SUPREME COURT, U.S. LIBRARY

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 228)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED AUGUST 27, 1951.

PROBABLE JURISDICTION NOTED OCTOBER 15, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

VOL. I

INDEX

	Original	Print
Record from U.S.D.C., Northern District of Illinois, Eastern Division Caption ..... (Omitted in printing)	1	
Complaint	3	1
Exhibit "A"—Complaint filed with Interstate Commerce Commission	62	50
Amendment of complaint	69	55
Exhibit "B"—Report of the Commission	72	57
Exhibit "C"—Order of the Commission	100	90
Answer of the Interstate Commerce Commission	102	90
Answer of the United States	109	94
Order granting the Atchison, Topeka and Santa Fe Railway Company, et al. leave to intervene	115	97
Answer of the Atchison, Topeka and Santa Fe Railway Company, et al.	120	98
Order granting the Union Stock Yard and Transit Company of Chicago leave to intervene	154	124

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 14, 1951.

—8925

	Original	Print
Record from U.S.D.C., Northern District of Illinois, Eastern Division Caption—Continued		
Answer of the Union Stock Yard and Transit Company of Chicago, intervening defendant	156	125
Order granting the Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange leave to intervene	166	131
Answer of the Chicago Live Stock Exchange, et al.	168	132
Order granting the Chicago Live Stock Exchange, et al. leave to file amendment to their answer (Omitted in printing)	171	
Amendment to answer of the Chicago Live Stock Exchange et al.	173	133
Order granting National Live Stock Producers Association and Chicago Producers Commission Association leave to intervene	175	134
Answer of the National Live Stock Producers Association et al.	177	135
Order designating Three-judge court	182	138
Notice of filing of deposition	184	139
Deposition of Guy A. Gladson and the notice of taking of said deposition	187	140
Excerpts from transcript of proceedings had on February 27, 1951	199	147
Appearances	199	147
Suggested findings of fact and conclusions of law submitted by plaintiff	234	150
Suggested findings of fact and conclusions of law submitted by railroad defendants	279	184
Excerpts from transcript of proceedings had May 15, 1951	296	196
Findings of fact and conclusions of law	433	197
Final order dismissing complaint	447	210
Petition for appeal	449	210
Order allowing appeal	451	211
Citation (Omitted in printing)	453	
Assignment of errors	455	212
Order approving bond on appeal (Omitted in printing)	494	
Bond on appeal (Omitted in printing)	496	
Order as to exhibits	499	218
Statement required by paragraph 2 rule 12 of the rules of the Supreme Court of the United States (Omitted in printing)	501	
Praecipe for transcript	505	219
Designation of additional portions of the record of the Chicago Live Stock Exchange et al.	509	220
Docket entries (Omitted in printing)	543	
Clerk's certificate (Omitted in printing)	548	

	Original	Print
Statement of points to be relied upon and designation of parts of record to be printed	549	221
Designation by the railroad appellees et al. of additional parts of the record to be printed	555	224
Counter-designation by United States and Interstate Commerce Commission of parts of the record to be printed	560	227
Order noting probable jurisdiction	563	228

VOL. II

Proceedings before the Interstate Commerce Commission	1a	229
Report proposed by examiner	1a	229
Transcript of hearing commencing February 24, 1948	1	248
Appearances	1	248
Opening statement by Mr. Smith	14	255
Testimony of G. F. Tally	22	261
H. McCaw	219	389
C. B. Heinemann	269	423
James J. Kinsella	288	436
Eugene Fuller	413	518
James J. Kinsella (resumed)	413	518
J. L. Sorenson	439	536
Statement by Mr. Knudsón	487	567
Testimony of John A. Zelinski	493	572
Matthew S. Parkhurst	538	602
John C. Starbuck	548	608
Joseph J. Stein	587	634
Walter Heide	610	648
E. G. Kiesele	648	674
R. D. Clousing	677	691
H. R. Park	703	708
Theodore Funk	796	769
E. C. McAdams	802	773
Leo R. Miller	822	786
David L. Swanson	848	802
A. C. Ashby	860	810
H. R. Welsh	881	824
David L. Swanson (recalled)	886	828
R. G. Rasch	887	828
Don C. Pollock	917	847
Ralph Seeman	926	853
W. H. Yungelas	941	864
J. A. Daggs	957	874
Ralph Jennings	962	878
Lloyd Lindsey	972	885
C. B. Heinemann (recalled)	1010	908
D. K. Van Ingen	1075	952
Rudolph N. Edman	1094	965
D. K. Van Ingen (resumed)	1113	970

Proceedings before the Interstate Commerce Commission—Continued
Transcript of hearing commencing February 24, 1948—Continued
Testimony of—Continued

	Original	Print
William J. O'Connor	1122	982
Frank E. Knutzen	1154	1005
Garland Russell	1183	1024
A. L. Bruckner	1194	1031
G. F. Tally (recalled)	1196	1033

VOL. III

EXHIBITS

1	Map showing proposed new location, Swift & Co. livestock pens, near 41st Street and Ashland Avenue, Chicago	1208	1040
2	Map showing tracks of Chicago Junction Railway within stockyards district of Chicago	1209	1041
3	Map showing entire line of the Chicago Junction Railway	1210	1042
4, 6, 8	Photographs showing switch connecting Swift & Co.'s sidetrack with rails of Chicago Junction Railway	1211	1043
9	Map showing Chicago Terminal (Switching) District	1216	1046
10	Compilation of correspondence, statistics, and rates referred to in the testimony of the witness, Mr. Tally	1217	1047
11	Excerpts from Swift & Company's Year Book for 1947	1246	1074
12	Statement on information furnished by railroad defendants concerning deliveries of livestock to plants at points in Western Trunk Line Territory	1260	1083
13	Large map of Chicago Junction Railway and the Chicago River and Indiana Railroad Co.	1268	1091
14	Map of Ashland Avenue yards, Chicago Junction Railway	1269	1092
15	Large scale aerial photograph of part of stockyards district of Chicago	1270	1094
16	Data furnished by railroad defendants showing consist of certain trains moving to stockyards area	1271	1095
17	Data furnished by railroad defendants showing carload delivery of livestock on team tracks in Chicago	1276	1101
18	Data furnished by N. Y. C. & St. L. R. Co. showing certain train consists	1277	1103
19, 20, & 21	Aerial photographs of Ashland Avenue Yards, South and North	1278	1104
22	Record of receipts of direct and other livestock at Chicago and certain other stockyards	1281	1107
23	Union Stock Yard & Transit Co. Tariff No. 14, effective August 11, 1947	1286	1112

EXHIBITS—CONTINUED

		Original	Print
28	Compilation of percentage of rail shipments of livestock billed direct to packers at Chicago, 1938-1947	1291	1117
29	Statement of receipts of direct shipments of livestock by individual packers at Chicago, 1936-1947	1292	1118
30	Statement of direct shipments of livestock received by packers by rail and by truck, 1938-1947	1296	1122
31	Record of direct shipments of livestock received by packers by truck, 1944-1947	1297	1123
32	Copy of transcript of hearing in I.C.C. Docket No. 29467, Neuhoff Packing Co. v. Louisville & N. R. Co., 268 I.C.C. 271	1298	1124
33	Schedule of departure time of C. B. & Q. trains to stockyards area	1347	1156
34	Map of Central Manufacturing District in Chicago	1350	1159
35	Report of cars of livestock handled for Omaha Packing Co. in 1947	1351	1160
36	Report of cars of livestock handled by C. B. & Q. and from connecting lines to Omaha Packing Co., 1942-1947	1352	1161
37	Record of trains to Union Stock Yards showing average cars per trip and average trips per day	1353	1162
38	Statement showing time consumed in movement of C. R. I. & P. trains to and through Chicago Junction	1354	1163
39	Record of time consumed by C. R. I. & P. crews to C. & N. W. Potato Terminal	1362	1171
40	Tabulation showing effect of consolidation of trains at Bensenville Yard	1363	1172
41	Tabulation of representative movements from Bensenville to Union Stock Yards	1364	1173
42	Large exhibit containing documents relating to the history of the Union Stock Yards at Chicago. (For detailed description of papers included, see the two pages in front of this exhibit, listing and describing Sub-Exhibits 47-78, inclusive.)	1365	117[illegible]
43	Record of statistics relative to receipts of livestock at Chicago	1880	1639
45	Statement of statistics relative to time of confinement for certain livestock trains arriving at Chicago	1921	1681
46	Statement of shipments, receipts, and valuation of livestock at Union Stock Yards, Chicago	2083	1843
47	Statement of scale of Western livestock rates	2094	1854
50	Cost study, delivery of livestock, C. & N. W. Ry. Co.	2096	1856
51	Statement of interstate livestock rate increases and destination terminal allowances included in the rate, C. & N. W. Ry. Co.	2103	1863
52	Cost study, livestock delivery, C. M. St. P. & P. R. R.	2104	1864
53	Maps showing local packing plants and terminal areas at various points in Western Trunk Line Territory	2108	1868

EXHIBITS—CONTINUED

		Original	Print
54	Map of stockyard and terminal areas, Sioux City, Iowa	2136	1896
55	Excerpts from U. S. Department of Agriculture Miscellaneous Publication No. 222, "The Direct Marketing of Hogs"	2138	1897
56	Statement of provisions contained in official list of open and prepay stations Tariff No. 62	2180	1960
57	Letter Winston, Strawn & Shaw to General Counsel, New York Central Lines, September 4, 1947	2181	1961
58	Statement showing motive power on the Chicago Junction Railway	2183	1963
59	Union Stock Yard & Transit Co. tariffs of August 24, 1936, and June 13, 1938	2185	1965

[fols. 1-2] [Caption omitted]

[fol. 3]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action, File No. 50 C 1017

SWIFT & COMPANY

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION

COMPLAINT—Filed July 18, 1950

[fol. 4] 1. Plaintiff, Swift & Company, is a corporation organized and existing under the laws of the State of Illinois, with principal office and place of business at Chicago, Illinois.

2. This complaint is brought to enjoin, set aside and annul a certain report and order of the Interstate Commerce Commission, known on the records of said Commission as "No. 29809, *Swift & Co.* v. *Atchison, T. & S. F. Ry. Co.*," 274 I. C. C. 557.

3. The complaint is brought against the United States and the Interstate Commerce Commission, and the jurisdiction of this court is conferred pursuant to 28 U. S. C. A. §§ 1253, 1336, 1398, 2101, 2284, 2321, 2323, 2324, 2325, and 5 U. S. C. A. § 1009, (a), (b), (c), (d), and (e).

[fol. 5] 4. On or about July 29, 1947, plaintiff filed with the Interstate Commerce Commission (hereinafter referred to as the "Commission") a complaint known upon the records of the Commission as docket No. 29809, *Swift & Co.* v. *Atchison, Topeka & Santa Fe Railway Company, et al.* A true and correct copy of said complaint, and of an amend-

ment thereto, is hereto attached, marked exhibit "A", and made a part hereof.

(a) In said complaint it was alleged, in substance, that defendants refuse to deliver direct interstate shipments of livestock, in carloads, to plaintiff's private side-track connected with the rails of defendant, Chicago Junction Railway (a subsidiary of and operated by defendant, The New York Central Railway Company) except upon payment of the line-haul rates to Chicago, Illinois, plus a penalty or switching charge of $24.00 per car (since increased to $36.00 per car); although defendants, without adding any penalty or switching charge in addition to the line-haul rates, contemporaneously deliver similar shipments of livestock to the unloading pens of the Union Stock Yard and Transit Company of Chicago, also located on the rails of defendant, Chicago Junction Railway; to other points and places in the Chicago area; and to substantially all points and places throughout central and western truck line territories at which are located meat packing plants which are competitive with plaintiff's said Chicago plant in the purchase of livestock and sale of meat products; and deliver upon plaintiff's said side-track, and other similar side-tracks connected with the Chicago Junction rails all interstate carload freight other than livestock without the addition of any penalty or switching charge in addition to the line-haul rates to Chicago. By its said complaint plaintiff sought an order by the Commission which would require delivery of plaintiff's direct shipments of livestock by defendants to plaintiff's said private side-track connected with the rails of defendant, Chicago Junction Railway, at rates and [fol. 6] charges which should not exceed the rates and charges applicable to deliveries of livestock by defendants to the unloading pens of the Union Stock Yard and Transit Company of Chicago; and which should not exceed the rates and charges applicable to the delivery of all line-haul freight other than livestock to plaintiff's said side-track and to other industrial side-tracks connected with the rails of said Chicago Junction Railway.

(b) Answers to said complaint were duly filed with the Commission by the defendants named in said complaint (hereinafter referred to as defendants). Thereafter hear-

ings were had before an Examiner designated by the Commission. A proposed report was issued by said Examiner and served upon the parties. Exceptions to said report of the Examiner were filed by plaintiff on or about November 30, 1948. Reply to said exceptions was filed on behalf of defendants and certain interveners. The case was orally argued before the entire Commission by counsel for plaintiff and by counsel for defendants and interveners.

(c) On or about July 6, 1949, the Commission issued its report and order in said proceeding, known upon the records of the Commission as No. 29809, *Swift & Co.* v. *Atchison, T. & S. F. Ry. Co.*, 274 I. C. C. 557. A true and correct copy of said report and order of the Commission is hereto attached, marked exhibit "B", and made a part hereof. The order of the Commission dismissed the complaint. Thereafter, on or about September 12, 1949, plaintiff filed with the Commission in said proceeding a petition for rehearing, reargument, or reconsideration, and reversal of the Commission's order. Replies thereto were filed by counsel for defendants and certain interveners. On February 6, 1950, the entire Commission entered an order in which it dismissed plaintiff's petition for reargument, reconsideration and reversal of the order theretofore made. A true and correct copy of said order of the Commission of February [fol. 7] 6, 1950, is attached hereto, marked exhibit "C", and made a part hereof.

5. The authority of the Commission with respect to the issues involved in said complaint No. 29809, during all of period when said complaint was pending before the Commission, is solely contained in and is limited to what is commonly known as the Interstate Commerce Act, part I (U. S. C. A. tit. 49, § 1, *et seq.*).

6. Said report and order of the Commission is erroneous, in violation of the provisions of the Interstate Commerce Act, part I (U. S. C. A. tit. 49, § 1, *et seq.*) and other laws of the United States. Said report and order of the Commission is void and of no effect because it is based upon findings of fact which are not supported by the evidence of record, are irrelevant to any issue therein, and upon substantial and controlling errors of law. Said erroneous report and order of the Commission subjects plaintiff to

the payment of charges which are unlawful, unjust, and unreasonable, because it denies to plaintiff, contrary to law, the right to obtain from defendants a reasonable and convenient delivery of carload shipments of livestock, consigned direct to plaintiff, at reasonable and nondiscriminatory rates and charges. The failure of the Commission to decide said case in accordance with the facts of record and the law applicable thereto; and in failing, neglecting and refusing to make findings in accordance with the facts of record, and the law applicable thereto, results in the payment by plaintiff of unlawful rates, charges and expenses in connection with the delivery by defendants of plaintiff's direct shipments of livestock by railroad to plaintiff's Chicago plant, and in the assessment of unlawfully discriminatory rates and charges upon plaintiff's said shipments by comparison with similar shipments consigned to other meat packing companies in the Chicago district and elsewhere. [fol. 8] Said report and order of the Commission is void because it is arbitrary and capricious; because it constitutes an abuse of power on the part of the Commission; because it denies to plaintiff certain rights conferred by law with respect to the delivery by defendants of plaintiff's said direct shipments of livestock, and denies certain statutory rights in connection therewith; because it is unsupported by substantial evidence; disregards substantial evidence; is unwarranted by the facts of record; and is based upon the unlawful assumption of authority by the Commission. The various respects in which said report and order of the Commission are erroneous or unlawful, for one or more of the reasons stated herein, are set forth in later paragraphs of this complaint.

Definitions

7. Certain words or phrases, common in railroad terminology or in the livestock trade (used in the record before the Commission and in said decision of the Commission) will be used herein with the meanings here stated:

(a) *Direct shipments* of livestock are those purchased by a meat packer in the producing areas and shipped to his plant for processing. As to such shipments the meat packer is the owner of the property during the course of railroad

transportation. The term *direct shipments* is used to distinguish this class of livestock traffic, during transportation, from livestock consigned by producers or others to commission men at a public livestock market for sale upon such market. At present approximately 64 percent of the hogs, 25 percent of the cattle, 40 percent of the calves and 39 percent of the sheep and lambs, purchased by meat packing plants operating under federal inspection, are marketed "direct" by producers or others to meat packers and are not consigned for sale upon the public livestock markets at Chicago or elsewhere. All the livestock involved in this pro- [fol. 9] ceeding are direct shipments to plaintiff or one of its subsidiary companies. During the five years prior to the hearing before the Commission such shipments consigned to plaintiff at Chicago and transported by defendants averaged 6,489 carloads per year. Such shipments do not require any of the services commonly performed at a public stockyard market, such as unloading from cars, placement in holding pens of the stockyard company, weighing, feeding, etc., at such market, if the purchaser is, like plaintiff, prepared to accept delivery of such shipments of livestock upon its private side tracks.

(b) *Line-haul carrier.* This term is used to describe a common carrier by railroad which performs, or participates in the performance of, the transportation of livestock and other freight from points outside the state of Illinois to Chicago, Illinois. This term is used to distinguish such a carrier and carriage from the services performed within a local switching area, such as Chicago. By way of illustration, the defendant, Chicago and North Western Railway Company, is termed a line-haul carrier with respect to traffic transported by it from Omaha, Neb., to Chicago. But if such a shipment were destined to a private side-track in the Chicago area located upon the rails of the defendant Illinois Central Railroad Company, the Chicago and North Western Railway Company would perform a "line-haul" service to its connection in Chicago with the Illinois Central Railroad Company; and the service performed by the Illinois Central Railroad Company in placing the car at a private side-track on its line would be termed a switching service.

(c) *Line-haul rates* as used herein, and in the record before the Commission, are railroad rates published to cover the "line-haul" transportation of livestock or other freight between points in different states, together with any termi- [fol. 10] nal service within an industrial area (such as Chicago) which may, by the terms of a railroad tariff, be included within the line-haul rates, without extra charge for such terminal service.

Each of the defendants in the complaint before the Commission was and is a line-haul common carrier by railroad, over its own line of railroad, from various points of origin to Chicago and other points, with the exception of the defendants, The Chicago River and Indiana Railroad Company, and Chicago Junction Railway (hereinafter jointly called "Junction") whose rails are located wholly within the Chicago terminal area. But said defendants last named, although separately incorporated, are subsidiaries of and operated by defendant, The New York Central Railroad Company, and constitute a part of its railroad system. Said Junction participates with each of the line-haul defendants in "joint rates" as hereinafter defined for the transportation of property between points on the lines of each of the line-haul defendants and points of origin or delivery upon the private side-tracks connecting with the Junction rails.

(d) *Joint rates*, as used in this proceeding, are rates named in a single sum per 100 pounds, or other unit of weight, to cover the transportaion of freight from a point on the line of one railroad carrier to a point on the line of another railroad carrier; in such instances one carrier gives a "concurrence" to another carrier, or both carriers may give a power of attorney to a joint agent, for publication of single-factor rates from points on one line to points on another. The amount received by each such carrier under such a rate is a matter of private agreement between the participating carriers. By way of illustration, if under proper authority a single-factor rate of $1.00 per 100 pounds is published for transportaion of a specific commodity from a station on the line of defendant, Chicago and North West- [fol. 11] ern Railway Company, to a station on the line of defendant, New York Central Railroad Company, this is

known as a "joint rate". But if to cover the same transportation service, the Chicago and North Western Railway Company publishes a rate of 50 cents from the same station to its junction with the New York Central Railroad Company, and the latter publishes a rate of 50 cents from such junction to the destination on its line, the combined rate of $1.00 for the through transportation is known as a combination of local rates. Each of the line-haul defendants in the complaint before the Commission publishes "joint rates" on traffic between points on its lines and private side-tracks on the Junction, in which the Junction concurs, and which include deliveries of carload freight on such private side-tracks served by the Junction rails, without the addition of any separate or local switching charges for the movement on the Junction rails to such private side-tracks.

(e) A *local rate* is one applying only from one point or station on a railroad to another point or station on the same railroad.

(f) *Absorptions.* Local switching charges of one railroad for delivery in an industrial area to or from a junction with a different line-haul carrier are frequently published as local rates by the switching line and "absorbed" by the line-haul carrier. This means that the line-haul carrier publishes in connection with its line-haul rates (local or joint) a provision that it will "absorb" or pay to the switching line, the amount of the latter's local switching charge; so that the shipment may be delivered on or received from a side-track reached only by the switching line without charge to the consignee or shipper above the line-haul rate. This practice of "absorption" is commonly used in connection with the delivery of livestock and other [fol. 12] freight to meat packing plants in central and western truck line territories, which are the territories most highly competitive with Chicago in the purchase of livestock and sale of meat products. But with respect to Chicago, joint rates are published (in which the line-haul carriers and switching lines are participants), which provide for the delivery of carload freight on the rails or side-tracks of the switching lines without charge above the line-haul rates. The Junction (operated by defendant, New York

Central Railroad Company) participates in such joint rates upon substantially all traffic except livestock. Each of the line-haul defendants before the Commission, including the New York Central, operator of the Junction, participates in such joint rates, which include delivery of carloads of livestock to a private side-track on the line of defendant, Chicago, Burlington & Quincy Railroad Company, known as the Omaha location at 2320 South Halsted Street in Chicago. And each line-haul defendant, including the New York Central, provides for delivery of livestock in carloads at certain sidings or tracks on its own rails in the Chicago area.

(g) *Central territory* is defined as approximately that territory composed of the states of Illinois, Michigan, Indiana, and Ohio, including portions of western Pennsylvania and southern Wisconsin.

(h) *Western Trunk Line territory* is defined as approximately that territory west of the Great Lakes and the Mississippi River, east of the Rocky Mountains, and generally north of the northern boundary lines of Oklahoma and New Mexico.

[fol. 13] Defendants and Interveners

(8). (a) Each defendant in the complaint before the Commission was and is a common carrier of property by railroad subject to the provisions of part I of the Interstate Commerce Act (49 U. S. C. A. 1, 27, 301, 901 and 1001). Certain persons, corporations or associations intervened in opposition to the complaint.

(b) Union Stock Yard and Transit Company of Chicago (hereinafter called the yard company), one of said interveners, is the owner and operator of the public livestock market at Chicago commonly known as the Union Stock Yards. So-called commission men operate upon this public market and to them producers consign livestock to be sold (generally to meat packing plants). The income of the yard company accrues from three principal sources: (1) charges for unloading of livestock from railroad cars into chute pens, paid to the yard company by the line-haul carriers of the livestock, and amounting at the date of the hearing to $2.08 per double-deck and $1.73 per single-deck car; (2) yardage charges, amounting at the time of the hearing to 65 cents per head on cattle, 40 cents per head on calves,

21 cents per head on hogs, and 15 cents per head on sheep and lambs, when received by railroad. Said yardage charges are charged against and paid by the consignee or shipper of the livestock. These charges are made for the purpose of compensating the yard company for the use of its alleys, scale facilities, pens, etc., while livestock consigned to commission men at the yards is awaiting sale to a purchaser, or delivery to the consignee when direct shipments are sent to the yards for such delivery; (3) charges for feed furnished to livestock by the yard company while awaiting sale or delivery on its premises. Said yard company, or one of its holding or subsidiary companies, is the [fol. 14] owner in fee of the property of the Chicago Junction Railway, as hereinafter more fully described.

(c) Plaintiff's present direct shipments of livestock to Chicago, which have averaged 6,489 cars per year, do not now pass through or use the facilities of the yard company. Said shipments are delivered, at the flat Chicago rates, without addition of switching charges, at plaintiff's private side-track unloading facilities, on the line of defendant, Chicago, Burlington & Quincy Railroad Company, at 2320 South Halsted Street, Chicago (about three miles from plaintiff's meat packing plant in the stock yard area), and must be thence transported by motor truck, at an expense to plaintiff of approximately $50,000 per year, without use of the pens or other facilities of the yard company. If said shipments were delivered to plaintiff's private side-track connecting with the Chicago Junction Railway in the stock yard area, no facilities of the yard company would be employed and the yard company would have no benefit therefrom except indirectly as the owner or lessor of the property of the Chicago Junction. Said intervener has no direct financial interest in the issues raised in said complaint before the Commission; it does not now obtain any revenue from the only shipments involved in the complaint and would not do so if the prayer of the complaint had been granted by the Commission.

(d) Substantially fifty per cent of the livestock consigned to the property of the yard company for sale or delivery arrive by motor vehicles and no haul by railroads is involved. Of the remaining fifty percent of livestock receipts at the yards, substantially fifty per cent are direct

shipments to meat packing plants in that area, other than those of plaintiff, and from which the yard company obtains revenue for its services of unloading, pen facilities, weighing, etc. The remaining fifty percent of the shipments [fol. 15] received at the yards by railroad (or approximately twenty-five per cent of its total receipts) are so-called market stock consigned to commission men for sale upon the public market.

(e) The position of the yard company was not that it would suffer any diminution of its revenues if the prayer of the complaint had been granted; but that if other meat packing plants, which now accept delivery of their direct shipments through the facilities of the yard company, should demand and be granted delivery of such shipments upon their private side-tracks connected with the Chicago Junction Railway, the revenue of the yard company which now accrues from its charges in connection with the delivery of such shipments would be substantially reduced.

(f) The Chicago Livestock Exchange and the Chicago Traders Livestock Exchange also intervened before the Commission in opposition to the complaint. The members of the Chicago Livestock Exchange (commonly known as commission men) receive a fee for services rendered only in connection with livestock consigned to them for sale by producers or others. From direct shipments they receive no compensation, whether delivered to the meat packers' private side-tracks, or through the pens and alleys of the yard company.

(g) The Chicago Traders Livestock Exchange and the members thereof, do not act as selling agents for livestock producers. In some instances they act as purchasing agents (for compensation) in the purchase of livestock on the public market at Chicago for meat packing plants at eastern and other points. In their trading operations they act with their own capital as speculators for their own account, purchasing livestock on the market in the hope of resale at a profit.

(h) Interveners, National Livestock Producers Associa- [fol. 16] tion and Chicago Producers Association, like the commission men, sell livestock on the Chicago market on a commission basis for their members, and remit the proceeds

of sales, less their commission, freight, yardage and other marketing charges, to their members or other consignors.

(f) Said exchanges and associations receive no compensation in connection with direct shipments, including plaintiff's shipments, to Chicago. Historically and traditionally, as well as from self-interest, they have been and are opposed to the direct marketing of livestock. They have sought to obtain through the enactment of legislation, and by other means, to prohibit or curtail the practice of direct sales of livestock by producers to meat packing plants. They are opposed to equality in railroad rates or transportation services in connection with the carriage or delivery of direct shipments.

Specific Errors in Decision

8. At page 559 of the Commission's decision the following statement appears:

> "In the determination of the issues raised in this proceeding, it is necessary to consider the track layout of the Junction, and the present operations thereover in the handling of so-called dead freight, which term includes perishable and all other freight other than livestock; the method by which livestock has for many years been handled by the line-haul carriers to the Union Stock Yards; the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock, as sought by the complainant; and also, in order to avoid undue preference and prejudice, if it were required to make similar deliveries to complainant's competitors."

(a) The Commission erred in confining its necessary considerations to what may be termed the purely physical factors of railroad operation, such as track layout, availability [fol. 17] of motive power, congestion of tracks, etc.* The

* At the same time, the Commission necessarily found that such physical factors of railroad operation as track layouts, availability of motive power or congestion of tracks, are not controlling provided a charge of $36 per car is made in addition to the flat Chicago rate on livestock. This inconsistency is alleged more in detail at page 55, *infra*.

Commission thereby excluded from consideration certain other factors which are relevant and controlling under the interstate commerce act, such as the improper and unlawful contractual relations between defendant New York Central Railroad Company and the yard company with reference to the operation of the Junction property; the legal duties of the defendant New York Central Railroad Company as lessor and operator of the Junction property; all questions of unlawful rate discriminations as between a delivery of livestock to plaintiff's private side-track on the Junction rails by the line-haul defendants and other deliveries of livestock and other freight; the question of unlawful discrimination in rates, charges and deliveries between livestock and dead freight on the Junction side-tracks; and many other facts of record necessary to be considered in connection with a just and equitable decision under the interstate commerce act. The Commission erred in failing to note and find that said act in no provision thereof condones or authorizes unlawful rate discriminations, prohibitive penalty charges, or other violations of law, because of mere physical inconvenience, or preference of the carrier, or contractual obligations to a lessor, with respect to the delivery of a specific commodity which is accepted and transported under its line-haul rates.

(b) The Commission erred in that, disregarding many provisions of the interstate commerce act, it based its decision wholly or principally (in so far as can be inferred from its findings and conclusions) upon certain physical difficulties, inconveniences, and preferences of the New York Central (Junction) in the operation of switching and ter- [fol. 18] minal services. The commission erred in finding and concluding that a prohibitive penalty charge may be assessed for delivery of plaintiff's direct shipments (the purpose of such charge, as indicated by the decision, being to prevent delivery upon plaintiff's private side-track) in order to expedite and prefer the delivery of other carloads of livestock (upon which defendants assess precisely the same line-haul rates) to the unloading pens of the yard company, although more than 50 percent of such carloads delivered to the pens of the yard company are, like plaintiff's shipments, direct shipments consigned to other meat packing plants and not shipments intended for sale upon the

public market. Thereby the Commission condoned, approved and perpetuated a railroad rate discrimination against plaintiff and in favor of other meat-packing plants with respect to transportation charges in the stockyard area amounting to $28.80 per car at the time of the hearing (since increased to $36.00 per car). The Commission erred in authorizing and permitting this rate discrimination, although the transportation of the livestock to said delivery point (plaintiff's side-track and the yard company pens) would be and is over the identical rails to within a short distance of said delivery points. The purpose, intent and result of the decision is that a carload of direct livestock consigned to Armour and Company (for example) will be delivered at the unloading pens of the yard company at the flat line-haul rate to Chicago; whereas a similar carload, consigned to plaintiff, and transported over the rails of the identical carriers, including the New York Central (Junction), shall pay the line-haul rate to Chicago plus a penalty charge of $28.80 (now $36.00) per car. In so deciding, the action of the Commission was arbitrary, capricious, beyond the power of the Commission, and in disregard of the various sections of the interstate commerce act hereinafter mentioned.

[fol. 19] 9. (a) The defendant, Chicago Junction Railway, herein, and in the decision of the Commission, called the Junction, is mentioned at least 53 times in said decision as if it were a separate, independent terminal line, dependent upon its own resources for the amount and character of its motive power, side-track facilities, etc., and free from any obligation to avoid unlawful discriminations and preferences which would apply to it if it had the obligations of a line-haul carrier. In so treating the Junction the Commission erred in fact and in law.

The Junction was for many years owned and operated by the yard company, or by a New Jersey or Maine holding company which also owned and operated the stock yards. During that period the Junction was operated as an adjunct to and facility of the yard company; and during that period the Junction and its owners denied that it was a common carrier by railroad, subject to regulation as such, and took the position that the Junction was merely a plant facility of the yard company. During that period the Junction did

not file tariffs or otherwise comply with the requirements of the act to regulate commerce. During that period the present practices with respect to the delivery of livestock on Junction rails were established in the interest of the yard company. It was not until 1912 (in *United States* v. *Union Stock Yard & T. Co.*, 226 U. S. 286, 57 L. ed. 226) that the Junction was held to be a common carrier by railroad, amenable to the provisions of the interstate commerce act and the jurisdiction of the Commission.

(b) Thereafter, on December 28, 1920, defendant New York Central Railroad Company filed with the Commission an application for permission to acquire control of the Chicago River and Indiana Railroad Company, by purchase of its capital stock, and acquisition by the Chicago River and Indiana Railroad Company of control and operation of the Junction properties by lease of its properties from the [fol. 20] yard company interests. On May 16, 1922, the Commission issued its decision and order (*Chicago Junction* case, 71 I. C. C. 631) in which it approved said application of defendant, New York Central Railroad Company, and since that time the Junction has been operated by the said New York Central Railroad Company as the lessee thereof through its wholly owned subsidiary, the Chicago River and Indiana Railroad Company.

(c) In its present decision the Commission accepts evidence of congested conditions on the Junction tracks, complete use of motive power, etc., as adequate excuses for in fact denying to plaintiff's shipments of livestock the equality of treatment sought by plaintiff, and this although the Commission stated as one of the reasons for approving the lease of the Junction properties that such lease would ameliorate and eliminate congested conditions then existing on the Junction rails by use thereof in connection with yards, sidings and terminals of the New York Central.

(d) Under said lease of the Junction properties to the New York Central, and by reason of the provisions of § 1(3)(a) of the interstate commerce act, the Junction became a part of the New York Central Railroad Company for the term of said lease. Thereby the tracks and sidings and motive power of the Junction came into precisely the same legal relation to the transportation and delivery of line-haul freight, including livestock, as the side-tracks, and

team tracks, and other terminal facilities operated or served by the New York Central, and may not lawfully be excluded from New York Central operation and control in the determination of questions of discrimination and other unlawful practices under part I of the interstate commerce act.

(e) The Commission erred in treating the Junction as an independent switching line, disassociated from obligations and duties which the New York Central incurs as a line-haul [fol. 21] carrier of livestock to various points on its line, including deliveries to pens of the yard company and to plaintiff's private side-track. In this connection the Commission disregarded and gave no effect to the evidence of record that throughout central and western trunk line territories generally the defendant, New York Central Railroad Company, effects direct delivery of carload shipments of livestock to meat packing plants which are in competition with plaintiff's Chicago plant at the same level of line-haul rates (without addition of switching or prohibitive penalty charges) which are applicable to deliveries of said commodity to plaintiff's side-track. The Commission thereby erred in fact and in law.

(f) The Commission erred in giving no weight, or no effective weight, to the fact that, by the terms of said lease, the New York Central has contracted to discriminate unlawfully in favor of lessor (the yard company) to the damage of plaintiff, with respect to the delivery of livestock to plaintiff's side-track upon the Junction rails.

In the lease of the Junction property from the yard company to its then subsidiary, Chicago Junction Railway, dated December 1, 1913, the Junction agreed

> "to conduct, manage and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the yards".

This provision was incorporated in the lease of May 19, 1922, of the Junction property to the New York Central Railroad Company.

(g) After the complaint in this proceeding had been by plaintiff filed with the Commission, a letter was addressed

[fol. 22] by general counsel for the yard company to general counsel for defendant, New York Central Railroad Company, reading in words and figures as follows:

"Winston, Strawn & Shaw
First National Bank Building,
Chicago 3

September 4, 1947.

Mr. Sidney C. Murray,
General Counsel,
New York Central Lines,
1236 La Salle Street Station,
Chicago 5, Illinois

Dear Sir:

In response to a telephone inquiry made by us last week, Mr. W. C. Douglas, Assistant Vice President of the River Road and the New York Central, stated that neither of those companies planned to offer any evidence or to take any other steps to defend the complaint in Swift & Company *vs.* The Atchison, Topeka & Santa Fe Railway Company, *et al.*, I. C. C. Docket 29809. In this complaint Swift is asking the Interstate Commerce Commission to compel the line-haul carriers and the River Road to deliver livestock to its plant at rates which do not exceed those charged for delivery of livestock to the unloading pens of the Union Stock Yard and Transit Company of Chicago.

If the request of Swift is granted, and the other packers demand and are accorded similar treatment (which may be anticipated), the effect will be substantially to destroy the business of the Yard Company.

In Article VI of the lease from the Yard Company to Chicago Junction Railway Company dated December 1, 1913, the Junction agreed 'to conduct, manage and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such [fol. 23] manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards.' In the lease of May 19, 1922, by the Junction to the River Road (see Art. III, Sec. 2, and Art. IX), the

River Road and the New York Central undertook to perform the above-quoted covenant of the Junction in the earlier lease.

Most of the evidence necessary to defend the Swift complaint and the power to raise the necessary issues for the determination of all the questions involved are in the possession of the River Road. We believe that if this evidence is adduced, and if the proper issues are raised by that road, the case can be successfully defended.

It is our considered opinion that the River Road and the Central are obligated under the terms of the foregoing provision of the lease of 1913 to defend this case and to take every other step appropriate to prevent irreparable injury to the Yard Company, and that any failure to do so will be a breach of this covenant of the lease.

Yours truly, Winston, Strawn & Shaw."

Thereupon defendant, New York Central Railroad Company, promptly reversed the position imputed to it in the first paragraph of said letter, and, in disregard of its duties as a line-haul common carrier of livestock, directed its officers and agents to offer evidence showing congestion, etc., on the Junction rails, filed a tariff prohibiting the delivery of carloads of livestock to plaintiff's said side-track, and took every step within its power to comply with said terms of said lease of December 1, 1913, and to prevent the delivery of livestock to plaintiff's side-track on the Junction upon terms and conditions as favorable from the standpoint of rates and charges as those under which livestock is delivered by defendant, New York Central Railroad Company, at the unloading facilities of the yard company and at numer- [fol. 24] ous other points on the line of said defendant, including Indianapolis, Indiana, Cleveland, Ohio, and other points; and this in order to operate the Junction to the benefit and advantage of the business of the owner of the Junction property, the yard company.

(h) The Commission erred in holding that any of the conditions stated in its authority for lease of the Junction by the yard company to the New York Central could or did

inhibit the operation of the Junction by the New York Central to the special advantage and interest of the yard company; in so doing the Commission disregarded and treated as of no effect the statutory requirements resting upon the New York Central as a line-haul carrier of livestock to afford a reasonable, convenient and non-discriminatory delivery thereof to the consignee; gave full force and effect to said unlawful provisions in said contract of December 1, 1913, and disregarded the provisions and requirements of §§ 1(3)(a), 1(4), 1(5), 1(6), 1(9), 15(5) and other sections of part I of the interstate commerce act.

10. The Commission found in its decision that cars containing plaintiff's direct shipments of livestock may reasonably be delivered to plaintiff's private side-track (decision, p. 564) as follows:

> "As hereinbefore shown, livestock can be and is handled in consolidated trains with other freight and it appears that direct shipments consigned to complainant could be placed on a track in the south yard for subsequent removal to complainant's plant."

but that if such livestock were so delivered to plaintiff's side-track it would tend to disrupt defendants' terminal operations. The Commission disapproved and required cancellation of a proposed rule (I. & S. docket No. 5443) published by the New York Central (Junction) which would have prohibited transportation by the Junction of live-[fol. 25] stock to private side-tracks (other than those of the yard company) on the Junction rails.

(a) The decision, under these findings, approves, establishes, and continues in force a prohibitive penalty charge (over and above the line-haul rates) of $28.80 per car at the time of the hearing (since increased to $36.00) for the delivery of livestock by defendants to plaintiff's private side-track on the Junction rails. This charge is, by the total amount thereof, in excess of the amounts for which defendants deliver livestock over the rails of the Junction to the pens of the yard company, adjacent to plaintiff's private side-track and on the same railroad; it exceeds by the total amount thereof the charges made by defendants for delivery of livestock to plaintiff's Omaha plant location

at 2320 South Halsted Street, Chicago, on the rails of defendant, Chicago, Burlington & Quincy Railway Company; it exceeds by the total amount thereof the rates and charges for which defendants deliver carloads of livestock upon their own team tracks at various points in the Chicago switching district; it exceeds by the total amount thereof the rates and charges for which defendants deliver carloads of livestock to competitive meat packing plants throughout central and western trunk line territories, whether such delivery be on the side-track of the line-haul carrier, or through the facilities of a separate switching line; and it exceeds by the total amount thereof the total rates and charges at which defendants deliver all other classes of carload freight, including perishable freight, to plaintiff's private side-tracks and to all other industrial side-tracks on the Junction rails.

(b) The effect of such a charge is that upon the average of 6,489 cars of direct shipments consigned annually to plaintiff's Chicago plant, plaintiff would be required to pay a switching charge of $186,883 (as of the time of the [fol. 26] hearing, presently $233,604) per annum, as compared with a cost of approximately $50,000 per annum for trucking said shipments over three miles through crowded city streets from the Omaha location at 2320 South Halsted Street; it would exceed by the total amount thereof the charges at which livestock is required (by order of the Commission) to be delivered to the unloading pens of the yard company at the flat Chicago rates, after following precisely the same movements through the outer and inner railroad terminals of the line-haul defendants in Chicago as would be used to reach plaintiff's private side-track. If said livestock were to be consigned to the yard company facilities for unloading and use of its pen and other facilities in effecting delivery to plaintiff's plant, the total yardage charges of the yard company would not exceed $129,000, or $57,000 less per annum than the prohibitive penalty charge approved and prescribed by the Commission.

(c) This prohibitive penalty charge, approved by the Commission, bears no stated, rational, or ascertainable relation to the charges and rates assessed by defendants

for the delivery of carload shipments of livestock to the unloading tracks and pens of the yard company, adjacent to plaintiff's side-track; or to the charges for delivery of carloads of livestock at other points on the rails of the line-haul defendants in Chicago or elsewhere; or to the total charges for the delivery of carloads of dead freight (including perishables, such as butter, eggs, dressed poultry, fresh meats, etc.) to side-tracks on the Junction rails; nor does it bear any stated, rational or ascertainable relation to the cost of performing the terminal service in connection with the line-haul rates and services. It disregards the fact that in making a delivery of carloads of livestock to plaintiff's side-track the defendants would avoid the cost of [fol. 27] unloading livestock cars by the yard company, for which defendants pay the yard company $2.08 per double-deck and $1.73 per single-deck car; and the trackage charge of $1.50 per car paid by the line-haul defendants to the Junction for the use of its tracks.

(d) Said charge represents the charge established by the Junction, many years ago, (and since increased to $36.00 per car) when the Junction was both owned and operated by the yard company as an adjunct to and a facility of the yard company. Said charge was then established for the express purpose of forcing the delivery of all livestock to the yard company for unloading and yarding, and to prevent the delivery of livestock by railroad at any other point on the Junction rails, in order that the yard company might obtain compensation for those services; although with respect to all other line haul traffic delivered to industries on the Junction rails, that line joined with the line-haul defendants in establishing joint rates for such deliveries, out of which the Junction receives a division of such joint rates, thereby providing deliveries on the Junction rails at the flat rates to Chicago from points in States other than Illinois.

(e) Said penalty charge constitutes an unlawful discrimination against livestock, as an article of railroad traffic, and against plaintiff. The action of the Commission in approving and continuing a prohibitive penalty charge is contrary to and in violation of the national transportation policy declared in 49 U. S. C. A. 1, to the effect that Congress

thereby intends to require the establishment of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages. In approving this prohibitive penalty charge the Commission disregarded, violated, and failed to give effect to the provisions of §§ 1 (3) (a), 1 (4), 1 (5) (a), 1 (9), 1 (10) and (11), [fol. 28] 2, 3 (1) and 15 (5) of part I of the interstate commerce act, and gave full force and effect to discriminations and practices prohibited by said statute.

11. The Commission erred in failing to find, disregarding, and giving no effect to the undisputed facts of record which show that defendants effect delivery of direct carload shipments of livestock to meat packing plants at cities and towns served by their lines, throughout central and western trunk line territories; that the meat packing plants at such points are in active competition with plaintiff's Chicago plant in the purchase of livestock and sale of meat products. The undisputed evidence of record before the Commission established that defendants, including the New York Central Railroad Company, effect delivery of livestock direct to the private side-tracks of meat-packing plants at Anderson, Ind., Austin, Minn., Cedar Rapids, Ia., Cudahy, Wis., Davenport, Ia., Des Moines, Ia., Dubuque, Ia., East St. Louis, Ill., Eau Claire, Wis., Estherville, Ia., Evansville, Ind., Ft. Dodge, Ia., Green Bay, Wis., Indianapolis, Ind., Joplin, Mo., Kansas City, Mo., Madison, Wis., Marshalltown, Ia., Mason City, Ia., Milwaukee, Wis., Newport, Minn., Omaha, Neb., Ottumwa, Ia., St. Joseph, Mo., Sioux City, Ia., Storm Lake, Ia., Waterloo, Ia., Winona, Minn., St. Louis Mo., and a number of other cities and towns in the same territories; that such deliveries are effected under the identical scales of line-haul rates which are applicable to plaintiff's direct shipments to Chicago; that such deliveries are effected by the line-haul defendants by the absorption of local switching charges, if the side-track of the meat packing plant is not reached by the line-haul carrier. The Commission erred in holding for naught such evidence, and thereby the Commission approved violations of the interstate commerce act, part I, and particularly §§ 2 and 3 (1) thereof. The Commission also erred in failing to find and state that [fol. 29] it is the general practice of defendants, and other

railroad carriers throughout the United States, to make such delivery of livestock to the industrial side-tracks of meat-packing plants at the line-haul rates; and to find that such a delivery is reasonable and necessary under the provisions of part I of the interstate commerce act.

12. The Commission erred in approving, condoning, and giving effect to an unlawful discrimination between livestock and all other commodities in the delivery service accorded such commodities and the charges therefor rendered and made by defendants, including the New York Central (Junction). The Commission accorded no weight, or no proper weight, to the facts (undisputed on the record) that defendants generally provide by tariffs for the delivery of all interstate line-haul traffic within the Chicago switching district at the flat line-haul rates to Chicago, without additional charges for switching to an industrial side-track on the line of a connecting carrier within such switching district; that such deliveries frequently involve switching over a much greater distance, and at greater expense, than the switching service to plaintiff's private side-track on the New York Central (Junction); and particularly that this practice is followed by the New York Central (Junction) with respect to the delivery of all line-haul interstate traffic commonly moving to side-tracks connected with the rails of the New York Central (Junction); that for the flat line-haul rates to Chicago defendants provide for and effect delivery of such carload traffic to all private side-tracks on the New York Central (Junction) rails, including plaintiff's private side-track, of butter, eggs, cheese, poultry, fresh meats, cured packing-house products, coal, lumber, wooden and paper boxes, salt, pepper, glass jars, tin cans, hides and pelts, machinery, vegetable oils, and many other com-[fol. 30] modities; that many of such commodities are transported to Chicago and so delivered on the New York Central (Junction) side-tracks at line-haul rates which are lower than the livestock rates; that many of such commodities require as great a degree of care in transportation and delivery as does livestock; and the Commission erred in construing the applicable provisions of part I of the interstate commerce act as authorizing such discrimination because of physical inconvenience or because of the con-

tractual relation existing between the New York Central (Junction) and the yard company.

13. The Commission erred in failing to note and give weight to the fact that in recent years more than 64 percent of the hogs and more than 25 percent of the cattle, sheep and lambs, sold by producers to meat packing plants under federal inspection, are sold direct by producers or their agents to the purchasing packers; that the services rendered by commission men and the yard company at a public market at destination are unnecessary in connection with the railroad delivery of such direct shipments if the purchaser maintains a private side-track upon which such shipments may be delivered; that it is the practice of defendants to deliver such direct shipments upon private side-tracks throughout central and western trunk line territories; that failure or refusal to do so, or the imposition of a prohibitive penalty charge for such a delivery to plaintiff's private side-track, although contemporaneously delivering such direct shipments to the side-tracks of the yard-company at the flat Chicago rates, constitutes an unlawful discrimination in rates and services, and results in unlawful charges, contrary to the provisions of §§ 2, 3 (1), 1 (5), 1 (6), 1 (9), and 15 (5) of part I of the interstate commerce act.

14. In connection with the following finding (decision, p. 565):

> "Apparently, however, that method of operation is [fol. 31] less expensive than delivery to complainant through Union Stock Yards which would involve yardage charges per head of 65 cents on cattle, 40 cents on calves weighing under 450 pounds, 21 cents on hogs, and 15 cents on sheep. The estimated number of head of each specie per single-deck car is shown as 25 cattle, 65 calves, 70 to 75 hogs, and 100 to 125 sheep."

the Commission erred in failing to find and state that said yardage charges are not made nor assessed by defendants; that said charges are for a non-transportation service, rendered after transportation by railroad has ended; that said charges are made by the yard company for a stockyard service under a tariff filed with the Secretary of Agricul-

ture; that such non-transportation services are unnecessary if a proper, convenient and lawful delivery of direct shipments of livestock is made upon a private side-track such as that of plaintiff; that in connection with a delivery through the facilities of the yard company defendants must and do bear the unloading charges assessed by the yard company, and trackage charges paid to the New York Central (Junction), which they would escape if plaintiff's livestock were delivered upon its private side-track; and that nothing in part I of the interstate commerce act justifies defendants or the Commission in forcing a delivery of livestock which will result in the involuntary payment by plaintiff to the yard company of compensation for an unnecessary non-transportation service.

15. The Commission erred in making and giving weight to the probable results in operations on the New York Central (Junction) rails if other meat packing plants served by said rails should elect to receive their direct shipments upon their private side-tracks, of which findings and conclusions the following are illustrative:

> "The probability of similar future demands by them if complainant's demand should be fully granted and [fol. 32] the required avoidance of undue prejudice, however, must be considered." (decision, p. 568).
>
> "Nevertheless, it is our best judgment, and we, therefore, so find and conclude, that, if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like delivery service in an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction lines." (decision, p. 572.)

The Commission erred in concluding that the assumed (but unproved) possible demands of other meat packing companies for the delivery of direct shipments of livestock upon their private side-tracks can or may justify or condone the imposition of a prohibitive penalty charge imposed by

defendants upon no traffic other than livestock; in failing to find that such deliveries (under the division of joint rates, presently accepted by the Junction upon all other carload traffic) would increase by approximately $680,400.00 per annum the gross revenue received by the Junction for switching services; in failing to find that if such deliveries should increase the Junction costs beyond its increased revenues, that question should be dealt with in connection with the divisions and charges received from the switching and delivery of all traffic, and not be assessed in a discriminatory and unlawful manner against a single commodity, livestock; and in concluding that the direct shipments of livestock to other meat packing plants in the stockyard area may lawfully be delivered to such companies at the flat Chicago rates (so far as any railroad service subject to the jurisdiction of the Commission is concerned), while plaintiff's shipments may lawfully have added thereto a pro-[fol. 33] hibitive penalty charge ($28.80 per car at time of hearing, since increased to $36.00).

16. The Commission erred (decision p. 573) in giving weight to and using as a precedent its decision in *Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553, because (a) the parties to that proceeding were different; (b) the principal issue was different, and did not involve delivery of livestock upon a private side-track, but through the facilities of the yard company; (c) the rates now in effect for the transportation of livestock to Chicago had not been made effective at the time of the decision in said case, nor had the Commission declared what services those rates were intended to and do include.

17. In making and applying the following finding (decision p. 574):

> "The line-haul rates on livestock to Chicago apply only to deliveries served by the line-haul carriers."

the Commission erred because, as shown by the record, the line-haul livestock rates to Chicago apply to railroad deliveries at the Omaha plant, 2320 South Halsted Street, Chicago, and no line-haul carrier to Chicago other than the Chicago, Burlington & Quincy Railroad Company reaches or serves that side-track delivery. The Commission also

erred in failing to note in this connection that the line-haul livestock rates to Chicago (by order of the Commission) also apply to deliveries at the facilities of the yard company, located only on the rails of the New York Central (Junction), and not reached by any other line-haul carrier except through trackage arrangements under which said other defendants pay a charge for the use of such tracks and pay the yard company for unloading the livestock; and in concluding that such trackage arrangements may justify discriminatory or otherwise unlawful charges. The Com- [fol. 34] mission erred in failing to consider what the line-haul rates to Chicago should include, rather than the technical tariff question of what is now included, as a result of the unlawful and preferential restrictions inaugurated and imposed by the yard company and by the New York Central (Junction).

18. In making the following finding (decision, p. 574):

> "The Junction participates in certain joint rates on perishable and other dead freight, out of which it receives for switching, a division of 3.15 cents per 100 pounds, minimum 60,000 pounds, which generally differs from and is lower than its local switching charge."

the Commission failed fairly and adequately to state the extent of the participation by the New York Central (Junction) in joint rates which include the delivery of line-haul traffic on the Junction rails.

(a) A more correct statement in this connection was made by the Commission in the decision in which it authorized the lease of the Junction property by the yard company to the New York Central. The Commission there said (*Chicago Junction case*, 71 I. C. C. 631, at p. 634):

> "Each carrier (meaning thereby the line-haul carrier) makes regular scheduled trips to the classification yards (of the Junction) to leave and pick up its own line-haul freight, the number of trips per day depending upon the volume of business handled by the individual carrier. Thus the Junction organization performs purely a switching service as to those movements,

the charges therefor constituting a part of the through rates published by the line-haul carriers." (Phrases in parentheses and italics supplied.)

(b) A fair and correct statement, as shown by the present record, would have been that the Junction participates in joint rates (flat Chicago rates, without addition of switching charges) upon all interstate traffic ordinarily shipped to or from all industries reached by its rails, including such [fol. 35] inbound shipments as butter, eggs, cheese, poultry, fresh meats, packing house products, coal, lumber, boxes, salt, pepper, glass jars, tin cans, hides and pelts, machinery, vegetable oils and many other commodities, upon many of which the line-haul rates to Chicago are less than upon livestock.

(c) The Commission further erred in giving weight to the following finding (decision p. 574):

> "In those instances in which the Junction does not participate in joint rates on dead freight, it collects its local switching charge."

for the reason that if there are any such instances in connection with interstate line-haul traffic to and from industries located on the Junction rails, the were not shown by the defendants upon the record before the Commission.

19. In making and giving weight to the following finding (decision, p. 574):

> "It does not appear that there are any joint rates on livestock from points in western trunk-line or southwestern territories in which the Junction is shown as a participating carrier."

the Commission erred because the finding is a mere technicality of railroad tariff construction, without legal effect. The defendant, New York Central Railroad Company, is the lessee and operator of the Junction property, and by the terms of section 1 (3) (a) of part I of the interstate commerce act, the Junction property is a part of the New York Central Railroad. The New York Central Railroad Company is a party to all the numerous railroad tariffs, agency or otherwise, which publish joint rates on livestock

between points on the lines of other railroads (many of them defendants herein) and points on the lines of the New York Central Railroad Company, in all instances in which [fol. 36] the New York Central may participate in the transportation, including livestock consigned for delivery on the Junction rails at the facilities of the yard company; and including livestock consigned for delivery on the rails of the Chicago, Burlington & Quincy Railroad Company at the Omaha plant, 2320 South Halsted Street, in Chicago. By this finding the Commission attempted to disassociate the Junction from its operating lessee, the New York Central, and to condone an unlawful discrimination.

20. The Commission erred in making and giving weight to the following finding (decision, p. 575):

> "There is no showing of a similarity in any respect of the services required and circumstances affecting services. There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred."

meaning thereby at certain other points in central and western trunk line territories served by defendants.

To the contrary, the record shows that at each of such points there are meat packing plants which compete with plaintiff's Chicago plant in the purchase of livestock and the sale of meat products; that the commodity delivered to such plants is the same, namely carloads of direct shipments of livestock; that such shipments are delivered to the private side-tracks of such meat packing plants at the flat line-haul rates, which are the same for similar distances as are the rates to Chicago; that the federal 28-hour law applies to such deliveries; and that the distances over which livestock is switched by the terminal switching line is in most instances greater than the distance over which livestock would be switched by the New York Central (Junction) from its connections with the other line-haul carriers to plaintiff's private side-track. The Commission erred in failing to find that there is no such degree of dissimilarity as would justify a rate discrimination of $28.80 per car (at the time of the hearing, since increased to $36.00 per car).

[fol. 37] 21. The Commission erred in failing to find that

the line-haul livestock rates to Chicago are adequate to provide for the delivery here sought by plaintiff upon its side-track connected with the New York Central (Junction) rails. These livestock rates are the maximum reasonable rates heretofore prescribed by the Commission for the transportation of livestock to Chicago and delivery therein. With respect to deliveries in Chicago the Commission has declared (*Chicago Livestock Exch. v. Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 542) that said livestock rates "were designed to cover the cost of normal terminal services, including unloading charges." Upon the delivery to plaintiff's side-track defendants would not incur the unloading costs, included in said rates, and which are now paid out of such rates by defendants to the yard company. The delivery sought by plaintiff involves only a normal terminal service. The switching services on the Junction tracks, by the motive power assigned thereto by defendant, New York Central Railroad Company, are the normal operations which have been performed on said tracks for many years; and, as found by the Commission in the decision (p. 560), these normal terminal operations on the Junction rails are performed in connection with approximately 1000 loaded cars per day, without discrimination against any commodity except livestock.

22. The Commission erred in failing to find that the delivery of livestock sought by plaintiff would reduce the switching costs per car now incurred by the line-haul defendants in connection with the switching and delivery of livestock to the stockyard area. By far the greater portion of such costs are the engine-hour costs (consisting of fuel costs, wages of switching crew, and kindred items). These costs per car vary directly in proportion to the number of cars switched by the engine on each trip, so long as the number of cars so switched is less than the capacity of [fol. 38] the engine. The facts stated by the Commission (first paragraph, p. 562 of decision) with reference to deliveries of livestock by defendant, Chicago, Burlington & Quincy Railway Company, to the yard company facilities may be assumed to be typical, and show the average number of cars per switching trip to have been 5.2. If this average number had been increased by the inclusion of live-

stock consigned direct to plaintiff (or to additional meat packing companies in the same area), the necessary deduction is that the engine-hour costs per car would have been reduced in exact proportion to the greater number of cars handled per engine-trip. In addition thereto, said defendant would have incurred no costs (deducted from its revenue under the line-haul rates) for unloading of said direct shipments of livestock by the yard company or for payment of trackage charges to defendant, New York Central (Junction) Railroad Company, whereas such unloading and trackage costs must be added to the engine-hour costs of switching with respect to cars of livestock delivered by defendant, Chicago, Burlington & Quincy Railway Company (and the other line-haul defendants) to the yard company for unloading and delivery to consignees.

23. The Commission erred in failing to find and state, as shown by the record, that in the year 1923 defendants transported and delivered to the stock yard area 303,228 carloads of livestock; that the number so delivered by defendants has gradually diminished until, in the last year shown of record (1946) only 65,139 such carloads were so delivered by defendants; and that of the carloads so delivered 80 percent reach the Junction rails at the west end of the Ashland Avenue yards and pass eastbound over track 1103, on which the Commission states (decision, p. 561) that "Frequently as many as four trains must wait to enter this track as a result of its being blocked at the east [fod. 391 end]"; and that if the number of cars of livestock now being delivered by defendants were increased by the average of 6,489 cars of direct shipments now received by plaintiff; or by the total of 36,000 carloads of direct shipments of livestock said to be received annually by all other meat packing plants in the stockyard area, the total would constitute less than one-third of the number of carloads of livestock delivered by defendants over this track 1103 in 1923 and earlier years, without disruption of terminal deliveries of livestock or other freight.

24. The Commission erred in making and giving weight to the following finding (decision, p. 574):

"The transportation services, conditions, and circumstances connected with deliveries at the Omaha

plant pens are substantially dissimilar from those connected with the delivery here sought. There, the unloading chutes are on the rails of a line-haul carrier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington. The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought."

(a) The error is partly factual and partly legal. The defendant, Chicago, Burlington & Quincy Railroad Company, like any other railroad, is subject to the federal 28-hour law, and therefore unable to effect delivery of livestock at its ordinary operating convenience when to do so would result in confinement of livestock in cars beyond the time permitted by law.

[fol. 40] (b) The Commission also erred, as a matter of law, in assuming that a mere matter of voluntary operating arrangement (as that defendant, Chicago, Burlington & Quincy Railroad Company elects to switch the livestock over its own tracks with its own motive power, whereas the New York Central (Junction) elects to permit the engines of line-haul carriers to deliver livestock and other traffic over its rails under trackage arrangements) may justify the application and maintenance of unequal rates and services.

(c) The Commission also erred in assuming and concluding that the defendants may lawfully effect and require a delivery of direct shipments to the stock yard facilities, unless the consignee of the shipments elects to have the yard company act as his agent and perform yardage services for compensation; and in concluding that the defendants may prefer in charges and services a delivery to a non-transportation agency (the yard company) instead of a reasonable and convenient delivery to the consignee of his property as required by law.

25. In making and giving weight to the following finding (decision, p. 560):

> "All inbound dead freight, with exceptions not important here, such as less-than-carload merchandise, must be delivered on 9 receiving tracks, with a capacity of 420 cars, in the south yard, and nowhere else, pursuant to a labor agreement between the Junction and its employees, entered into in January, 1946 to avert a threatened strike. Adjoining the 9 receiving tracks on the south are 24 classification tracks with a capacity of 680 cars. There are no tracks in this yard regularly assigned to any connecting line, all inbound freight being assigned by the Junction yardmaster to an available receiving track. More than 1,000 loaded cars per day are received in this yard. After delivery of cars on the receiving tracks by connecting lines' crews, and completion of the necessary inspection and carding by [fol. 41] the Junction, the cars are switched at frequent intervals by Junction break-up crews to the adjoining classification tracks for grouping and movement to base yards serving the respective operating districts. There the cars are reclassified and switched to team tracks or to the private sidings of the consignees.
>
> "The north yard has 24 tracks with a capacity of 700 cars. Cars switched from the base yards by the Junction are first placed on three of these tracks; 7 tracks are used for holding and classification purposes, and 14 tracks are ordinarily used for delivering cars to connecting lines. The movement through this yard ranges from 600 to 800 cars per day outbound and consists generally of cars, loaded and empty, destined to western connecting lines."

the Commission erred in failing to note and find that each and every one of the services here described is performed by the New York Central (Junction) at the flat-line-haul rates to Chicago, without the addition of a switching charge; and in acting upon the assumption that a settlement of a labor controversy with it employees may justify, or tend to justify, unreasonable or discriminatory rates, charges or

practices in connection with the delivery of livestock to plaintiff's side-track.

26. In making and giving weight to the following findings respecting trackage rights:

> "* * * nor do the line-haul carriers have trackage rights to operate over Junction rails to reach complainant's present or proposed plants." (decision, p. 559)
>
> "The line-haul carriers have trackage rights to operate east-bound over 1103 to the Union Stock Yards and west-bound from those yards over 1102 and 1104. For those trackage rights, the line-haul carriers pay to the Junction $1.50 per car loaded or empty handled by them to or from the Union Stock Yards." (decision, p. 561)
>
> [fol. 42] "They (meaning thereby connecting lines) are privileged to and do operate over the Junction rails at their convenience for the purposes stated above and may be on those tracks at all hours of the day or night." (Decision, p. 562.)

and in finding that such arrangements justify a discrimination against delivery of livestock to plaintiff's side-track, the Commission erred; for the reason that trackage rights are voluntary agreements between railroad carriers under which one carrier is permitted to operate its motive power and move its cars over the tracks of another carrier; because such voluntary agreements may not operate as an excuse for, or in justification of, unreasonable or discriminatory rates, rules, regulations or deliveries; because the fact, as found by the Commission (decision, p. 562) that an average of 167 "foreign" crews per day were operating on the New York Central (Junction) tracks, without restriction as to time or place, can not absolve the New York Central (Junction) and the other defendants from the substantive provisions of part I of the interstate commerce act as to rates, practices, discriminations, deliveries, etc.; and because confusion and conflict in operations on the New York Central (Junction) rails, being the result of voluntary arrangements between the defendants, may be changed or

corrected by the contracting carriers, and can not condone or excuse violation of statutory requirements with respect to the transportation and delivery to the consignee of carload shipments of livestock,

27. In making and giving weight to the following findings respecting loaded and empty cars:

> "It will be observed that this method of handling livestock, which has existed for many years, does not burden the Junction's receiving and delivery yards with either loaded or empty livestock cars." (Decision, p. 561.)
>
> "Under the present practice, followed since the in- [fol. 43] auguration of services to the Union Stock Yards in the interest of expeditious centralized delivery, the yards of the Junction are not burdened with livestock cars either loaded or empty." (Decision, p. 568.)

the Commission erred, as a matter of law, because the delivery of a loaded car and removal of the empty car are burdens and obligations which all railroad carriers necessarily assume under their line-haul rates; because such burdens are assumed, without extra charge, by the New York Central (Junction) and all the other defendants, with respect to all dead freight delivered upon the Junction tracks or elsewhere; by all defendants with respect to all livestock cars delivered to the unloading pens of the yard company; and in all other placements and deliveries of loaded livestock cars, not only in Chicago but also at all other points on their lines; and because the service of placing an empty car, or a loaded car, and removal thereof, can not justify a discrimination in rates or deliveries of livestock or other freight; or a discrimination by the lessee New York Central in favor of the yard company, owner and lessor of the Junction property.

28. In making and giving weight to the following findings:

> "Manifestly, as the line-haul carriers must use the same eastbound track into the Union Stock Yards, any delay to a train on that track results in 'piling up' trains of other lines seeking ingress to the Union Stock Yards. Frequently as many as four trains must wait

to enter this track as a result of its being blocked at the east end. Delays are necessarily experienced also because of the 'set outs' made by consolidated trains, consisting of livestock and dead freight. In a consolidated train the dead freight is on the head and behind the engine. The cars of livestock are cut off and left standing at the eastern end of the eastbound running track while the line-haul carrier's engine sets the dead freight on one of the nine receiving tracks in the south [fol. 44] yard. This operation blocks the running track until the engine returns and hauls the livestock into the Union Stock Yards." (Decision, pp. 561, 562.)

and in making other and similar findings, the Commission erred in concluding that such conditions may justify a prohibitive or discriminatory charge for the delivery of livestock on the New York Central (Junction) side-track serving plaintiff's track; in failing to note and find, that although the delivery of dead freight to the Junction rails results in certain delays in operation, nevertheless all deliveries of dead freight are there made at the flat Chicago rates, regardless of such conditions; and that similar services and rates are denied in connection with the delivery of livestock over the same rails.

29. In making and giving weight to the following findings:

> "In practically all cases, stock arriving at Chicago has only a limited time within which it must be unloaded from cars in order to avoid violation of the 28-hour law. The outer yards of the line-haul carriers, from which runs are made to the Union Stock Yards, contain very limited feeding, watering, and rest facilities. Many stock runs are made with but one or two cars per train." (Decision, p. 562.)

the Commission erred, because the limited time in connection with the transportation and delivery of livestock (without unloading for feed, rest and water before the expiration of 28 or 36 hours) is due to a federal law which applies equally to the interstate transportation of all livestock, whether destined to the facilities of the yard company, to other deliveries in Chicago, or to any other destination on

the line of the defendants; and in failing to find that this legal limitation in connection with the transportation of livestock is one that was considered and given weight when the Commission prescribed the line-haul rates which are [fol. 45] applicable to the transportation of livestock to Chicago and other points in central and western trunk line territories.

30. In making and giving weight in this proceeding to the following finding:

> "The measure of the transportation services rendered shipments of live animals is substantially greater than that accorded dead freight." (Decision, p. 563.)

and concluding that such finding may justify a prohibitive and discriminatory penalty charge the Commission erred for the following reasons: (a) the livestock rates paid for the transportation of livestock to Chicago have heretofore been prescribed by the Commission as maximum reasonable rates for the transportation of said commodity, including the services rendered in connection therewith (*Livestock-Western District Rates*, 176 I. C. C. 1); and (b) because said rates have been specifically declared and found by the Commission (*Chicago Livestock Exch.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531) to be adequate to include transportation and "the rendition of terminal services in connection with the transportation of livestock and * * * sufficient to cover such terminal services under a normal operation, as well as to cover the unloading and loading of livestock at public stockyards;" including delivery over the rails of the New York Central (Junction) to the unloading pens of the yard company; and because said finding does not distinguish or differentiate the delivery of livestock sought by plaintiff from any other delivery of livestock made by defendants at their flat line-haul rates.

31. In making and giving weight to the following finding (decision, p. 570):

> "Indeed, it appears that in some instances, immediately upon arrival of a consolidated train including [fol. 46] cars of livestock for complainant, the Junction might have to make a special run to deliver the cars at the latter's plant."

the Commission erred because the condition mentioned is common to all railroad deliveries of livestock, due to the requirements of the federal 28-hour law; because the Commission found (decision, p. 562), in connection with the delivery of livestock to the yard company facilities "Many stock runs are made with but one or two cars per train;" and the Commission has required such delivery to the yard company facilities to be made at the flat Chicago rates, without addition of any terminal charge; because such incidents arise in connection with deliveries to the Omaha plant, 2320 South Halsted street, Chicago, which the Commission has required to be made at the flat Chicago rates, without addition of any terminal charge; and because such incidents are inherent in the delivery of livestock by railroad to the forty or more competing plants in central and western trunk line territories to which deliveries are made by defendants at the flat-line haul rates, in certain instances by order of the Commission and in certain others voluntarily by defendants.

32. In making and giving weight to the following findings:

> "In the ordinary and usual course of classifying dead freight by the Junction, the engine pushes a string of cars along a track leading to the classification tracks. Uncoupled cars are 'kicked' or given impetus to roll freely through a switching lead onto the proper classification track. Manifestly, if livestock were so handled it would result in injury to the animals by being thrown against the ends or sides of the cars or knocked down. Cars of livestock must necessarily come to rest without rough shocks or jolts." (Decision pp. 563, 564.)
>
> "But, while in the case of dead freight the cars may be simply 'kicked,' if the switching were to include [fol. 47] livestock for complainant or other packers, the service would have to be differently performed. Whether livestock were handled alone or together with the dead freight, the cars could not be simply 'kicked,' but would have to be switched and actually placed on the receiving track to avoid risk of injury to the animals; and, once the cars were so placed, subsequent switches of dead freight could not be 'kicked' and thus permitted to roll freely against the cars of livestock." (Decision, p. 569.)

"In its work of classifying dead freight for switching delivery, the Junction, which serves, not only the packers, but hundreds of other industries, follows the usual and time-saving practice of 'kicking,' whereby uncoupled cars at the end of a string of cars being classified are sent on their way over the switching lead and onto the proper classification track; but if classification track 19, or any other, were to be used for the livestock destined to complainant, neither the livestock cars nor subsequent cars of dead freight could be so 'kicked,' but would have to be pushed over the lead and along the track to the point of placement, such cars remaining coupled until brought to rest." (Decision, p. 570.)

"In the switching of dead freight or empty cars into this district no air is used, and the danger is always present of cars breaking off on the descending grades and rolling freely for a short distance before striking standing cars. Manifestly, avoidance of that contingency would become necessary in handling cars of livestock." (Decision, pp. 564, 565.)

"* * * and, because cars of livestock and any cars of dead freight handled along with them can not be switched in the usual expeditious manner but must be carefully placed and brought to rest * * *" (Decision, p. 571.)

and in concluding that such findings may justify an unreasonable, discriminatory, or intentionally prohibitive charge in connection with the delivery of livestock cars on plaintiff's side-track, the Commission erred.

[fol. 48] (a) In concluding that such a charge may be justified by the necessity for normal and reasonable care in the transportation and delivery of cars loaded with livestock, the Commission erred in fact and in law; this for the reason that such normal and reasonable care in the switching and placement of livestock cars is in no sense peculiar to a placement on the side-tracks of the New York Central (Junction); such normal and reasonable care is equally necessary in connection with the delivery of livestock by defendants to the pens of the yard company on the Junction rails; to a delivery to any other point in Chicago to which

livestock is now delivered by defendants at no charge in excess of the line-haul rates; to the separation and classification of livestock cars by defendants in their outer terminal yards in Chicago; to all deliveries and placements by defendants of loaded livestock cars at competing meat packing plants throughout central and western trunk line territories; and because such normal and reasonable care in switching operations is necessary if damage is to be avoided to loaded cars of eggs, and other commodities, now delivered on side-tracks of the New York Central (Junction) without extra charge; and because the livestock line-haul rates to Chicago, now in effect, have been by the Commission declared to be adequate to cover a normal terminal movement, which necessarily includes switching of such cars with the degree of care necessary for the safe transportation and delivery of the traffic.

(b) The Commission finds that the only dissimilarity in the switching service between livestock destined to plaintiff's side-track and dead freight, including perishables, destined to the same location, is that loaded livestock cars may not be "kicked" by switch engines and that in some instances "air" must be used in placing livestock cars. The Commission does not find, in this connection, that the place-[fol. 49] ment of loaded livestock cars at plaintiff's side-track is, or by any possibility could be, different from the services performed in switching livestock to facilities of the yard company on the Junction tracks; to the Omaha delivery at 2320 South Halsted Street, Chicago; or to the forty or more competing packing houses in central and western trunk line territories. The Commission erred in holding that said distinction in switching or placing loaded livestock cars may lawfully justify imposition of a prohibitive penalty charge, intended as such, for the purpose of preventing the delivery of livestock cars to plaintiff's side-track.

33. The Commission erred in finding and giving weight to the assumption or conclusion (whether or not warranted by the record) that a delivery of livestock to plaintiff's private side-track might or would interfere with or delay an "expeditious centralized delivery" (decision p. 568) to the facilities of the yard company.

(a) The Commission erred in fact and in law in assuming and concluding that defendants have arranged for or established an "expeditious centralized delivery" of livestock within the requirements of law. The delivery referred to is not a delivery to the consignee of direct shipments of livestock, but a delivery to an independent operating company, the yard company. Plaintiff has not authorized the yard company to act as its agent for the receipt of direct shipments of livestock. In making a delivery of plaintiff's livestock to the facilities of the yard company, defendants do not effect a delivery to plaintiff or any authorized agent. In making such a delivery the livestock is by defendants placed in the custody of an agent not owned or operated by defendants, for a non-transportation service, not subject to the jurisdiction of the Commission, or control by defendants, which thereby obtains possession of the livestock after [fol. 50] transportation has ended, and from which the consignee may ransom its livestock only by payment of the yardage charges of the yard company.

(b) The Commission erred in its assumption or conclusion that defendants may require plaintiff (or another receiver of direct shipments of livestock) to accept a delivery of livestock (after transportation has ended) through pens and alleys of the yard company, and thereby become indebted to the yard company for non-transportation services; or suffer the imposition of so great a penalty for delivery on defendants' own rails as would necessarily force delivery through the facilities of the yard company. The Commission also erred in failing to note and give effect to the fact (as shown by its decision, p. 566) that approximately half of the shipments delivered to the yard company by defendants likewise consist of direct shipments to other meat packers; and that neither defendants nor the Commission may establish rates and charges which give a preference in transportation charges to such other deliveries of direct shipments.

(c) The Commission also erred in failing to note and to find that even if side-track delivery of their direct shipments were requested and accorded to other meat packing companies, under existing practices engines of the line-haul carriers would still continue to move livestock direct to the yard company facilities when so consigned, in which service

the motive power of the New York Central (Junction) does not and would not participate, whereas direct shipments consigned to plaintiff would be set out on a side-track by the line-haul defendants' engines and await a later delivery by motive power of the New York Central (Junction); and that this method of operation would necessarily give a preference in time of delivery to livestock consigned to commission men operating on the yard company market and to [fol. 51] direct shipments consigned to other meat packing companies who might elect to constitute the yard company their agent for the receipt and delivery of their direct shipments.

34. The Commission erred in adopting and using as a basis for its action in this proceeding the following finding (decision, p. 568):

> "There can be longer trains and greater movements of livestock by the line-haul carriers to the stockyards, but the conclusion is warranted that a substantial movement by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the movement of livestock to the stockyards area and the return movement of the empty cars were performed by the Junction."

(a) The Commission erred in concluding that defendants may lawfully elect to deliver livestock to a non-transportation agency (the yard company), rather than effect a delivery to the consignee upon his private side-track. The finding is erroneous because the condition stated therein (even if warranted) can not in law excuse the New York Central (Junction) and the other defendants in discriminating against the transportation and delivery of livestock direct to the consignee and owner thereof, so long as defendants hold themselves out as common carriers by railroad to transport and deliver said commodity; and in favor of all other traffic which is now delivered on the Junction rails and side-tracks at the flat Chicago rates. The operating conditions here stated by the Commission do not in law justify violations of §§ 1(3)(a), 1(5), 1(6), 2, 3(1), 1(9), 1(10) and (11) or 15(5) of part I of the interstate commerce act. The Commission erred as a matter of law in finding

and concluding that operating conditions which do not prevent the delivery of livestock on New York Central (Junc-
[fol. 52] tion) side-tracks, ordered by the Commission to be continued, may justify prohibitive rates or charges intended by the Commission to make such delivery impractical and improbable; or that, for equal rates to Chicago, defendants may give preferred service, and charges for the delivery of direct shipments of livestock to the facilities of the yard company when consigned to competitive meat packing companies in the stockyard area, which constitute approximately half of the rail deliveries to the yard company; or that defendants, or the Commission, may establish or apply a switching charge in addition to the line-haul rates, greater per car than the yardage charges at the yards, in order to create and maintain a preference in favor of delivery to the yard company; in order to require plaintiff to accept such delivery and unnecessary services, or in the alternative to move its direct shipments for long distances over city streets by motor vehicle.

35. The Commission erred in making and giving weight to the following findings (decision, p. 566):

> "The Junction operates 35 steam and 12 diesel electric locomotives. * * * The present motive power of the Junction is being operated to capacity and that carrier estimates that 6 to 8 additional engines for each 8-hour tour of duty would be required to handle approximately 36,000 direct shipments of livestock, or about 130 cars per day based on a 5-day week. This estimate contemplates all of the direct shipments of livestock delivered in 1947 to the Union Stock Yards as well as the direct shipments received by complainant at its Omaha plant pens."

(a) The Commission erred in failing to find in this connection that if 36,000 carloads of direct livestock had been delivered by the New York Central (Junction) upon its private side-tracks, and if it had received for such service the same division of the rates on livestock which it receives
[fol. 53] in connection with the delivery of all other carload freight ($18.90 per car at the time of the hearing), the gross revenues of the Junction would have been increased by $680,400.00 per year; and in failing to find that the amount

and type of motive power used by and assigned to Junction rails is wholly within the control of lessee, defendant New York Central Railroad Company.

(b) The Commission erred in failing to find and state, as shown by the record, that since the New York Central leased the Junction property from the yard company in 1922, said New York Central has progressively decreased the motive power assigned to the Junction tracks as follows:

1923	77 engines.
1925	86 engines.
1930	64 engines.
1935	64 engines.
1940 and at present	47 engines.

and in concluding that such facts may justify a discriminatory or prohibitive penalty charge in connection with the delivery of carload shipments of livestock to plaintiff's sidetrack.

36. In making and giving weight to the following findings:

> "In fact, facilities for that purpose do not exist on that line." (Decision, p. 562.) (Meaning thereby that facilities for feeding and watering livestock do not exist on the line of the Junction.)

and

> "* * * the Junction has no facilities for watering or feeding anywhere on its lines and such facilities of the kind as are maintained by the line-haul carriers are very limited." (Decision, p. 570.)

[fol. 54] the Commission erred; the fact being that perhaps the largest facilities for feeding and watering livestock in the midwest are those of the yard company, which are reached only by the Junction rails; and that said yard company has on file with the Secretary of Agriculture a tariff which provides charges and services for the feeding and watering in transit of livestock which require that service while passing through the Chicago area; and that such facilities of the yard company are used by defendants where such services become necessary under the federal 28-hour law.

37. In making and giving weight to the following finding respecting the Junction:

> "There is no land available for the expansion of those yards or the building of additional facilities nearby for the interchange and classification of traffic." (Decision, p. 560.)

the Commission erred, and to all intents and purposes nullified the principal reason stated by it as justifying the lease of the Junction property by the yard company to defendant New York Central Railroad Company as follows (*Chicago Junction case*, 71 I. C. C. 631):

> "The Central now controls by stock ownership the Indiana Harbor Belt Railroad, hereinafter termed the Harbor Belt." (71 I. C. C. 632.)
>
> "The Junction properties are incapable of expansion so as to afford adequate facilities for interchange and classification, since the district in which they lie is highly developed and intensively used, whereas the Harbor Belt has or can acquire additional space for the building of yards. The inner and outer properties are therefore complementary and in no sense competitive, but can only be operated to the best advantage by bringing them under common control. This expansion at outlying points would permit the inner group to extend further its team-track facilities and enable a more expeditious use of the less than carload facilities of the stockyards group. The gain to shippers on the Junc- [fol. 55] tion would be found in the greater accessibility of the outer-belt facilities of the Harbor Belt and the expansion of inner facilities made possible by the removal of outer-belt facilities from the inner district. Inbound traffic, for example, would be brought first to outer classification yards on the Harbor Belt and there made up into trains for the 12 districts served by the inner lines. Other services now performed by the Junction in the congested area would be performed on the outer belt, to the great relief of the present Junction facilities." (71 I. C. C. pp. 634, 635.)

38. The Commission erred in failing to find that the practice of defendants in preventing, or attempting to prevent, the delivery of carloads of livestock to plaintiff's

private side-track, by a prohibitive penalty charge, or otherwise, is a violation of § 1 (9) of part I of the interstate commerce act. The necessary switch connection from the New York Central (Junction) tracks to plaintiff's side-track is now in place and in operation (as stated by the Commission at page 563, 3d par. of the decision); it has been operated safely for many years; the thousands of cars which pass over it each year furnish sufficient business to justify its operation. Livestock can now be received on plaintiff's private side-track and be unloaded onto plaintiff's private grounds by the use of portable chutes, trucks, or otherwise. Under these conditions it was and is the duty of defendants, as required by said section, to deliver livestock over said switch connection to plaintiff's side-track without discrimination in rates, services, or otherwise. The facts essential to prove a discrimination and a violation of § 1 (9) were found by the Commission; but in connection therewith the Commission disregarded and held for naught that portion of said section which requires that said switch connection shall be operated without discrimination.

39. In excusing defendants from rendering the service sought by plaintiff at the rates accorded on other commodi- [fol. 56] ties generally, the Commission erred in failing to find and determine that defendants, including the New York Central (Junction) are required by § 1 (10) and (11) of part I of the interstate commerce act to furnish safe and adequate car service and to establish, observe and enforce just and reasonable rules, regulations and practices in connection therewith; that every unjust and unreasonable rule, regulation or practice in connection therewith is prohibited and unlawful; that said statute makes no exception to this rule because of inconvenience to the railroad carrier in its physical operations; or because the carrier prefers to deliver dead freight, including perishable traffic, rather than livestock; or because the carrier elects to operate its line of railroad for the business advantage of its lessor; or because certain shipments of livestock are destined to commission men operating on a public market for sale thereon; or because certain consignees elect to accept delivery of their direct shipments through the facilities of a public stock yard, while others are destined for delivery on a private side-track of the consignee.

40. The Commission erred in holding and concluding that the New York Central (Junction), severally, or in connection with the other defendants, may discriminate in charges against the delivery of livestock and in favor of all other traffic, without violation of §§ 2 and 3 (1), part I of the interstate commerce act.

41. The Commission erred in disregarding and failing to give effect to the provisions of § 15 (5) of part I of the interstate commerce act with respect to the transportation and delivery of shipments of ordinary livestock destined to points of delivery other than a public stockyard.

42. In making and giving weight to the following findings and conclusions:

> "We may, however, disapprove the inauguration of [fol. 57] a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally." (decision, p. 573.)
>
> "The published switching charge is appropriate for any switching that may occur of cars of livestock to complainant's proposed plant. It does not appear that the maintenance of a switching charge for livestock will have any detrimental effect upon terminal operations." (decision, p. 576.)

the Commission erred in at least the following respects:

(a) The Commission erred in holding that it may disapprove and prevent the delivery of carloads of livestock to the consignee thereof by means of railroad facilities, and authorize and require its delivery only to a non-transportation agency, such as the yard company, from whom it may be obtained by the consignee only upon the payment of charges for non-transportation services. The Commission erred in assuming that a carrier by railroad is not required by law to effect a reasonable and convenient delivery of livestock to the consignee thereof upon facilities owned or operated by the carrier, and which will not result in the involuntary payment by the consignee of additional charges for non-transportation services.

(b) The Commission erred because the quoted para-

graphs plainly show that the Commission intended to approve or prescribe a charge which it well knew would prevent and prohibit the delivery by defendants of livestock to plaintiff's side-track; because it would be greater than the cost of moving the traffic by motor truck from the location at 2320 South Halsted Street in Chicago; and greater than the cost of sending the carloads of livestock to the facilities of the yard company and paying its yardage charges for a non-transportation service rendered after railroad transportation has ended.

[fol. 58] (c) The Commission exercised, through subterfuge, its arbitrarily assumed power to prevent the delivery of loaded livestock cars to the consignee thereof upon railroad facilities, by holding that all of the so-called disruption of railroad terminal services which it described may be required and enforced if plaintiff elects to pay the New York Central (Junction) approximately $233,604.00 (average of 6,489 cars multiplied by present charge of $36.00 per car) per annum in order to accomplish that purpose; or if all other meat packing companies which receive direct shipments of livestock through the yard company facilities should decide or desire to pay the New York Central (Junction) $1,296,000.00 per annum (36,000 carloads multiplied by present charge of $36.00) in order to bring about the result which the Commission finds it has power to prevent.

(d) In so finding and concluding the Commission acted beyond and in excess of its statutory powers, arbitrarily, capriciously, and whether intentionally or not, gave permanent effect and validity to the provision of the lease whereby defendant New York Central Railroad Company agreed to operate the Junction for the benefit and advantage of the yard company, regardless of the requirements of part I of the interstate commerce act.

43. In making and giving weight to the following finding (decision, p. 568):

> "Under the present practice, *followed since the inauguration of services to the Union Stock Yards in the interest of expeditious centralized delivery*, the yards of the Junction are not burdened with livestock cars either loaded or empty." (Emphasis supplied.)

and in similar findings and conclusions throughout the decision wherein the Commission gives controlling weight to practices inaugurated prior to the present century, the Commission erred: (a) in failing to find and state, as shown by the record, that in the period 1892-1912 the stockyard [fol. 59] company adopted extraordinary measures and spent vast sums of money in an effort to force all deliveries of livestock in the Chicago area to its facilities and to monopolize such deliveries for the purpose of collecting its yardage and other charges upon all livestock consigned to the Chicago area; that in this effort it was largely successful; and that during said period it used the Junction properties as an effective instrument to that end, operating the Junction as an appurtenant plant facility and refusing to permit any delivery of livestock on or via the Junction rails other than to the facilities of the yard company; and (b) that the duties and obligations of the Junction changed after it was held to be a common carrier by railroad in 1912 and after its property was leased to defendant New York Central Railroad Company in 1922. The decision of the Commission in this proceeding has the practical effect of restoring the Junction to the position held by it in the period 1892-1922, and making it an effective instrument for the purpose of monopolizing railroad livestock deliveries in the yard company and preventing the delivery of livestock to the consignee, without the intervention, services, and costs of a non-transportation agency. In so holding and deciding the Commission exceeded its statutory powers; acted arbitrarily, capriciously and unjustly; and denied to plaintiff the equal protection of the laws, including services and charges by defendants as required by relevant provisions of part I of the interstate commerce act and other laws relating to the transportation and delivery of livestock.

44. But for the errors in findings of law and fact herein alleged, and the erroneous conclusions adopted and given effect by the Commission, the decision of the Commission would have been favorable to plaintiff and the prayer of its said complaint would have been granted in substance by the Commission. As a consequence of said erroneous findings of law and fact, and of the dismissal of the complaint, plain- [fol. 60] tiff has been damaged, and will continue to be dam-

aged, by the failure of the Commission to require said defendants to perform their legal duty to plaintiff in connection with the delivery of its direct shipments of livestock to plaintiff at its said side-track. Except as provided in 28 U. S. C. A. §§ 1253, 1336, 1398, 2101, 2284, 2321, 2323, 2324, 2325, and 5 U. S. C. A. § 1009, (a), (b), (c), (d), and (e), plaintiff is without any remedy at law or otherwise.

Wherefore, plaintiff prays:

(1) That a writ of subpoena issue immediately out of and under the seal of this court, and be directed to said defendants, the United States of America and the Interstate Commerce Commission, requiring said defendants, on a day certain therein to be specified, to be and appear before this court and to answer this complaint, but not under oath, answer under oath being hereby expressly waived;

(2) That this court direct that due and proper notice of this complaint issue and be served forthwith as prescribed by said statutes.

(3) That a court constituted as required by said statutes, (28 U.S.C.A. §§ 1253, 1336, 1398, 2101, 2284, 2321, 2323, 2324, 2325), be convened and that said court so constituted and convened shall hear this complaint upon due and legal notice to defendants.

(4) That upon the filing of this complaint the judge of this court shall notify the chief judge of this circuit, with request that said chief judge shall designate two other judges, of whom at least one shall be a circuit judge, to hear and determine this complaint.

(5) That, upon the final hearing of this complaint, the court so constituted shall enter a decree permanently suspending, enjoining, setting aside and annulling the said order of said Commission; that this court shall construe the statutes involved and determine and state the correct [fol. 61] principles of law controlling the disposition of said complaint before the Commission; shall determine the jurisdiction of the Commission in the premises; and shall also determine what, if any findings of fact, in said decision of the Commission, are erroneous, or irrelevant and immaterial to the disposition of the complaint before the Commission; and that this court shall thereupon remand said complaint to the Commission for further hearing and decision by the Commission in accordance with the controlling

principles of law determined by this court; or find and determine that plaintiff is entitled to a further hearing before the Commission and a decision therein not inconsistent with the decision of this court.

(6) That plaintiff have and recover of the defendants the proper costs of this suit; and

(7) That plaintiff have such other and further relief in the premises as may be lawful and as may be deemed by this court to be fit and proper.

Wm. N. Strack, John P. Staley, Ross Dean Rynder,
4115 Packers Avenue, Chicago, Illinois, Attorneys
for Swift & Company.

[fol. 62] EXHIBIT "A" TO COMPLAINT

Before the Interstate Commerce Commission

No. 29809

SWIFT & COMPANY

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
The Baltimore and Ohio Chicago Terminal Railroad Company
The Baltimore and Ohio Railroad Company
The Belt Railway Company of Chicago
The Chesapeake and Ohio Railway Company
Chicago & Eastern Illinois Railroad Company
Chicago and North Western Railway Company
Chicago, Burlington & Quincy Railroad Company
Chicago Great Western Railway Company
Chicago, Indianapolis and Louisville Railway Company
Chicago Junction Railway
(The Chicago River and Indiana Railroad Company, Lessee)
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
The Chicago River and Indiana Railroad Company
The Chicago, Rock Island and Pacific Railway Company
(Joseph B. Fleming and Aaron Colnon, Trustees)
Chicago South Shore and South Bend Railroad

Erie Railroad Company
Grand Trunk Western Railroad Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad Company
Indiana Harbor Belt Railroad Company
Minneapolis, St. Paul & Sault Ste. Marie Railroad Company
The New York Central Railroad Company
The New York, Chicago and St. Louis Railroad Company
The Pennsylvania Railroad Company
Wabash Railroad Company

COMPLAINT

The complaint of the above named complainant respectfully shows:

[fol. 63]

I

The complaint of the above named complainant respect- organized and existing under the laws of the sta[redacted] of Illinois, with principal office and place of business at [redacted]cago, Ill., and that it is engaged in what is commonly known as the meat packing business.

II

That the defendants above named are common carriers engaged in the transportation of property, and particularly of live stock, wholly by railroad, over their own lines and the lines of connecting railroad carriers, from points in various states of the United States to Chicago, Ill., and, as such common carriers, are subject to the provisions of part I of the Interstate Commerce Act.

III

That complainant operates at Chicago, Ill., a meat packing plant; that, in connection with the operation of that plant, complainant purchases at various points in states other than Illinois large quantities of live stock, including cattle, hogs, sheep, and lambs, which are shipped to complainant at Chicago, Ill., over the lines of the defendants, or the defendants and their connecting lines, for delivery to and use at complainant's said plant at Chicago, Ill.; that said shipments are commonly known and described as direct shipments and are not shipped to complainant at Chicago

for marketing but only for processing; and that during the course of transportation the said shipments of live stock are and continue to be the sole property of complainant up to and including the time of delivery at Chicago, Ill.

[fol. 64]

IV

That complainant's plant at Chicago is connected with the main lines of the defendants by reason of the fact that it is located upon and served by the rails of the Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee) which is a subsidiary of the defendant The New York Central Railroad Company; and that complainant's plant is provided with spur or switch tracks upon which carload freight, including live stock, can be transported to unloading points adjacent to complainant's said plant at Chicago.

V

That the defendants by proper tariff publication, provide for the receipt and delivery upon complainant's said industrial sidetrack serving its Chicago plant, and other plants in the same general neighborhood, of substantially all carload freight, except live stock, from interstate points of origin to Chicago at the flat line haul freight rates to Chicago, without the addition thereto of switching charges; but that defendants refuse to make delivery of carload shipments of live stock to complainant's plant at Chicago except upon payment of the line haul rates from interstate points of origin to Chicago, plus a switching charge of 4 cents per 100 pounds, subject to a minimum weight of 60,000 pounds, resulting in a minimum charge of $24.00 per car in addition to the line haul rate to Chicago for the delivery of each such carload of live stock.

VI

That the defendants make delivery of interstate carload shipments of live stock to other points and places in Chicago or the Chicago switching district at the line haul rates from points of origin to Chicago without assessment of any switching charge in addition to said line haul rates; that, [fol. 65] generally speaking, this is true with respect to all shipments from what may generally be described as territory west of Chicago; that with respect to shipments

originating in other territories, such as southern territory and official territory, defendants make such deliveries upon basis of the line haul rate upon interstate shipments, plus a terminal charge of $3.71 per car with respect to certain origin territory and $1.86 per car with respect to certain other origin territory; and that included in the points at which such deliveries are made without the assessment of additional switching charges are the chutes and pens of The Union Stock Yard and Transit Company of Chicago and certain other points in Chicago or in the Chicago switching district.

VII

That at various points and places on their lines the defendants, or one or more of them, make delivery of live stock as above described, in carloads, to packing plants located upon their lines at the line haul rates to such points without the addition of any terminal or switching charge thereto; that included in such points are East St. Louis, Ill., Elburn, Ill., Peoria, Ill., Cedar Rapids, Ia., Davenport, Ia., Des Moines, Ia., Dubuque, Ia., Estherville, Ia., Fort Dodge, Ia., Marshalltown, Ia., Mason City, Ia., Ottumwa, Ia., Sioux City, Ia., Storm Lake, Ia., Waterloo, Ia., South Omaha Nebr., Joplin, Mo., St. Louis, Mo., South St. Joseph, Mo., Kansas City, Kans., Newport, Minn., South St. Paul, Minn., Winona, Minn., Chippewa Falls, Wis., Cudahy, Wis., Eau Claire, Wis., Fort Atkinson, Wis., Green Bay, Wis., Madison, Wis., Milwaukee, Wis., Anderson, Ind., Evansville, Ind., Frankfort, Ind., Indianapolis, Ind., Mishawaka, Ind., and Terre Haute, Ind.; and that complainant and its meat packing plant at Chicago are in active competition with meat packing plants located at many or all of said points [fol. 66] in the purchase of live stock and the processing and sale of the products thereof.

VIII

That, by reason of the facts above stated, complainant is subjected to the payment of freight rates and charges, for the delivery of interstate shipments of live stock to its meat packing plant at Chicago, which are unjust and unreasonable in violation of section 1 (5) (a) of part I of the

Interstate Commerce Act in so far as such charges exceed the charges made for other deliveries of live stock within the Chicago switching district, including deliveries at the unloading pens of The Union Stock Yard and Transit Company of Chicago, and in so far as said charges exceed charges assessed upon interstate shipments of live stock delivered to packing plants at points in the states of Illinois, Iowa, Nebraska, Missouri, Kansas, Minnesota, Wisconsin, and Indiana, as alleged in paragraph VII herein; that by reason of the facts herein stated complainant and its meat packing plant at Chicago are subjected to undue and unreasonable prejudice and disadvantage by comparison with rates charged for other deliveries of interstate shipments of live stock hereinbefore alleged within the Chicago switching district and at the points specified in paragraph VII hereof; that by reason of said facts live stock as a commodity is subjected to undue prejudice and disadvantage; that the charges in connection with the delivery thereof to complainant's plant in Chicago are unduly prejudicial in violation of section 3 (1) of part I of the Interstate Commerce Act; and that the rates, charges, and practices herein alleged to be unreasonable and unduly prejudicial also constitute violations of sections 1 (4) and 1 (6) of part I of the Interstate Commerce Act.

That by reason of the facts hereinbefore alleged complainant, as a practical matter, is required to accept deliv- [fol. 67] ery of its direct shipments of live stock at the unloading pens of The Union Stock Yard and Transit Company of Chicago, in which event it is subjected to the yardage and delivery charges of said stock yard company, although no stock yard service is required or desired; or to have its said direct shipments of live stock, intended for its Chicago plant in the stock yard area, transported to a delivery point known as the Omaha Packing Company approximately three miles from the Chicago stock yards area and thence transported by motor vehicles through the public streets of Chicago to its meat packing plant in the stock yard area; or to take delivery upon the team tracks of certain of the line haul carriers and thence transport said live stock by motor vehicles through the city streets of Chicago to its meat packing plant in the stock yard area in Chicago.

Wherefore complainant prays that defendants may be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants, and each of them, to cease and desist from the aforesaid violations of part I of the Interstate Commerce Act, and to establish and put in force and apply in the future to the transportation of interstate shipments of live stock, consigned over their lines to complainant's plant in the stock yard area in Chicago, just and reasonable rates, charges, rules, regulations, or practices under which defendants will afford delivery of said carload shipments of live stock upon the industrial sidetracks serving complainant's plant in the stock yard area in Chicago and under which said rates and charges shall not exceed those assessed by defendants in connection with deliveries of interstate shipments of live stock to the unloading pens of The Union Stock Yard and Transit Company of Chicago and to other points in Chicago at which defendants deliver such shipments of live stock at the line haul rates to Chicago with-
[fol. 68] out charge above such line haul rates; and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at Chicago, Ill., July 28, 1947.

Swift & Company, Union Stock Yards, Chicago, Illinois; By John P. Staley, Attorney and Registered Practitioner, 4115 Packers Avenue, Chicago 9, Illinois.

[fol. 69] Before the Interstate Commerce Commission

No. 29809

Swift & Company

vs.

The Atchison, Topeka and Santa Fe Railway Company

Amendment of Complaint

Now comes the complainant and respectfully prays that it be permitted to amend its complaint herein by inserting in the prayer thereof, on sheet 7, line 17, after the word

"practices," the words "including joint through rates between the line haul defendants and the defendants, the Chicago Junction Railway and The Chicago River and Indiana Railroad Company," so that the prayer of said complaint shall read:

"WHEREFORE complainant prays that defendants may be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants, and each of them, to cease and desist from the aforesaid violations of part I of the Interstate Commerce Act, and to establish and put in force and apply in the future to the transportation of interstate shipments of live stock, consigned over their lines to complainant's plant in the stock yard area in Chicago, just and reasonable rates, charges, rules, regulations, or practices, including joint through rates between the line haul defendants and the defendants, the Chicago Junction Railway and The Chicago River and Indiana Railroad Company, under which defendants will afford delivery of said carload shipments of live stock upon the industrial sidetrack serving complainant's plant in the stock yard area in Chi- [fols. 70-71] cago and under which said rates and charges shall not exceed those assessed by defendants in connection with deliveries of interstate shipments of live stock to the unloading pens of The Union Stock Yard and Transit Company of Chicago and to other points in Chicago at which defendants deliver such shipments of live stock at the line haul rates to Chicago without charge above such line haul rates; and that such other and further order or orders be made as the Commission may consider proper in the premises."

Dated at Chicago, Ill., October 15, 1947.

Swift & Company, Union Stock Yards, Chicago, Illinois; By John P. Staley, Attorney and Registered Practitioner, 4115 Packers Avenue, Chicago 9, Illinois.

[fol. 72] EXHIBIT "B" TO COMPLAINT

25398

INTERSTATE COMMERCE COMMISSION

No. 29809[1]

SWIFT & COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, et al.

Submitted February 1, 1949. Decided July 6, 1949.

1. Published switching charges in addition to line-haul rates found not unreasonable or otherwise unlawful for the transportation of livestock, in carloads, for delivery on private sidetracks to be constructed by complainant at Chicago, Ill., which will connect with the Chicago Junction Railway, provided that the tracks to be constructed will be adequate for deliveries by that railway at its ordinary operating convenience and without interruption or interference. Establishment of joint rates for this traffic found not necessary or desirable in the public interest. Complaint dismissed.
2. Suspended schedules proposing specifically to exempt livestock from the traffic which will be transported by the Chicago Junction Railway and to cancel the application on livestock of the switching charges, except to and from chutes and sidings at the Union Stock Yards in Chicago, Ill., found not just and reasonable. Suspended schedules ordered canceled, and suspension proceeding discontinued.

Ross D. Ryder and *John P. Staley* for complainant and protestant.

Douglas F. Smith, Leo P. Day, Kenneth F. Burgess, Martin M. Lucente, Richard F. Babcock, R. G. Hawkinson, C. A. Pape, R. G. Ragsch, Henry Christianson, F. V. White, H. L. Van Amburgh, J. E. Flansburg, E. W. Larson, and *H. O. Malm* for defendants and respondents.

---

[1] This report embraces also Investigation and Suspension Docket No. 5543, Livestock at Chicago, Chicago Junction Railway, which was heard cooperatively with Illinois Commerce Commission Docket No. 35809.

Nuel D. Belnap, John S. Burchmore, Robert N. Burchmore, Ralph M. Shaw, Guy A. Gladson, Bryce L. Hamilton, Fred H. Hatch, M. W. Gillogly, Leo R. Miller, H. B. Park, Lee J. Quasey, J. F. Daniels, B. R. Prather, Paul E. Blanchard, and *James A. Knudson* for interveners and other interested parties.

Report of the Commission

By the Commission:

Exceptions to the report proposed by the examiner and replies to exceptions were filed by the parties and we have [fol. 73] heard them in oral argument. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions, have been given consideration and found not justified. Our conclusions differ in some respects from those recommended by the examiner.

By complaint filed July 9, 1947, as amended, complainant, a corporation, alleges in substance, that charges on direct[2] shipments of livestock, in carloads, from points in States other than Illinois, for delivery to complainant's plant at Chicago, Ill., are unreasonable, unduly prejudicial to livestock as a commodity, and unduly prejudicial to complainant and preferential of its competitors at points in Illinois, Iowa, Nebraska, Missouri, Kansas, Minnesota, Wisconsin, and Indiana, in violation of sections 1 and 3 of the Interstate Commerce Act. The Commission is asked to prescribe reasonable—

rates, charges, rules, regulations, or practices, including joint through rates between the line-haul defendants and the defendants, the Chicago Junction Railway[3] and the Chicago

---

[2] Shipments consigned directly to packers for slaughter, and not offered for sale in the public market.

[3] The Chicago Junction Railway is operated by the Chicago River and Indiana Railroad Company as lessee, in connection with the latter's own terminal switching line. For convenience, these two carriers will sometimes hereinafter be referred to as the Junction. Operation of the combined properties of the two terminal railroads by one operating entity is in conformity with *Chicago Junction Case*, 71 I. C. C. 631.

River and Indiana Railroad Company, under which defendants will afford delivery of said carload shipments of livestock upon the industrial sidetrack serving complainant's plant in the stock yard area in Chicago and under which said rates and charges shall not exceed those assessed by defendants in connection with deliveries of interstate shipments of livestock to the unloading pens of the Union Stock Yard and Transit Company of Chicago and to other points in Chicago at which defendants deliver such shipments of livestock at the line haul rates to Chicago without charge above such line haul rates.

By schedules filed to become effective December 15, 1947, and later, the Junction proposes to specifically exempt livestock from the traffic which it will transport and to cancel the application on livestock of all switching charges published by it, except to and from chutes and sidings at the Union Stock Yards. The present tariff provides for switching charges on "all carload freight" to or from industries, sidings, team tracks, and districts as shown therein. However, as hereinafter explained, the Junction does not actually transport livestock to the Union Stock Yards or to any other point. Upon protests of complainant, and others, operation of the proposed schedules was suspended until July 14, 1948. The Junction has voluntarily postponed the effective date of the schedules pending decision herein. These two proceedings were heard on a consolidated record. Defendants and respondents will be referred to collectively as defendants.

[fol. 74] Numerous parties representing the Union Stock Yards, producers, buyers, and sellers of livestock intervened in opposition to the complaint. The United States Department of Agriculture also intervened as an interested party under its administration of the Packers and Stock Yards Act, 1921, 42 Stat. L. 159.

The issue presented is whether or not complainant is entitled to have direct shipments of livestock delivered by the Junction without a charge in addition to the line-haul rates on a private siding at a plant which it proposes to construct in the stockyard area in Chicago. The proposed site of the contemplated plant and the facilities and tracks to be constructed thereat will hereinafter be more fully de-

scribed. At present, the line-haul rates generally include the delivery of livestock to the Union Stock Yards. Complainant operates a meat-packing plant in Chicago, which is served solely by the Junction. Complainant does not have facilities or tracks at that plant for receiving livestock and it is not here seeking to obtain deliveries there. The line-haul rates into Chicago do not include delivery of livestock to that plant, nor do the line-haul carriers have trackage rights to operate over Junction rails to reach complainant's present or proposed plants. The charge of the Junction for switching livestock from junctions with connecting lines to complainant's plant and other points on its line is 4.8 cents per 100 pounds [4] or $28.80 based on the minimum of 60,000 pounds. That carrier, however, has never, except in an emergency handled ordinary livestock in switching service. That traffic is at present, and for many years past has been, handled at Chicago entirely by the line-haul carriers, as later more fully explained.

In the determination of the issues raised in this proceeding, it is necessary to consider the track lay-out of the Junction, and the present operations thereover in the handling of so-called dead freight, which term includes perishable and all other freight other than livestock; the method by which livestock has for many years been handled by the line-haul carriers to the Union Stock Yards; the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock, as sought by the complainant; and also, in order to avoid undue preference and prejudice, if it were required to make similar deliveries to complainant's competitors.

The Chicago switching district is approximately 40 miles in length and from 7 to 15 miles wide. It is served by 35 railroads. The Ashland Avenue yards of the Junction, into and through which an average of 726,144 loaded and empty cars per annum during 1945, 1946, and 1947, were funneled, [fol. 75] are in a densely developed industrial part of the city of Chicago. There is no land available for the expansion of those yards or the building of additional facilities nearby for interchange and classification of traffic. The two lines

[4] In effect when the hearing was held.

referred to as the Junction are exclusively switching lines, and together operate 224.35 miles of track within the Chicago switching district and connect with 27 railroads, 22 of which are trunk lines and 5 switching lines. The majority of the 499 industries with private sidings, at present served solely by the Junction, are in the stockyard district or vicinity. The two switching lines also maintain 11 team tracks and 3 freight stations and together serve 653 industries with 823 sidetracks.

In addition to a large number of tracks and yards used for less-than-carload freight, storing cars and other purposes, with which we are not directly concerned, the Junction has three yards for the receipt and delivery of loaded and empty cars interchanged with connecting lines, known as the Ashland Avenue north yard, Ashland Avenue south yard, and the Loomis Street yard. These yards will hereinafter be called the north yard, south yard, and Loomis yard, respectively. The north and south yards are contiguous but, for operating purposes, each has a particular function. They are approximately 1 mile west of the Union Stock Yards. All in-bound dead freight, with exceptions not important here, such as less-than-carload merchandise, must be delivered on 9 receiving tracks, with a capacity of 420 cars, in the south yard, and nowhere else, pursuant to a labor agreement between the Junction and its employees, entered into in January 1946, to avert a threatened strike. Adjoining the 9 receiving tracks on the south are 24 classification tracks with a capacity of 680 cars. There are no tracks in this yard regularly assigned to any connecting line, all in-bound freight being assigned by the Junction yardmaster to an available receiving track. More than 1,000 loaded cars per day are received in this yard. After delivery of cars on the receiving tracks by connecting lines' crews, and completion of the necessary inspection and carding by the Junction, the cars are switched at frequent intervals by Junction break-up crews to the adjoining classification tracks for grouping and movement to base yards serving the respective operating districts. There the cars are reclassified and switched to team tracks or to the private sidings of the consignees.

The north yard has 24 tracks with a capacity of 700 cars.

Cars switched from the base yards by the Junction are first placed on 3 of these tracks; 7 tracks are used for holding and classification purposes, and 14 tracks are ordinarily used for delivering cars to connecting lines. The movement through this yard ranges from 600 to 800 cars per day out-bound and consists generally of cars, loaded and empty, destined to western connecting lines.

[fol. 76] Between the north and south yards the Junction has three parallel main running tracks designated 1102, 1103, and 1104, respectively. An auxiliary track, known as 1105, parallels these tracks on the south, and is used by the Junction to reach the packing-house district. The line-haul carriers have trackage rights to operate east-bound over 1103 to the Union Stock Yards and west-bound from those yards over 1102 and 1104. For these trackage rights, the line-haul carriers pay to the Junction $1.50 per car loaded or empty handled by them to or from the Union Stock Yards.

The Loomis yard is south of the Union Stock Yards and contains 20 tracks with a capacity of 420 cars. Through this yard move loaded and empty cars, generally for eastern and southern connecting lines. The number of cars handled per day is not shown.

Out-bound cars, loaded and empty, are switched from industry or team tracks to the base yards, where they are classified for further movement to the north or Loomis yards. At the latter yards the cars are assembled for switching to designated tracks assigned to the connecting lines and subsequently picked up by transfer crews of those lines.

At present approximately 63 percent of the trains of the trunk lines going to the Union Stock Yards handle livestock exclusively. Solid trains of livestock entering the stock-yard area from the west are handled by the line-haul carriers over east-bound track 1103 to the unloading chutes in the Union Stock Yards. No separation is required of livestock by species to make delivery at particular pens. While the cars are being unloaded, the engine cuts off, passes around the train and couples on to the other end. The unloading operation consumes but a few minutes a carload. When the unloading has been completed the empty cars

are hauled over west-bound tracks 1102 or 1104 to the line-haul carrier's home yard. This procedure is followed by each of the line-haul carriers in turn. It will be observed that this method of handling livestock, which has existed for many years, does not burden the Junction's receiving and delivery yards with either loaded or empty livestock cars. Manifestly, as the line-haul carriers must use the same east-bound track into the Union Stock Yards, any delay to a train on that track results in "piling up" trains of other lines seeking ingress to the Union Stock Yards. Frequently as many as four trains must wait to enter this track as a result of its being blocked at the east end. Delays are necessarily experienced also because of "set outs" made by consolidated trains, consisting of livestock and dead freight. In a consolidated train the dead freight is on the head and behind the engine. The cars of livestock are cut off and left standing at the eastern end of the east-bound [fol. 77] running track while the line-haul carrier's engine sets the dead freight on one of the nine receiving tracks in the south yard. This operation blocks the running track until the engine returns and hauls the livestock into the Union Stock Yards. Indicative of the average delay resulting from this operation is the following data in connection with the Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington: During the period from April 16 to May 10, 1947, that carrier handled 108 trains from its Clyde yard to the Junction's east-bound running track. Of these, 53 were solid trains of livestock and moved directly to the Union Stock Yards; 19 were dead freight and were switched by the line-haul carrier to the 9 receiving tracks in the south yard; and 36 were consolidated trains containing set outs for the receiving tracks and livestock for the Union Stock Yards. The average running time for the distance of 9.3 miles from Clyde yard for trains direct to the Union Stock Yards was 1 hour 2 minutes. The average running time to those yards of consolidated trains which set out dead freight was 1 hour 39 minutes. The total number of cars of livestock delivered by that carrier to the Union Stock Yards in 1947 was 7,147, which were handled in 1,362 trips, for averages of 5.2 cars per trip and 3.7 trips per day.

During a test period from December 1 to 7, 1947, inclusive, there were 1,171 foreign crews moving on the Junction's rails or an average of 167 crews per day. The average time each crew was on the Junction's tracks was 3 hours 12 minutes. A crew consists of three members in addition to the engineer and fireman. There are no restrictions by the Junction limiting the time within which connecting lines may deliver freight on Junction tracks. They are privileged to and do operate over the Junction's rails at their convenience for the purposes stated above and may be on those tracks at all hours of the day or night.

Under the Federal law, livestock may be confined in cars for not more than 28 hours without unloading for watering and feeding unless the shipper requests in writing that the time be extended to 36 hours. In practically all cases, stock arriving at Chicago has only a limited time within which it must be unloaded from the cars in order to avoid violation of the 28-hour law. The outer yards of the line-haul carriers, from which runs are made to the Union Stock Yards, contain very limited feeding, watering, and rest facilities. Many stock runs are made with but one or two cars per train. Under the present practice of handling directly to the unloading chutes in the Union Stock Yards, it is unnecessary to unload the stock for water, feed, and rest at some intermediate location on the Junction. In fact, facilities for that purpose do not exist on that line. That [fol. 78] carrier contends that if it should attempt to switch livestock to private delivery tracks an additional 1 to 8 hours hours would be required before cars could be set for unloading. Accordingly, it is contended that the line-haul carriers would have to allow the Junction at least 8 hours after interchange within which to effect delivery to the industry and where there was not sufficient time to make delivery within the period prescribed by law, the line-haul carriers would be compelled to unload the stock on their rails or rearrange their train schedules. In this connection, it is shown that, while livestock arrives at all hours, the bulk of the traffic is consigned so as to make the early morning market. The market period extends to 2 p. m. each day but as a practical matter trading is over about 11 a. m. Late arrivals must often be carried over, resulting in some

depreciation, as well as added costs for feeding and handling.

Certain of complainant's buildings and facilities have become obsolete and inadequate. A new packing plant therefore is proposed which will have substantial facilities for unloading livestock brought in by rail or truck and adequate holding pens. In addition to certain buildings for slaughtering and processing livestock, complainant proposes to construct two stub tracks with a total capacity of 22 car spots to serve the proposed plant.

At present the Junction connects at Ashland Avenue with private tracks serving complainant's present plant which is in the northern section of an area known as "Packingtown," located just west of the Union Stock Yards. That connection would be used in reaching complainant's proposed unloading facilities for direct shipments of livestock. The Junction also serves numerous other packing plants in the packing-house district which is bounded on the west by Ashland Avenue, on the south by Forty-seventh Street, on the east by Racine Avenue, and on the north by Thirty-ninth Street. This area is connected with the Union Stock Yards by a network of overhead runways, tunnels, and viaducts which are owned and maintained by the Union Stock Yards and used to drive livestock from those yards to the slaughtering floors of the packers, including complainant.

The site of the proposed plant is about three-fourths of a mile west of the Union Stock Yards and just north of the present plant and was, at the time of hearing, occupied by another concern. The present structures and tracks of that company are to be removed and replaced by new buildings, tracks, and facilities.

The measure of the transportation services rendered shipments of live animals is substantially greater than that accorded dead freight. Livestock cannot be switched in the same manner as other freight. In the ordinary and [fol. 79] usual course of classifying dead freight by the Junction, the engine pushes a string of cars along a track leading to the classification tracks. Uncoupled cars are "kicked" or given impetus to roll freely through a switching lead onto the proper classification track. Manifestly, if livestock were so handled it would result in injury to the animals

by being thrown against the ends or sides of the cars or knocked down. Cars of livestock must necessarily come to rest without rough shocks or jolts. The Junction contends that it has no classification tracks available for assignment to livestock or any space in its yards where such tracks could be constructed. As hereinbefore shown, livestock can be and is handled in consolidated trains with other freight and it appears that direct shipments consigned to complainant could be placed on a track in the south yard for subsequent removal to complainant's plant.

If delivery of livestock to complainant became necessary the cars would have to be grouped by the line-haul carriers in a convenient place in the train with other freight intended for set-out in the south yard and thereafter an engine and crew would segregate the livestock from the dead freight. A special run to the private tracks of complainant may in some instances become necessary. Dead freight for delivery to complainant is set out by the Junction on track 19 in the south yard, which track is assigned for the classification of loaded cars consigned to complainant. Subsequently, those cars are switched by Junction power to the Damen Avenue yard, which adjoins the south yard and is just west of complainant's present and proposed plants. The Damen Avenue yard has 15 tracks with a capacity of 550 cars. After arrival in that yard, complainant issues instructions to spot the cars for unloading at designated locations in its plant area. If it were necessary to move livestock through the south yard, track 19 probably would be used for placement of the cars for complainant. The switching operation that would be necessary to reach the proposed unloading chutes after leaving Damen Avenue yard would be as follows: The engine would pull the cars over auxiliary track 1105 to the clearance point of the entrance switch to the facility east of Ashland Avenue. At that point the engine would uncouple and proceed around the train. While so engaged the cut of cars would have to be controlled by air, as there is a descending grade east from Ashland Avenue to the proposed plant. The engine would then recouple and move westward, crossing over Chicago River & Indiana in-bound and out-bound main tracks to reach the lead track to the proposed facility,

and would then shove the cars downgrade and around a curve to the unloading chutes. In the switching of dead freight or empty cars into this district no air is used, and the danger is always present of cars breaking off on the descending grade and rolling freely for a short distance [fol. 80] before striking standing cars. Manifestly, avoidance of that contingency would become necessary in handling cars of livestock. Cars made empty could be returned to the Loomis yard when for eastern or southern connecting lines or to the north yards when for western connections, which procedure is at present followed by the Junction in handling empty cars other than livestock cars.

Defendants contend that to attempt to perform generally services such as desired by complainant would result in serious delay to shipments of livestock consigned to the Union Stock Yards and the return of empty cars, as well as to shipments of dead freight for the other industries in the switching district. Whether this warrants absolute denial to complainant of desired services is an issue hereinafter considered.

Except livestock purchased by complainant in the Union Stock Yards, all shipments consigned direct to complainant are delivered by the Burlington at the line-haul rate, at pens of the Omaha Packing Company, a wholly owned subsidiary of complainant. This is in accordance with our findings in *Omaha Packing Co.* v. *Chicago, M. & St. P. Ry. Co.*, 37 I. C. C. 378, decided in 1915. At that time the Omaha plant slaughtered and processed a substantial portion of the livestock received by it. The plant was completely destroyed by fire on August 4, 1932, and has never been rebuilt. However, complainant continued to receive and at present receives livestock at the unloading pens where that plant was situated, hereinafter referred to as the Omaha plant pens. Such livestock is then transported about 2.5 miles by complainant's trucks to the slaughtering floors of its present plant. The latter plant is in the stockyard area, about three-fourths of a mile west of the Union Stock Yards. The estimated total average annual cost to complainant for trucking 6,383 cars of unspecified species of livestock received during 1947 by rail at the Omaha plant pens to the present plant was stated to have been

$50,000, but no detailed data were submitted to show how that cost was computed. Apparently, however, that method of operation is less expensive than delivery to complainant through Union Stock Yards which would involve yardage charges per head of 65 cents on cattle, 40 cents on calves weighing under 450 pounds, 21 cents on hogs, and 15 cents on sheep. The estimated number of head of each specie per single-deck car is shown as 25 cattle, 65 calves, 70 to 75 hogs, and 100 to 125 sheep. No dead freight is delivered at the Omaha location.

During the test period hereinbefore referred to, the time per car consumed between delivery to the Junction of 511 cars of perishable freight and 1,570 cars of other dead freight, by connecting lines at the south yard, and actual [fol. 81] or constructive placement at industries' tracks on the Junction, was 23 hours 30 minutes for perishable freight and 31 hours 48 minutes for other dead freight. The Junction operates 35 steam and 12 Diesel electric locomotives. Of the steam locomotives, 10 are 6-wheel switchers weighing 74 tons; 14 are 6-wheel shifters weighing 82 tons; and 11 are 8-wheel switchers weighing 110 tons. The 12 Diesels weigh 100 tons. Owing to light rails, sharp curves, and certain side obstructions, only the six-wheeled and eight-wheeled engines and the Diesels can be safely used in industrial work. The heavier engines have a 15-foot wheel base which will not permit operation over sharp curves. They are used generally for hauling trains between the several yards. The present motive power of the Junction is being operated to capacity, and that carrier estimates that 6 to 8 additional engines for each 8-hour tour of duty would be required to handle approximately 36,000 direct shipments of livestock, or about 130 cars per day based on a 5-day week. This estimate contemplates all of the direct shipments of livestock delivered in 1947 to the Union Stock Yards as well as the direct shipments received by complainant at its Omaha plant pens. If only complainant's shipments are considered, the resulting average per day would approximate 18 cars based on the number of direct shipments received by it in 1947. The total average annual movement by rail to the Union Stock yards for the past 5 years was 76,920 cars, of which an average of 30,976 cars, or approximately

40 percent, were direct shipment consigned to packers. During the corresponding period, the average annual movement of livestock consigned direct to complainant's Omaha plant pens was 6,489 cars. The direct shipments averaged 44.9 percent of the total movement, and that percentage has been increasing steadily. For example, based on the foregoing average to complainant's Omaha plant pens and the actual number of direct shipments to the Union Stock Yards during January 1948, the direct shipments constituted 63.7 percent of the total movement.

It appears that the blocking out in outer yards of direct shipments consigned to the Omaha plant pens is a minor operation which, except as to the Burlington, averages but one or two cars per day, or less, for the individual lines. For example, in 1946 the Chicago & North Western Railway Company handled 14,198 carloads of livestock from that carrier's Proviso yard, 18 miles to the Union Stock Yards, while it interchanged only 287 carloads with the Burlington for delivery at the Omaha plant pens. The respective figures for 1947 were 10,479 and 369 carloads. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company handled 12,884 carloads in 1946 and 9,425 carloads in 1947 from its Bensenville yard, about 27 miles to the Union Stock Yards, and 415 and 326 carloads, respectively, [fol. 82] consigned to the Omaha plant pens were interchanged with the Burlington at the latter's Western Avenue yard, 2 miles from the point of delivery. Similarly, in 1947, the Atchison, Topeka & Santa Fe Railway Company handled 5,281 carloads from its Corwith yard, 5 miles to the Union Stock Yards, while interchanging with the Burlington, at the Western Avenue yard, 209 carloads consigned to the Omaha plant pens. The Burlington delivered to the Omaha plant pens in 1946 a total of 4,204 carloads, of which 2,228 carloads were received in its Western Avenue yard from connecting lines and 1,976 carloads were off-line shipments. Like data for 1947 were 6,383 carloads, of which 2,786 carloads were off-line shipments and 3,597 carloads were received from connecting lines in the Western Avenue yard. During 1946 and 1947 the number of carloads of livestock handled by the Burlington from its Clyde or Western Avenue yards to the Union Stock Yards was 12,111 and 7,147 carloads, respectively.

All of the foregoing shipments to the Union Stock Yards were handled over the east-bound running track of the Junction, hereinbefore described, but none of the shipments consigned to the Omaha plant pens over the carriers named moved through the Ashland Avenue yards of the Junction.

The following operation over the Chicago, Rock Island & Pacific Railway Company, hereinafter called the Rock Island, is typical of the operation over other line-haul carriers entering the stockyard area from the east. Consolidated trains containing livestock and dead freight arrive at that carrier's Burr Oak yard, 14 miles from the Ashland Avenue yards. At Burr Oak yard the cars of livestock and dead freight are separated, and cars of livestock consigned to the Union Stock Yards are hauled directly to the latter yards by a Rock Island switch engine without passing through the Ashland Avenue yards. Empty stock cars are returned to the Burr Oak yard by the same engine. Livestock consigned to the Omaha plant pens, and dead freight for set-out in the south yard are handled by the Rock Island over the west-bound running tracks of the Junction, hereinbefore described, to the western end of the Ashland Avenue yards where the set-outs are made on the receiving tracks in the south yard, and any cars of livestock that carrier may have for the Omaha plant pens are then hauled to the Western Avenue yard. In 1946 the Rock Island handled 5,896 cars of livestock to the Union Stock Yards, and 213 cars for the Omaha plant pens were interchanged with the Burlington as described.

Complainant's counsel objected to the receipt in evidence of an exhibit containing copies of agreements and other documents relating to certain events which gave rise to [fol. 83] the present practice of delivering livestock to the Union Stock Yards and showing that this practice was inaugurated in 1867 when the Union Stock Yards were constructed to displace four widely separated stockyards which had proved unsatisfactory to the railroads and to the livestock industry, and indicating that in 1892 complainant, or its predecessor, and other packers acquiesced and concurred in that development of the terminal practices and facilities for the handling of livestock at Chicago. The

objection was overruled and the exhibit was received. After the hearing, complainant filed a memorandum in support of a motion to exclude the exhibit from evidence as being irrelevant to the issues. All facts relating to the existing custom and practice of making deliveries of livestock and also facts and circumstances leading up to that custom and practice, as well as the effect of the proposed practice on the interests of the carriers, the public, and other shippers, are relevant. The motion is denied.

Packers at the Union Stock Yards, other than complainant, who also were represented at the hearing, did not indicate that they would be dissatisfied if the desired private track deliveries of livestock were made at complainant's proposed plant without a charge in addition to the line-haul rates. The probability of similar future demands by them if complainant's demand should be fully granted and the required avoidance of undue prejudice, however, must be considered.

Under the present practice, followed since the inauguration of services to the Union Stock Yards in the interest of expeditious centralized delivery, the yards of the Junction are not burdened with livestock cars either loaded or empty. It clearly appears that any attempt by the Junction to make deliveries of livestock generally to packers or to transport an amount of livestock substantially greater than complainant's present needs, would result in serious disruption of operations and services and serious delays in the delivery of livestock. Complainant contends that any disruption of operations would be the result of inefficiency, and that this is indicated by the fact that in the past there were times when the movement of livestock to the stockyards was much greater than the present movement. There can be longer trains and greater movement of livestock by the line-haul carriers to the stockyards, but the conclusion is warranted that a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the large movement of livestock to the stockyards area and the return movement of the empty cars, were performed by the Junction.

[fol. 84] We have indicated generally the difficulties which would confront defendants if required to make delivery of livestock at complainant's plant, the basic difficulty being that such method of delivery is not adapted to defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays.

While, as above stated, any cars of livestock consigned to complainant could be handled in consolidated trains by grouping such cars at the head of the train with the cars of dead freight intended for set-out in the south yard, nevertheless, because of difficulties peculiar to livestock traffic, such handling would, it appears, affect adversely the line-haul carriers' operations in carrying livestock to the stockyards. As previously stated, all such traffic must move over east-bound track 1103 and, for that reason, any delay in unloading the stock tends to delay and "pile up" other trains seeking ingress over the tracks to the stockyards. Consolidated trains always occasion some delay since the cars of livestock destined to the stockyards are left standing on the track while the engine hauls the cars of dead freight a short distance eastward and then, after backing them onto a sidetrack leading to the receiving tracks of the south yard, "kicks" the cars as previously described. But, while in the case of dead freight the cars may be simply "kicked," if the switching were to include livestock for complainant or other packers, the service would have to be differently

performed. Whether the livestock were handled alone or together with the dead freight, the cars could not be simply "kicked," but would have to be switched and actually placed on the receiving track to avoid risk of injury to the animals; and, once the cars were so placed, subsequent switches of dead freight could not be "kicked" and thus permitted to roll freely against the cars of livestock.

Also, of course, the need for such difference in service and the effect thereof, would extend to the service in the south yard and beyond. As above shown, the south yard is the [fol. 85] yard of the Junction to which all cars of in-bound dead freight are delivered. There such cars, after inspection and carding, are switched to classification tracks for grouping and movement to base yards, at which latter yards they are reclassified and thereafter switched to team tracks or to private sidings of consignees, which siding may, as in the case of complainant, lead to a number of unloading locations in the plant area. Having in mind the need for taking into account periods of peak movements and maximum use, the south yard appears to be used to capacity with no space for construction of additional tracks. However, dead freight consigned to complainant is set out on classification track 19, which track is assigned to it; and, in case of movements of livestock for delivery to complainant, that track would probably be used for placement of the cars. In its work of classifying dead freight for switching delivery, the Junction, which serves, not only the packers, but hundreds of other industries, follows the usual and time-saving practice of "kicking," whereby uncoupled cars at the end of the string of cars being classified are sent on their way over the switching lead and onto the proper classification track; but if classification track 19, or any other, were to be used for the livestock destined to complainant, neither the livestock cars nor subsequent cars of dead freight could be so "kicked," but would have to be pushed over the lead and along the track to the point of placement, such cars remaining coupled until brought to rest.

Moreover, in the making of any such use of classification track 19, or any other, for complainant's livestock shipments, it would have to be expected that the cars of livestock would often be blocked in between cars of dead freight, and

it would have to be "dug out" for a special run to complainant's plant. Indeed, it appears that in some instances, immediately upon arrival of a consolidated train including cars of livestock for complainant, the Junction might have to make a special run to deliver the cars at the latter's plant. As above mentioned in practically all cases, livestock arriving at Chicago has only a limited time left before it must be unloaded to avoid violation of the law governing watering and feeding; the Junction has no facilities for watering or feeding anywhere on its lines and such facilities of the kind as are maintained by the line-haul carriers are very limited. While these conditions—all necessitating promptly handling of the traffic—are suited to the practice, long followed, of making deliveries of all shipments of livestock at the stockyards, they are not, it is evident, at all suited to the plant delivery service sought by complainant, in the performance whereof the cars of livestock would have to be switched and otherwise intermingled with cars of dead freight which latter, it appears, may, in the case of perishable freight, [fol. 86] require nearly a full day for movement through the yards to points of delivery, and in the case of other dead freight, nearly 32 hours.

Furthermore, even assuming that the factor of limited time within which to unload in order to observe the law were in some way eliminated or rendered unimportant, the cars of livestock for delivery at complainant's proposed plant would, if handled in regular course and not by special runs, have to be switched, classified, set out, and otherwise handled together with cars of dead freight; and, because cars of livestock and any cars of dead freight handled along with them cannot be switched in the usual expeditious manner but must be carefully placed and brought to rest, there would result the interferences and delays described above, that is, the delaying of the trains of livestock moving over track 1103 to the stock yards, the interferences and delays in the south yard and from that yard to and through the base yard and also, so it appears, in controlling the cars in their movement over the descending grade to the proposed plant. Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily

would considerably delay and burden defendants' operations. Moreover, although it is shown that complainant's direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipments exceeded 18 cars. Also it appears that the number of complainant's direct shipments of livestock in proportion to the number bought at the stockyards has been steadily increasing, and the testimony of complainant's witnesses affords ground for the belief that that condition will continue.

As we have said, defendants contend that, if complainant's demand for plant deliveries of livestock without charge in addition to the line-haul rates were granted, the other packers would make like demands which would have to be complied with to avoid violations of section 3. Complainant characterizes this contention an unwarranted assumption, urging substantially that defendants had not inquired, and did not know, whether the other packers would make like demands; that, before the latter would be entitled to make such demands they would have to assume burdens similar to those complainant had assumed at its Omaha location and would continue to bear at its new location, and that, before they could know whether they wanted to change to the new method of receiving livestock, they would have to determine the cost (as well as the convenience) of erecting and maintaining unloading facilities in order to weigh the same against the cost and convenience of receiving livestock through the stockyards. Although it is true that defendants did not ask the other packers what they would do if complainant's demand for plant deliveries of livestock at the [fol. 87] flat line-haul rates were granted, still, if their contention that the other packers would in such case make like demands is an assumption, it is one that we can hardly disregard. For, clearly, in the event complainant's demand was granted, the other packers would be under very considerable competitive compulsion to construct the requisite track and unloading facilities (acquiring additional space if necessary) to place themselves in a position to make like demands. Complainant does not dispute, but instead concedes, that the other packers, if providing the necessary facilities therefor, would be entitled to the same delivery service at the same rates as accorded it. What it urges is

that the carriers' contention as to additional burdening and disruption of their operations because of demands for the service from other packers rests on an untested assumption or conjecture, and would thus require us to decide the case, not upon facts, but upon prediction, opinion, and prophesy.

But the very nature of complainant's complaint, asking, as it does, that defendants be required to render for its proposed plant a delivery service of a kind new to the stockyards district, necessarily requires exercise of judgment as to future effects and results. The record contains ample facts showing that, if complainant's demand for the service without charge in addition to the line-haul rates were granted, the other packers would be under considerable, if not great, competitive compulsion to provide the necessary facilities enabling them to make like demands. We may take account of, and give effect to, such conditions without being definitely apprised as to what each and all of the other packers will do, or will find it financially profitable and otherwise advantageous to do. Obviously, complainant considers that its venture of constructing, on a new site, a new plant provided with unloading facilities will prove profitable and advantageous. The other packers or some of them may encounter difficulties occasioning delay in the establishment of unloading facilities; in instances the difficulties may cause the packer or packers to conclude not to change to the new method of receiving livestock. Nevertheless, it is our best judgment, and we, therefore, so find and conclude, that, if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like delivery service in an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction's lines.

Interferences with the movement of livestock to the stockyards is a serious concern not only of defendants but also of [fol. 88] producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is ade-

quate for their needs. It is the position of these interests that deliveries of livestock on private industrial tracks served by the Junction should be condemned upon the ground that such disposition of livestock is contrary to the public interest. We are not authorized to prescribe the manner in which livestock shall be marketed in the public interest.

We may, however, disapprove the inauguration of a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally. The proposed complete exemption of livestock from transportation by the Junction under any circumstances is not justified. There is no warrant, however, for a conclusion that the establishment of joint rates as desired by complainant is necessary or desirable in the public interest.

In *Hygrade Food Products Corp* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553, complainant therein alleged, among other things,[5] that switching charges demanded for the placement of carloads of livestock at complainant's plant directly north of the unloading pens of the Union Stock Yards in Chicago, were inapplicable and, if applicable, were unreasonable, unduly prejudicial to complainant, and unduly preferential of the Omaha Packing Company, in Chicago, a competitor of complainant.

The plant of the complainant in that proceeding also is served only by the rails of the Junction. It was there sought, as in the instant proceeding, to have certain private tracks used for the receipt of livestock without any additional charge for switching. We found that the published switching charge there assailed, $12 per car, which, as increased by subsequent general authorized increases, is the identical switching charge here assailed, was applicable to the placement for delivery of carloads of livestock at complainant's plant, and had not been shown to be unreasonable or otherwise unlawful.

---

[5] Findings as to certain issues were held to have no valid basis, in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193.

In the report in the proceeding we said at page 555:

While deliveries are made at the plant of the Omaha Packing Company without the assessment of a switching charge such as applies to deliveries at complainant's plant, there is no indication that transportation services, conditions, and circumstances connected with deliveries at complainant's plant would be substantially similar to those connected with deliveries at the plant of the Omaha Packing Company, and no facts of record lead to the conclusion that charges appli- [fol. 89] cable to such services as may be performed in making deliveries at complainant's plant are unreasonable or that the differences in these charges are not warranted.

The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those connected with the delivery here sought. There, the unloading chutes are on the rails of a line-haul carrier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington. The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought.

The line-haul rates on livestock to Chicago apply only to deliveries served by the line-haul carriers. The Junction participates in certain joint rates on perishable and other dead freight, out of which it receives for switching, a division of 3.15 cents per 100 pounds, minimum 60,000 pounds, which generally differs from and is lower than its local switching charge. In those instances in which the Junction does not participate in joint rates on dead freight, it collects its local switching charge. It does not appear that there are any joint rates on livestock from points in western trunk-line or southwestern territories in which the Junction is shown as a participating carrier.

The line-haul rates on livestock to Chicago are Commis-

sion-prescribed rates. In *Chicago Livestock Exch.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 545, 546, we said that "the line-haul carriers operate over the tracks of the Chicago Junction to the Union Stock Yards and make delivery there thereby making these yards their own terminals." We pointed out that in prescribing the rates on livestock to Chicago, among other markets, there was specifically taken into consideration as an element "the rendition of terminal service in connection with the transportation of livestock," and there was included what was considered "sufficient to cover such terminal services under a normal operation as well as to cover the unloading and loading of livestock at public stockyards," but we did not there consider what the services would be in connection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services.

As support for the delivery of livestock to private industrial tracks without charges in addition to line-haul rates, [fol. 90] complainant refers to *Baltimore Butchers Abattoir & Live Stock Co.* v. *Philadelphia B. & W. R. Co.*, 20 I. C. C. 124, by the Commission, *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55, by the Commission, and *Neuhoff Packing Co.* v. *Louisville & N. R. Co.*, 268 I. C. C. 271, by division 3, in which the refusal to make such deliveries at Baltimore, Md., Cleveland, Ohio, and Nashville, Tenn., respectively, was found unlawful. Deliveries to private industrial tracks at those points did not require substantial modification of terminal operations and interferences with established operations in a manner required at Chicago for such deliveries, and did not involve, as at Chicago, serious disruption of operations. There is no showing of a similarity in any respect of the *the* services required and circumstances affecting services. There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred.

Complainant asserts that a contractual relation exists between the Union Stock Yards and the Chicago Junction under a lease dated December 1, 1913, whereby the carrier agreed "to conduct, manage and operate the line of railroad by this instrument demised, and in so far as possible

the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards." The covenant quoted was incorporated in a later lease executed May 19, 1922, when the Chicago Junction subleased its line to the Chicago River & Indiana, a wholly owned subsidiary of the New York Central Railroad, for 99 years with an option to renew in perpetuity. *Union Stock Yard & Transit Co.* v. *United States*, 308 U. S. 213, 216. The effect of the leases was to completely divest the Union Stock Yards of operation and control of the terminal railroad, the Court saying that by ceasing to operate or control its railroad directly or indirectly, the Union Stock Yards restricted its transportation service to the loading or unloading of livestock as specified in its tariff. The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the *Chicago Junction Case, supra.* Those conditions were particularly intended to insure that the Chicago Junction and the Chicago River & Indiana should be operated as neutral terminal carriers, without special advantage favoring the New York Central but the conditions were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards.

The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of [fol. 91] services that would be required for the desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plant.

The Junction provides for switching charges on "all carload freight." That provision, without qualification, includes livestock. There is therefore a holding out by the Junction to switch livestock to and from industries, sidings, team tracks, and districts listed in the tariff. The published switching charge is appropriate for any switching that may occur of cars of livestock to complainant's proposed plant. It does not appear that the maintenance of a

switching charge for livestock will have any detrimental effect upon terminal operations.

We find (1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for the transportation of livestock for delivery on the private sidetracks to be constructed by complainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference, and (2) that establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest.

We further find that the proposal to specifically exempt livestock from the traffic which will be transported by the Junction at Chicago and to cancel the application on livestock of switching charges, except to and from chutes and sidings at the Union Stock Yards at that point, is not just and reasonable.

An order will be entered dismissing the complaint, requiring cancellation of the suspended schedules, and discontinuing the suspension proceeding.

ALLDREDGE, *Commissioner*, dissenting:

Admittedly, this proceeding poses a complex problem. It is not easy to place all details of the factual situation in their proper perspective. The majority report leaves much to be desired from my point of view in explaining the factual situation and in determining the principles of law properly applicable.

It should be said in the beginning that the Chicago Junction Railway Company and the Union Stock Yard and Transit Company of Chicago, the owners of the trackage facilities serving the area in which Swift proposes to build its plant, and in which the stockyards operate, are principally owned and controlled by the Chicago Stock Yards Company and that the latter corporation owns the Union Stock Yards. The Chicago Junction Railway Company and the [fol. 92] Union Stock Yard and Transit Company of Chicago have leased all their tracks to the Chicago River and

Indiana Railroad Company, which, in turn, is owned and controlled by the New York Central Railroad Company. The owners of the stockyards, therefore, have a substantial interest in the facilities which are to serve Swift at the plant which it proposes to build. This interest finds definite support in a special covenant which was originally embodied in a lease dated December 1, 1913, by and between the Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railway Company in which the lessee agreed "to conduct, manage, and operate the line of railroad by this instrument demised, and insofar as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the yards." This particular covenant was incorporated by general reference in article III, section 2, of a lease executed on May 19, 1922, between the Chicago Junction Railway Company, the Union Stock Yard and Transit Company of Chicago, the Chicago River and Indiana Railroad Company, and the New York Central Railroad Company, whereby the latter company assumed control of the lessee-operator of these terminal properties. It appears from a letter of record in this proceeding (exhibit 57) written on September 4, 1947, by counsel for the Union Stock Yard and Transit Company of Chicago to the general counsel of the New York Central Lines that this covenant is recognized as still in force and effect and of some controlling importance.

It seems to me that these facts bring this proceeding within the orbit of the decision of the Supreme Court of the United States in *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169. In that case, a provision was incorporated in a contract governing the use by the New York Central of a track belonging to the stock yards in Cleveland, whereby this track was not to be used for the transportation of traffic which was competitive with the stockyards. By mutual consent this covenant was interpreted as prohibiting the transportation of livestock to and from a private sidetrack of Swift & Company located near the stockyards. All other traffic was free to move over this track. The Supreme Court struck this provision down on the ground that a com-

mon carrier cannot contract so as to impair its ability to discharge its responsibilities as a common carrier.

It is difficult to escape the conclusion that the pecuniary interest of the owners of the stockyards in these terminal facilities has been permitted to work itself out in such manner as to deprive Swift of a service to which it would ordinarily be entitled. The conduct, management, and operation of these facilities so as to assure a direct and un- [fol. 93] interrupted movement of livestock, under trackage contracts,[6] to and from the stockyards and to exact a substantial switching charge for the transportation of livestock to any industry not using the services of the stockyards seems to me to comport squarely with the covenant of the lease to "conduct, manage, and operate the line of railroad * * * in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the yards. This, however, is clearly inconsistent with the responsibility of a common carrier to serve all patrons indiscriminately within the limits of its capacity.

In the *Chicago Junction Case*, 71 I. C. C. 631, the Commission was asked by the New York Central Railroad Company to approve (*a*) the purchase by the New York Central of all of the capital stock of the Chicago River and Indiana Railroad Company and (*b*) the leasing to the Chicago River and Indiana Railroad Company of the properties owned and leased by the Chicago Junction Railway Company for a term of 99 years and thereafter, at the option of the lessee, in perpetuity. After hearing, the Commission found that the acquisition by the New York Central of the capital stock of the Chicago River and Indiana Railroad Company and the leasing to the latter company of

---

[6] These trackage contracts also yield a monetary return to the Chicago Junction Railway, and presumably to its owners, by a special charge per car, both loaded and empty, paid by the trunk lines for use of the leased track—*Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531 (532). The Chicago Junction Railway has a petition pending before the Commission for a substantial increase in this special charge.

the properties of the Chicago Junction Railway Company would be in the public interest and approved the application subject to 17 stated conditions, none of which refers in any way to this special covenant. It has been urged that this action of the Commission sanctioned and approved the covenant in question. Reference to the records of the Commission indicates that this assumption is factually wrong. It is also legally unsound. The vice of this covenant, or of any covenant of similar import, is not curable by Commission approval. It would be beyond the power of the Commission, if it were so inclined to validate such a covenant in the charter of a common carrier. But the character and significance of this covenant had not been revealed to the Commission when it passed upon the application of the New York Central in its decision of May 16, 1922, in such a way as to create an issue concerning its legality or propriety. That application was accompanied by a so-called preliminary contract by which the Chicago Junction Railway and others agreed to execute a lease in the event the application was approved by the Commission. This preliminary agreement stated, among other things, that the lease, when executed would be subject to all the terms and conditions of a lease dated December 1, 1913, by and be- [fol. 94] tween the Union Stock Yard and Transit Company of Chicago and the Chicago Junction Railway Company, except as otherwise provided. The formal lease for which approval was sought by the New York Central was not actually executed until after the decision was rendered. The old lease of December 1, 1913, however, was put into the record as an exhibit in the Chicago Junction case and it included the text of the covenant hereinbefore mentioned, which was buried among many other provisions, some of which were expressed in quaint and obscure language. No party of record made an issue of this covenant or brought it before the Commission on brief or at the oral argument, and it could not have been consciously passed upon by the Commission. No reference was made to this covenant in the Commission's report or in its report on further hearing in that proceeding, 150 I. C. C. 32. It would be stretching the Commission's decision, therefore, beyond reasonable bounds to say that it approved this covenant.

The illegality of this covenant is not, as was contended on oral argument, self-corrective through the operation of the qualifying phrase "insofar as possible." The daily conduct of a common carrier's business cannot be supervised by governmental authority so as to safeguard the public interest against the observance of such a covenant, whether qualified as indicated or left entirely unqualified. Its effects may be subtle and indirect and their impact may be felt by shippers located hundreds of miles from the locale of the carrier's operations and who could not, for this reason, be expected to trace the source of their difficulties. A covenant of this character is so diametrically opposed to the public duties and obligations of a common carrier that no vestige of it should be allowed to remain. It is unlawful per se.

Since 1920 a public stockyard's right to have all ordinary livestock consigned to or moving from its yards unloaded into or loaded from suitable pens without extra charge has been specifically guaranteed by section 15 (5) of the Interstate Commerce Act. (See *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193.) There is, however, a significant proviso in section 15 (5) which, it seems to me, is pertinent in the situation before us. It is therein stated that "Nothing in this paragraph shall be construed to affect * * * the duty of performing service as to shipments other than those to or from public stockyards." This is ample warning to carriers not to commit themselves to the service of public stockyards—as important and useful as such institutions are in the marketing of livestock—so that they cannot meet their obligations in the delivering [fol. 95] and receiving of livestock at private industries; but this has apparently be- done in the area where Swift now proposes to erect a packing plant.

The law with respect to the delivery of livestock at private sidetracks or to private industries was clearly stated by the Supreme Court of the United States in *Covington Stock Yards Company* v. *Keith*, 139 U. S. 128. While, as pointed out by the Supreme Court in *Armour & Co.* v. *Alton R. Co.*, 312 U. S. 195, this suit was instituted before Congress adopted the Interstate Commerce Act, this decision, so far as I am advised, has never been disaffirmed

or its effect changed by subsequent court decision or by amendatory statute. It was cited with approval by the Supreme Court in *Atchison, T. & S. F. Ry Co.* v. *United States, supra.* The pertinent parts of the decision in *Covington Stock Yards Company* v. *Keith, supra,* to the issues here involved read as follows:

The transportation of livestock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered, to the consignee, if to be found, at such place as admits of their being safely taken into possession.

* * * * * * *

It was not within the power of the railroad company, by such an agreement as that of November 19, 1881, or by agreement in any form, to burden the appellees with charges for services it was bound to render without any other compensation than the customary charges for transportation.

When the facts are fully understood, it seems to me that the law in this case is relatively simple. Insofar as Swift's relation to the terminal railroad is concerned, the governing law is contained in section 1 (9) of the Interstate Commerce Act. Inasmuch as Swift's track has already been connected and is proposed to be operated in the handling of cars containing other kinds of freight than livestock, it seems conclusive that all the conditions set forth in section 1 (9) have been met. In that event, it is the duty of the Chicago River and Indiana Railroad Company to operate the track for all kinds of traffic, including livestock, without discrimination. That is clearly the obligation of the statute.

As to whether the line-haul carriers are to assume the expense of delivery of livestock destined to Swift over the tracks operated by the Chicago River and Indiana Railroad Company without charge, over and above the regular transportation rate, depends upon proper application of the law as embodied in other provisions of the Interstate Commerce Act, including sections 1 (4), 1 (5) (a), 2, and 3 (1).

The main question to be answered in this connection is whether the compensation included in the line-haul rates

covers delivery of livestock to the private sidetrack of Swift. In determining this question it is important to look [fol. 96] at the general practice prevailing in that area with respect to freight generally. This practice is somewhat unusual in one respect, that is, the line-haul carriers and the switching lines, such as the Chicago River and Indiana Railroad Company, enter into joint rates to and from sidetracks located on the switching lines in the Chicago district, including Packingtown. An exception has been made, as previously noted, in the delivery and receipt of livestock at the Union Stock Yards in that several of the line-haul carriers under trackage agreements make the deliveries and receive the outgoing livestock at the stockyards themselves. On all other kinds of freight, including perishables, delivery is made to all other points and industrial sidings on the lines of the Chicago River and Indiana Railroad Company, including Swift's sidetrack, without charge in addition to the line-haul rates, and this carrier receives as compensation for its switching services a division of each joint rate that amounts to 3.15 cents per 100 pounds, minimum 60,000 pounds, or $18.90 per car on a minimum carload, which may be compared with its local switching charge of $28.30 per car.

The conclusion seems inescapable that the singling out of livestock as the exclusive type of freight which will not be accorded the switching service without extra charge is not only unjust and unreasonable, under sections 1 (4) and 1 (5) (a) of the act, but unduly and unreasonably prejudicial under section 3 (1). The latter section prohibits, among other things, the subjection of any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The attempt of the respondents to justify different treatment of livestock from that accorded all other classes of freight, including perishables, on the ground that livestock alone would create an intolerable disruption of service on the lines of the Chicago River and Indiana Railroad Company fails, in the circumstances here presented, to satisfy the demands of reason and justice. Injury can grow out of such a situation and I think it will in this instance. (See *Utah State Automobile Assn.* v. *Atchison, T. & S. F. Ry. Co.*, 92 I. C. C. 376,

and *Duluth Chamber of Commerce* v. *C., St. P., M. & O. Ry.*, 122 I. C. C. 739.)

The majority is impressed with the speculative possibility that if Swift's request here is granted other packers in that area would be entitled, on demand, to receive similar services and that the capacity of the terminal facilities of the Chicago River and Indiana Railroad Company might thus be overtaxed. Conceivably, those facilities can be overtaxed, but that point has not yet been reached and the right of the carrier to deny service on that ground does not now exist. If and when such an eventuality occurs the problem [fol. 97] may be resolved in the light of settled principles of law. Service may not be denied by a common carrier, upon reasonable demand for it, as long as the carrier has the capacity to render it. It is true that the right of a common carrier to deny service to a prospective user on the ground of a lack of capacity has been recognized by law, but this right does not arise until the limits of capacity have actually been reached. The principles of law which govern such a situation were stated by the Supreme Court at page 133 of its opinion in *Pennsylvania R. Co.* v. *Puritan Coal Mining Co.*, 237 U. S. 121, as follows:

> The common law of old in requiring the carrier to receive all goods and passengers recognized that "if his coach be full" he was not liable for failing to transport more than he could carry. Hutchinson on Carriers, 146; *Lovett* v. *Hobbs*, 2 Shower, 127; *Riley* v. *Horne*, 2 Bing. 217; *Peet* v. *Ry.*, 20 Wisconsin 594. The same principle is applicable to those who transport freight in cars drawn by steam locomotives. The law exacts only what is reasonable from such carriers—but, at the same time, requires that they should be equally reasonable in the treatment of their patrons. In case of car shortage occasioned by unexpected demands, they are bound to treat shippers fairly, if not, identically.

The action of the majority in authorizing an extra switching charge to deliver livestock at Swift's plant, on the ground that such additional compensation is justified by reason of an increased congestion of the yard operations and facilities, introduces a novel idea into the field of rail-

road regulation. Under such a theory the tendering of shipments of any kind to a railroad in excess of the capacity of its regular train schedules might well give rise to the assessment of an extra charge on the surplus shipments. The terminals of railroads and other agencies are subject to periods of congestion, particularly at the larger centers, which frequently occasion overtime work or the employment of additional help to restore normal conditions. While embargoes are often employed as an aid in overcoming difficulties of this kind, there is no record of an attempt to resort to the use of extra transportation assessments as a recompense to the carriers for the extra costs entailed. It is a familiar practice, for instance, for carriers to run extra busses or passenger trains out of various terminals on week ends to take care of overflows of passengers. If pursued to its ultimate conclusion, the principle which the majority here enunciates would authorize the charging of additional compensation to the overflow passengers. Such an idea is too closely akin to a punitive measure to be just and reasonable. A search of the authorities reveals no warrant of law for such action. As a matter of fact, it is condemned by the decision cited and quoted from in the preceding paragraph hereof.

There is no more justification for assessing an extra charge against Swift for the switching of livestock in this [fols. 98-99] instance than there would be for charging additional compensation over and above the line-haul rates on all traffic passing though the yards in question. If the handling of a heavy volume of traffic through the yards with Swift's livestock cars added should actually contribute to a higher rather than a lower cost per car, which is doubtful to say the least, then the additional cost should be distributed over all traffic flowing through the yards rather than be charged to one shipper alone.

Commissioners Johnson, Mitchell, and Cross did not participate in the disposition of these proceedings.

[fols. 100-101] EXHIBIT "C" TO COMPLAINT

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of February, A. D. 1950.

No. 29809

SWIFT & COMPANY

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petition of complainant for rehearing, reargument, or reconsideration; and it appearing that the reasons presented in support of such petition do not constitute good cause for reopening the proceeding for rehearing, reargument, or reconsideration:

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 102] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—Filed September 13, 1950

The Interstate Commerce Commission, a defendant herein, for answer to the complaint herein filed, says:

I to III

Answering paragraphs 1 to 3, inclusive, it admits the incorporation of plaintiff, the jurisdiction of this court to

entertain the suit; that the venue is properly laid and the purpose of the suit as stated.

IV

Answering paragraph 4, the Commission admits the allegations of the first paragraph thereof that the complaint therein referred to was filed with the Commission; Answering subparagraph (a) of paragraph 4, it submits that the complaint so filed is the best evidence of the allegations contained therein and of the relief sought by plaintiff, and that this defendant is not required to make answer thereto, but respectfully refers this court to said complaint for full and complete information as to the contents thereof. The Commission admits the allegations of subparagraph (b) and [fol. 103] (c) as to the procedures had and the action taken in the said proceeding before it.

V

Answering paragraph 5, the Commission submits that allegation therein made raises a question of law and that it is not required to make answer thereto.

VI

Answering paragraph 6, the Commission denies that either its report and order made in the said proceeding before it is erroneous and in violation of the Interstate Commerce Act or any other law or laws of the United States; denies that either is void and of no effect for the reasons alleged in said paragraph or for any other reason or reasons; denies that they are not supported by evidence of record in the proceeding: On the contrary, the Commission avers that the said report and order are in accordance with law, and are based on findings of fact supported by the evidence. The other part of the said paragraph contains matter as to the alleged effects of the report and order and are such as require no answer, inasmuch as they are argumentative and speculative.

VII

The allegations of paragraph 7 of the complaint consist in part of definition of certain words or terms used in railroad matters. Since there is no dispute as to the meaning of these terms and as no issue is raised concerning them, it is respectfully submitted that no answer to this paragraph is required of the Commission. But the Commission does not admit the statements made in the subparagraphs, which are ostensibly made "by way of illus-
[fol. 104] tration", except to the extent that they are supported by the evidence and record before the Commission.

VIII —

Answering paragraph designated 8 (on page 10) of the printed complaint and titled "Defendants and Interveners," the Commission admits the allegations of subparagraph (a) that the defendants in the complaint proceedings each is a common carrier by railroad subject to the provisions of part I of the Interstate Commerce Act: and it admits that certain persons, corporations or associations intervened in opposition to the complainant.

The Commission does not admit the allegations of subparagraphs (b), (c), (d), (e), (f), (g), (h), or (i) of said paragraph 8, which attempt to set forth the status of certain interveners, their operations, their attitude or position in respect of the complaint. Further, the Commission submits that such matter is evidential in character and therefore its incorporation in the complaint is not in accord with accepted practice in pleading.

VIII to XLIV

Answering paragraphs 8 to 44, inclusive, beginning on page 13 of the printed complaint and captioned "Specific Errors in Decision," [Note.—The numbering of this paragraph as 8 apparently is an error since the next preceding paragraph is numbered 8], the Commission denies each and every allegation contained therein, of error committed by the Commission in the proceeding, report and order assailed, and every allegation of invalidity thereof, for lack of

support in the record or otherwise, or for any error of law. [fol. 105] Further answering, the Commission avers that in the proceeding before it referred to in the complaint herein, the parties thereto, including the plaintiff herein, were and each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings testimony and other evidence bearing on the matters covered in the report and order were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff; that at said hearing and subsequently, both orally and in briefs, questions relating to the said matters were fully argued and submitted to the Commission for determination, including many of the particular questions raised by plaintiff in this suit.

The Commission further alleges that each and all findings and conclusions in said report were and are supported by substantial evidence.

The Commission also alleges that in making said report of July 6, 1949, it considered and weighed carefully in the light of its own knowledge and experience all of the facts and conditions called to its attention by the parties to the proceeding including many of the questions and matters covered by the allegations of the complaint herein.

The Commission further alleges that said report and order were not made or entered either arbitrarily or capriciously or contrary to the relevant evidence or without evidence to support them; that in making said report and order the Commission did not exceed the authority duly conferred upon it, and it denies each and every allegation to the contrary contained in the complaint herein. The Commission denies that its said orders are arbitrary, unreasonable, unlawful, or null and void for any of the [fol. 106] reasons set forth in the complaint herein, or for any other reason or reasons.

Except as herein expressly admitted, the Commission denies the truth of each and every allegation contained in the complaint insofar as they conflict with the allegations herein, or with the statement or conclusions contained in said report of July 6, 1949, and its order of that date.

Wherefore, the Commission prays that the complaint be dismissed.

Interstate Commerce Commission, By Daniel W. Knowlton, Chief Counsel; H. L. Underwood, Assistant Chief Counsel.

[fols. 107-108] *Duly sworn to by William E. Lee. Jurat omitted in printing.*

[fol. 109] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed October 5, 1950

Now comes the United States of America, defendant, and for answer to the complaint filed in the above-entitled action, admits, denies, and avers as hereinafter set forth.

I

Answering paragraphs 1, 2, and 3, the United States admits the corporate status of the plaintiff, the stated purpose of the present suit, and the jurisdiction of this court to hear this suit.

II

Answering paragraph 4, the United States admits the allegations of the first subparagraph thereunder. Answering subparagraph (a) the United States refers the court to the complaint itself (Exhibit A to the present complaint), said complaint being the best evidence of the contents thereof. Answering subparagraphs (b) and (c) of paragraph 4, the United States admits the allegations therein contained.

III

Answering paragraph 5 of the complaint, the United States submits that such an allegation is a question of law and does not require an answer.

[fol. 110]

IV

Answering paragraph 6 of the complaint, the United States denies that the report and order of the Commission in said proceeding is erroneous, in violation of the provisions of the Interstate Commerce Act, part I (U.S.C.A. Title 49 § 1, *et seq.*) or any other laws of the United States. The United States denies that said report and order of the Commission is void and of no effect for the reasons alleged or for any other reason. Further answering, the United States alleges that the order of the Commission is valid and lawful in all respects, supported by adequate findings and based on substantial evidence. Further, the United States alleges that the order of the Commission is warranted by the facts of record and was within the statutory authority of the Commission. The remaining allegations of paragraph 6 are statements of the alleged unlawful results of the Commission's order and as such require no answer beyond that already made since defendant United States has denied that the order of the Commission was unlawful or invalid in any respect whatsoever.

V

Paragraph 7 of the complaint is composed of definitions of terms used in railroad parlance. The meanings of these terms are not in issue in this case and therefore no answer is required to that part of paragraph 7. The statements made to illustrate the meanings of the terms are admitted only insofar as they are supported by the evidence of record submitted in the proceedings before the Commission.

VI

Answering paragraph (8) of the complaint, the United States admits the allegations of subparagraph (a) thereof. The United States alleges that it does not have sufficient knowledge or information to form a belief as to the truth of the allegations of subparagraphs (b), (c), (d), (e), (f), (g), (h), and (i). Further answering, the United States alleges that the statements as to the status and positions of the intervenors in respect to the issues involved are [fol. 111] argumentative and are admitted only insofar as

they are in accord with the evidence of record submitted to the Commission.

VII

Answering paragraphs 8 through 44, entitled "Specific Errors in Decision", the United States denies every allegation therein contained which purports to show that the Commission erred in any respect in its report and order or in its conduct of the administrative proceedings. Further, the United States denies each and every allegation that the report and order of the Commission are invalid for any reason assigned in the complaint or for any reason whatever.

For further answer, the United States alleges that in the proceeding before the Commission a full and fair hearing was granted to all parties to the action including the plaintiff in the case at bar. All parties were given the opportunity to give testimony and to present evidence in support of their respective positions. The matters involved were fully argued before the Commission.

Further answering, the United States alleges that in making its report and order which are challenged in the case at bar, the Commission, the expert body in the field of transportation, carefully considered all the evidence submitted to it and thereupon made its findings. The United States further alleges that these findings are supported by substantial evidence.

For further answer the United States denies that the report and order challenged in the case at bar are arbitrary, capricious, unreasonable, invalid, unlawful, or null and void for any of the reasons set forth in the complaint or for any reason whatsoever. On the contrary, the United States avers that the administrative proceedings before the Interstate Commerce Commission were conducted in accordance with the standards prescribed by the Congress of the United States and all laws applicable thereto and that said report and order of the Commission constitute [fol. 112] the lawful action of that Commission. Defendant United States further states that said report and order were duly made, within the Commission's constitutional and statutory powers, upon adequate findings, supported

by substantial evidence, and were and are in all respects valid and lawful.

VIII

Except as herein expressly admitted, defendant denies each and every allegation in the complaint contained.

Wherefore, defendant prays that the relief prayed for by plaintiff be denied and that the complaint be dismissed, plaintiff to pay the costs.

John F. Baecher, Special Assistant to the Attorney General; Frederick R. Hanlon, Special Attorney, Department of Justice, Washington, D. C.

Herbert A. Bergson, Assistant Attorney General; James E. Kilday, Special Assistant to the Attorney General; Otto Kerner, Jr., United States Attorney, Attorneys for the United States of America, Defendant.

[fols. 113-114] Certificate of Service (omitted in printing)

[fol. 115] In United States District Court

[Title omitted]

Order—November 15, 1950

This cause coming on to be heard on the motion of The Atchison, Topeka and Santa Fe Railway Company, The Baltimore & Ohio Chicago Terminal Railroad Company, The Baltimore & Ohio Railroad Company, The Belt Railway Company of Chicago, The Chesapeake and Ohio Railway Company, Chicago & Eastern Illinois Railroad, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railway, Chicago, Indianapolis and Louisville Railway Company, Chicago, Milwaukee, St. Paul and Pacific Railroad, Chicago River & Indiana Railroad Company, Chicago, Rock Island and Pacific Railroad Company, Chicago, South Shore and South Bend Railroad, Erie Railroad, Grand Trunk Western Railroad Company, Gulf, Mobile and Ohio Rail-

road, Illinois Central Railroad, Indiana Harbor Belt Railroad Company, Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, The New York Central Railroad Com-
[fols. 116-119] pany, The New York, Chicago & St. Louis Railroad Company, The Pennsylvania Railroad Company, and Wabash Railroad Company, for leave to intervene in and to be made parties to the above entitled cause, and to file their separate answer to the complaint heretofore filed in said cause, the Court, upon consideration thereof, and being fully advised in the premises, finds that said motion should be granted.

It is therefore ordered, adjudged and decreed that the said applicants for intervention be, and they are hereby given leave to intervene in, and they are hereby made parties to, the above entitled cause.

It is further ordered that said applicants for intervention may file instanter their separate answer to the complaint heretofore filed herein in the same manner and with like effect as if named in the said complaint as parties hereto.

Philip L. Sullivan.

Nov. 15, 1950.

Enter: ——— ———, United States Circuit Court Judge, ——— ———, United States District Court Judge, ——— ———, United States District Court Judge.

[fol. 120] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENERS' ANSWER—Filed November 15, 1950

Now come The Atchison, Topeka and Santa Fe Railway Company, The Baltimore & Ohio Chicago Terminal Railroad Company, The Baltimore & Ohio Railroad Company, The Belt Railway Company of Chicago, The Chesapeake
[fol. 121] and Ohio Railway Company, Chicago & Eastern Illinois Railroad, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railway, Chicago, Indianapolis and Louisville Railway Company, Chicago, Mil-

waukee, St. Paul and Pacific Railroad, Chicago River & Indiana Railroad Company, Chicago, Rock Island and Pacific Railroad Company, Chicago South Shore and South Bend Railroad, Erie Railroad, Grand Trunk Western Railroad Company, Gulf, Mobile and Ohio Railroad, Illinois Central Railroad, Indiana Harbor Belt Railroad Company, Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, The New York Central Railroad Company, The New York, Chicago & St. Louis Railroad Company, The Pennsylvania Railroad Company, and Wabash Railroad Company, intervening defendants, hereinafter referred to as interveners, and for their separate answer to plaintiff's complaint herein, allege and say:

I

Interveners admit the allegations of Paragraphs 1 and 2 of the Complaint.

II

Answering Paragraph 3 of the complaint, interveners admit that the complaint is brought against the United States, and the Interstate Commerce Commission, and that the jurisdiction of this Court, if any, is conferred pursuant to the relevant statutes cited in said Paragraph 3.

[fol. 122] III

Interveners admit the allegations of Paragraphs 4 and 5, except that interveners deny that sub-paragraph (a) of Paragraph 4, which purports to summarize the complaint filed by plaintiff with the Interstate Commerce Commission in Docket No. 29809, *Swift & Company* v. *The Atchison, Topeka & Santa Fe Railway Company, et al.*, constitutes a true and accurate summary of said complaint. Interveners further allege that the allegations as made in the said complaint filed with the Interstate Commerce Commission in the said proceeding are shown by the copy of said complaint attached to plaintiff's complaint herein as Exhibit "A", and not by plaintiff's argumentative summary thereof.

IV

Answering Paragraph 6 of the complaint, interveners deny each and every allegation thereof.

Interveners allege that in the proceedings wherein the report and order here attacked were entered, a full hearing, as provided in and by the Interstate Commerce Act, was granted to all parties to the said proceeding, including the plaintiff herein; that evidence both oral and documentary, bearing on the matters covered in and by the report and order of the Commission was submitted to the Commission; that in the briefs filed in said proceeding all questions relating to the said matters were fully argued and submitted to the Commission for determination on behalf of all parties, including the plaintiff herein; that by its report and order the Commission, after a full hearing, has determined the matters presented to it in said proceeding; that the Commission, after a full hearing, has determined the issues against the plaintiff; that the findings and conclusions of the Commission as set forth in its report and order filed with [fol. 123] the complaint herein were and are fully supported and justified by the evidence submitted in said proceeding; that in making said order the Commission did not exceed the authority conferred upon it and that none of its findings or conclusions or order was made either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support it; that said order was made in the exercise of the authority vested in the Commission by the Interstate Commerce Act after a full and lawful hearing and in the light of all the evidence presented; and that the said order does not in any manner deny to plaintiff any rights conferred by law or otherwise with respect to delivery of said plaintiff's direct shipments of livestock or in any other respect.

V

Answering Paragraph 7 of the complaint, interveners admit that the words or phrases therein defined are used in the complaint with the meanings set forth in said Paragraph 7, but interveners deny that said definitions or the illustrations used in connection therewith, are complete or accurate, and said interveners further deny the argumentative con-

clusions and statements alleged as a purported part of said definitions and illustrations.

VI

Interveners admit the allegations of sub-paragraph (a) of Paragraph (8) of the complaint. Interveners further admit the first sentence of sub-paragraph (c) of said Paragraph (8), and that the persons, corporations, or associations named in sub-paragraphs (b), (f), (g), and (h) of said Paragraph (8) intervened in opposition to the complaint filed by the plaintiff with the Commission.

[fol. 124] Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in sub-paragraphs (b), (c) (d), (e), (f), (g), and (h) of said Paragraph (8).

VII

Answering Paragraph 8 of the complaint, interveners admit that the statement quoted in the first sub-paragraph of said Paragraph 8 appears in the Commission's decision herein, but said interveners deny each and every other allegation of the said Paragraph 8.

In further answer to said Paragraph 8, interveners allege that the Commission, in its determination of the complaint, filed with it by the plaintiff herein, considered each and every factor recited by the plaintiff in sub-paragraph (a) of said Paragraph 8 and fully and accurately stated its appraisal of the said factors in its decision and report herein; that the Commission's determination of each and all of said matters was abundantly and overwhelmingly supported by the evidence before it and in full conformity with the applicable principles and provisions of law.

Interveners further allege, in response to the allegations of sub-paragraph (b) of said Paragraph 8, that delivery of direct shipments of livestock to the Union Stock Yards at Chicago does not discriminate against plaintiff or prefer other meat packers. Precisely the same type of service and basis of rates is available to plaintiff, and was in fact utilized by plaintiff before plaintiff commenced the practice of receiving its direct shipments of livestock at the so-called Omaha plant pens. Plaintiff, therefore, pretends

to find a rate discrimination against itself when exactly the same rates and service would apply to plaintiff's direct shipments if delivery at the Union Stock Yards, the point at which delivery is made to the allegedly preferred packers, [fol. 125] were desired by plaintiff. Plaintiff instead elects to receive its direct shipments of livestock at the so-called Omaha plant pens in Chicago, and said delivery is made at the line-haul rates. By reason of the basis of rates thus accorded plaintiff at the so-called Omaha plant pens, plaintiff in fact has the advantage of a more favorable basis of charges since the other packers must, in addition to the line-haul rates, pay yardage charges assessed by the Union Stock Yards Company.

Furthermore, the record before the Commission conclusively proves, and the Commission expressly found that:

> "The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought." (274 I. C. C. 557, 574.)

That finding precludes plaintiff's present attempt to find a rate discrimination between delivery on its private tracks and delivery at the Union Stock Yards.

VIII

Interveners deny the first and second sentences of sub-paragraph (a) of Paragraph 9. Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said sub-paragraph (a). In further answer to said Paragraph 9, interveners admit the allegations of sub-paragraph 9(b), except that said interveners deny that the Chicago Junction Railway has been operated by the New York Central Railroad Company as the lessee thereof. Interveners further deny the allegations of sub-paragraphs (c), (d), (e), (f), (g), and (h) of said Paragraph 9, except that interveners admit that the covenant referred to in said sub-paragraph [fol. 126] (f) was contained in the lease therein referred to,

and that the letter referred to in sub-paragraph (g) was mailed to and received by the addressee.

Interveners further allege that the technical status of the Chicago Junction Railway was and is entirely foreign and irrelevant to any of the issues presented by the complaint before the Commission. Whether the Chicago Junction Railway be regarded as a part of the New York Central or as an independent operating entity which it in fact is by reason of the Commission's report and order in the *Chicago Junction Case*, 71 I. C. C. 631, would not vary or detract from the facts of record which demonstrate the utter impracticability of rendering the type of service at the rates here sought by the plaintiff. The operational consequences of such a proposal would remain the same, the complete dissimilarity, as found by the Commission, between the delivery and transportation services sought by plaintiff and that presently accorded other packers at Chicago and elsewhere, would not change with any technical change in the status of the Chicago Junction Railway nor would such change affect in any manner the Commission's finding that the present switching charge of the Chicago Junction Railway, in addition to the line-haul rates, for the delivery service sought by plaintiff was and is not unreasonable or otherwise unlawful.

Interveners further allege that the covenant referred to in sub-paragraphs (f) and (g) of said Paragraph 9 is similarly irrelevant to the issues determined by the Commission, that the said covenant does not in any manner affect the operating and other factors considered and fully discussed by the Commission as the basis for its finding that the rates and practices attacked by plaintiff were not and are not discriminatory, preferential or unreasonable and that plaintiff's reliance upon the said covenant is in [fol. 127] effect an attempt to remedy its inability to sustain its complaint before the Commission by relevant or persuasive evidence.

IX

Answering Paragraph 10 of the complaint, interveners deny that the Commission found that plaintiff's direct shipments of livestock could reasonably be delivered to

plaintiff's private sidetrack or that the statement quoted in said Paragraph 10 has any such meaning. Interveners deny the allegations of sub-paragraphs (a) and (b) of said Paragraph 10, except that interveners admit the accuracy of the figures therein recited. Interveners further deny the allegations of sub-paragraphs (c), (d), and (e) of said Paragraph 10.

Interveners further allege that the Commission found that the private track delivery of livestock sought by plaintiff would seriously interfere with and adversely affect the operations of the Chicago Junction Railway and the line-haul carriers' operations in the stock yard area. Because of the serious and costly operating difficulties that would thus be encountered in any attempt to maintain the delivery service sought by plaintiff, the Commission further found:

> "The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of services that would be required for the desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plant." (274 I. C. C. 557, 575-76.)

In addition to the finding above quoted, the Commission also found, with reference to each of the rate comparisons alleged by plaintiff, that the transportation services and [fol. 128] conditions involved in each compared situation were and are vitally dissimilar from the transportation services and conditions which would be involved in effecting the delivery service proposed by plaintiff. Plaintiff's comparisons are, therefore, wholly irrelevant to the Commission's determination that the Chicago Junction's charge, in addition to the line-haul rates, was and is not unreasonable or otherwise unlawful for the delivery service sought by plaintiff.

X

Interveners deny the allegations of Paragraph 11 of said complaint and allege that the Commission considered plaintiff's allegations of preference to the points recited in

said Paragraph 11 and found, with respect to such allegedly preferred points:

> "There is no showing of a similarity in any respect of the services required and circumstances affecting services. There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred." (274 I. C. C. 557, 575.)

In addition to plaintiff's complete failure to show a similarity of transportation conditions between the allegedly preferred points and the private track delivery sought by it at Chicago, the Commission further found that the line-haul rates under which delivery of livestock is made at such allegedly preferred points were prescribed to cover normal terminal operations, but were not designed for and did not include terminal operations of the character which plaintiff's proposed private track delivery at Chicago would require.

[fol. 129] XI

Answering Paragraph 12 of the complaint, interveners deny the allegations of said paragraph. Interveners allege that the Commission carefully and exhaustively considered and evaluated the transportation services and conditions which attend the delivery of dead freight as compared with those necessary to effect private track delivery of livestock to plaintiff's plant at Chicago, and concluded:

> "The measure of transportation services rendered shipments of live animals is substantially greater than that accorded dead freight." (274 I. C. C. 557, 563.)

It was because of such vital dissimilarity of circumstances affecting delivery of such unrelated commodities, and not because of any contractual provisions, that the Commission found that no discrimination exists as between dead freight and livestock deliveries to plaintiff's private track at Chicago, and the evidence of record overwhelmingly sustains and justifies that finding.

XII

Interveners deny the allegations of Paragraph 13 of the complaint, and allege that the Commission, on the basis of the evidence of record, found that plaintiff's charges of discrimination in rates and services were unfounded and without merit, and that such findings were abundantly supported by the evidence before the Commission.

XIII

Interveners deny the allegations of Paragraph 14 of the complaint. In further answer to said Paragraph 14, interveners allege that plaintiff does not pay any of the charges referred to in said paragraph on any of its direct ship- [fol. 130] ments of livestock. Such shipments are now, and for some years have been, delivered to plaintiff's so-called Omaha plant pens at Chicago. Interveners further allege that delivery of direct shipments of livestock to the Union Stock Yards at Chicago, and the consequent payment of yardage charges by the consignee were attacked by plaintiff in a prior proceeding before the Commission. The Commission, in that proceeding, approved such delivery as proper and reasonable. (*Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179 (1940).) The Supreme Court of the United States affirmed the Commission's decision that "the Yard Company's unloading pens were suitable points at which to terminate the duties of carriers to consignees * * *." (*Swift & Co.* v. *U. S.*, 316 U. S. 216, 225.) Plaintiff is, therefore, by indirection, seeking a rehearing upon the same issue previously and finally determined adversely to it, despite the fact that it does not now and has not for some years paid yardage charges on any of its direct shipments of livestock.

XIV

Answering Paragraph 15 of the complaint, interveners deny the allegations of said paragraph and further allege that, under the provisions of the Interstate Commerce Act, it would be the duty and obligation of these interveners to provide to the other Chicago packers, upon demand therefor, the same services and charges sought by plaintiff with reference to its direct shipments of live-

stock, and that it was likewise the right and duty of the Commission to consider the consequences of such probable demands. In the prior *Swift* case (238 I. C. C. 179 (1940)), although the present plaintiff was likewise the sole plaintiff, the Commission properly and of necessity gave consideration and effect to the conditions which must exist if the required service were accorded, as the law requires, [fol. 131] to all of the Chicago packers alike, in regard to their total direct shipments. The Supreme Court approved the Commission's action in considering, not only plaintiff's direct shipments, but also the direct shipments of all the Chicago packers (316 U. S. 216). Interveners further allege that the Commission could not have determined the issues raised by plaintiff's complaint without weighing and considering the effects that the granting of the requested relief would have upon terminal operations in the stock yards area, and that such appraisal could not be realistically or sensibly made without considering the total movement of livestock which is entitled by law to equal and non-discriminatory treatment and handling.

XV

Interveners deny the allegations of Paragraph 16 of the complaint, and allege that *Hygrade Food Products Corp. v. Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553, involved precisely the same issue presented to the Commission in this proceeding. In the *Hygrade* case, complainant, whose plant was served solely by the Chicago Junction Railway, alleged that the switching charge for delivery of livestock to its plant, the same charge as that involved here as increased by authorized general increases; was unreasonable, prejudicial to complainant, and preferential of its competitors. The Commission there, as here, found the switching charge not unreasonable or otherwise unlawful, stating:

> "• • • no facts of record lead to the conclusion that charges applicable to such services as may be performed in making deliveries at complainant's plant are unreasonable or that the differences in these charges are not warranted." (195 I. C. C. 553, 555.)

Interveners allege that the *Hygrade* case constitutes controlling authority with regard to the issues presented by [fol. 132] plaintiff to the Commission, and that the Commission justifiably and necessarily considered said decision in its report herein.

XVI

Interveners deny the allegations of Paragraph 17, and allege that the Commission's statement quoted in said Paragraph 17 was made in connection with plaintiff's contention that said line-haul rates apply to the delivery service sought by the plaintiff. Such line-haul rates were prescribed by the Commission and with reference to what such rates include, the Commission, referring to the proceeding wherein it had prescribed such rates, stated:

> "* * * we did not there consider what the services would be in connection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services." (274 I. C. C. 557, 574.)

The Commission further found that such line-haul rates do not include the service sought by plaintiff, and that the Junction's switching charge in addition to the line-haul rates was not unreasonable for deliveries of livestock to plaintiff's private track.

Interveners further allege that certain uncontradicted cost studies of record conclusively show, and sustain the Commission's finding, that the present line-haul rates do not cover the cost of performing the customary delivery of livestock to the Union Stock Yards, and that such rates, if construed to include the service sought by plaintiff, would be completely non-compensatory so far as such terminal service is concerned.

[fol. 133] XVII

Interveners deny the allegations of Paragraphs 18 and 19 of the complaint, and, in further answer to said paragraphs, allege that plaintiff sought, in the proceeding before the Commission, the establishment of joint rates for the transportation of its direct shipments of livestock with

delivery to its private track through the Chicago Junction yards, such rates to be equal to the line-haul rates. The Commission found that the showing required by the Interstate Commerce Act; that such rates must be necessary or desirable in the public interest, had not been met, and the evidence of record abundantly supports that finding. Interveners further allege that the extent to which the Junction participates in joint rates on dead freight or whether it technically, through the New York Central, participates in joint rates on livestock, does not affect the Commission's determination that the joint rates sought by plaintiff are not necessary or desirable in the public interest.

XVIII

Answering Paragraph 20 of the complaint, interveners deny the allegations of said paragraph, and further allege that plaintiff, in the presentation of its case before the Commission, failed to introduce any evidence in support of its allegation of preference to certain other points in Central and Western Trunk Line territories, that the only evidence in relation to such issue was that introduced by these interveners showing a complete dissimilarity between the transportation conditions and circumstances as regards the service rendered at such allegedly preferred points, and that sought by plaintiff, and that the Commission's finding quoted by plaintiff in said Paragraph 20 is supported by the evidence and unimpeached.

[fol. 134] XIX

Interveners deny the allegations of Paragraph 21 of the complaint except that interveners admit the fourth sentence of said paragraph. Interveners further allege that the livestock delivery service sought by plaintiff is not a normal terminal service in Chicago or elsewhere, but on the contrary, that such delivery service would entail transportation burdens and difficulties that are not encountered at Chicago or at any other terminal. The greater part of the record before the Commission delineates and demonstrates the acute and costly difficulties which all of the carriers involved would experience in any attempt to deliver

plaintiff's direct shipments of livestock to plaintiff's private track. It was on the basis of such evidence that the Commission found that the normal terminal services covered by the line-haul rates did not include the private track delivery sought by plaintiff, and that the Junction's switching charge, in addition to such line-haul rates, was not unreasonable for the private track delivery sought by plaintiff.

Interveners further allege that uncontradicted cost studies of record conclusively show that the present line-haul rates are not adequate to cover the normal terminal services rendered in connection with deliveries to the Union Stock Yards, that such line-haul rates would be non-compensatory with reference to the delivery service sought by plaintiff, and, as the Commission found, that such rates, duly prescribed by it, were not intended to cover any such service.

[fol. 135] XX

Answering Paragraph 22 of the complaint interveners deny the allegations of said paragraph. Interveners further allege that the delivery of livestock sought by plaintiff would greatly increase the switching and other terminal costs incurred by interveners in the delivery of livestock in the stock yards area. Under plaintiff's proposal, the exclusive livestock trains which now move expeditiously and efficiently to the stock yards would be compelled to stop and switch plaintiff's cars of livestock for delivery to plaintiff by the Junction, thus increasing the delay occasioned by the blocking of the main running track, serving the public stock yard. It would also be necessary to make special runs with one or two cars of plaintiff's livestock to the Junction in order that that carrier might have ample time to perform the difficult and extensive switching through its yards within the 28-hour limitation. The number of trains carrying mixed cars of dead freight and livestock, each entailing a stop for setouts at the Junction and consequent delay to all other carriers using the main running track, would be increased. Each of the factors mentioned above, and numerous others shown by the evidence before the Commission, would greatly increase the delays and congestion which are largely responsible for the costs of terminal operations in

the stock yards area, and all such increased costs would be directly attributable to the proposed private track delivery sought by plaintiff. On the basis of such evidence, the Commission found:

> "The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of services that would be required for the [fol. 136] desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plant." (274 I. C. C. 557, 575-76.)

XXI

Interveners deny the allegations of Paragraph 23 of the complaint, and allege that the deliveries referred to by plaintiff as having been made in 1923, were deliveries to the Union Stock Yards, and not deliveries of the type here sought by plaintiff. It is in connection with the private track delivery sought by plaintiff, and not the centralized and relatively simple delivery to the Union Stock Yards, that disruption and insuperable difficulties would arise in terminal operations in the stock yards area.

XXII

Answering Paragraph 24 of the complaint, interveners deny the allegations thereof except that interveners admit that the Chicago, Burlington & Quincy Railroad Company is subject to the federal 28-hour law. Interveners further allege that the terminal operations involved in making delivery of livestock at the so-called Omaha plant pens and at the Union Stock Yards are vitally dissimilar from those involved in the private track delivery sought by plaintiff, that the evidence of record proves such vital differences and abundantly supports the Commission's findings that the transportation services, conditions, and circumstances connected with deliveries at the so-called Omaha plant pens and the Union Stock Yards are substantially dissimilar from those connected with the private track delivery sought by plaintiff.

[fol. 137]

XXIII

Answering Paragraph 25 of the complaint interveners deny the allegations thereof, and further allege that the Commission considered and evaluated the services performed in the transportation of dead freight, including those referred to in the quoted statement appearing in said Paragraph 25, and found:

> "The measure of the transportation services rendered shipments of live animals is substantially greater than that accorded dead freight." (274 I. C. C. 557, 563.)

Interveners allege that the Commission's finding, as shown by the evidence of record, is particularly true with reference to the terminal operations connected with the delivery of dead freight and those entailed in the private track delivery sought by plaintiff. Accordingly, the charges with reference to one type of service furnish no criterion for determining reasonable charges for the other type of service.

Interveners further allege that the manner in which the Junction is compelled to perform its switching operations was properly and necessarily considered by the Commission.

XXIV

Interveners deny the allegations of Paragraph 26 of the complaint, and allege that the statements quoted therein from the Commission's report are accurate descriptions of the extent to which the line-haul carriers have trackage rights over the Junction's tracks and also bear directly upon the long existing custom and practice of delivering livestock in Chicago; that said statements by the Commission were not used for the purposes alleged by plaintiff.

[fol. 138]

XXV

Answering Paragraph 27 of the complaint, interveners deny the allegations of said paragraph. Interveners allege that the statements by the Commission quoted in said paragraph accurately state a significant and basic difference between the operating conditions which would attend

plaintiff's proposed private track delivery and delivery at the Union Stock Yards as presently made. In its appraisal of the issues presented by the complaint filed with it, it was the Commission's right and duty carefully to consider and analyze the present and proposed methods of delivering livestock in order that plaintiff's claims of unreasonableness, preference and discrimination might be determined. The findings quoted in said Paragraph 27, defining as they do some of the additional transportation burdens which would accrue as a result of the proposed private track delivery, were relevant to the issues of reasonableness and discrimination, and were abundantly sustained by the evidence before the Commission.

XXVI

Answering Paragraph 27 of the complaint, interveners deny the allegations thereof and allege that the finding by the Commission as set forth in the said paragraph was necessary to the Commission's determination of plaintiff's complaint and was relevant to the issues involved in the proceeding before the Commission. Only by reference to the transportation services, conditions, and circumstances surrounding the present and proposed methods of livestock delivery was it possible for the Commission to determine whether or not the present charges and practices were reasonable and non-discriminatory, and whether or not the establishment of the joint rates requested by plaintiff would be necessary or desirable in the public interest.

[fol. 139] Interveners further allege that the manner in which consolidated trains cause delays in terminal operations in the stock yards area is particularly relevant in its bearing upon the operating conditions that would attend plaintiff's proposed private track delivery because the number of such consolidated trains, as shown by the record and found by the Commission (pp. 564, 569) would be multiplied if such private track delivery were accorded to plaintiff or any of the other packers in the stock yards area.

XXVII

Interveners deny the allegations of Paragraph 29 of the complaint, and in further answer to said paragraph inter-

veners allege that although the 28-hour limitation applies to all interstate transportation of livestock, attempted compliance with that limitation under the operating conditions which would exist if plaintiff's request for private track delivery in Chicago were granted would produce difficulties and costs which it produces nowhere else. The very different incidence which the 28-hour limitation would have upon livestock shipments under the proposed practice as contrasted with the present practice was discussed by the Commission in the following finding:

> "As above mentioned in practically all cases, livestock arriving at Chicago has only a limited time left before it must be unloaded to avoid violation of the law governing watering and feeding; the Junction has no facilities for watering or feeding anywhere on its lines and such facilities of the kind as are maintained by the line-haul carriers are very limited. While these conditions—all necessitating prompt handling of the traffic—are suited to the practice, long followed, of making deliveries of all shipments of livestock at the stockyards, they are not, it is evident, at all suited to the plant delivery service sought by complainant, in the [fol. 140] performance whereof the cars of livestock would have to be switched and otherwise intermingled with cars of dead freight which latter, it appears, may, in the case of perishable freight, require nearly a full day for movement through the yards to points of delivery, and in the case of other dead freight, nearly 32 hours." (274 I. C. C. 557, 570-71.)

Interveners further allege that the effect of this limitation upon the transportation of livestock was considered by the Commission in prescribing line-haul rates, as shown by the report therein, only in relation to normal terminal operations and delivery to the stock yards, not in terms of its effect under the proposed plant delivery.

XXVIII

Interveners deny the allegations of Paragraph 30 of the complaint and allege that the line-haul rates prescribed by the Commission were expressly designed to cover only the

costs of normal terminal operations. Throughout its reports wherein said rates were prescribed (*Livestock—Western District Rates*, 176 I. C. C. 1, and *Chicago Livestock Exchange* v. *A. T. & S. F. Ry. Co.*, 219 I. C. C. 531), the Commission described in detail the relatively simple terminal operations which it referred to as "normal" and in no instance was private track delivery to plaintiff's plant at Chicago, as presently sought, referred to or mentioned. As stated by the Commission in its report herein, with reference to *Chicago Livestock Exchange* v. *A., T. & S. F. Ry. Co.*, 219 I. C. C. 531:

> "We pointed out that in prescribing the rates on livestock to Chicago, among other markets, there was specifically taken into consideration as an element 'the rendition of terminal service in connection with the transportation of livestock', and there was included what was considered 'sufficient to cover such terminal services under a normal operation as well as to cover [fol. 141] the unloading and loading of livestock at public stockyards,' but we did not there consider what the services would be in connection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services.'" (274 I. C. C. 557, 574.)

After an extended discussion of the services which would be required in effecting the delivery sought by plaintiff, the Commission found that the Junction's switching charge in addition to the line-haul rates was not an unreasonable charge.

XXIX

Interveners deny the allegations of Paragraph 31 of the complaint and, for further answer to said paragraph, interveners refer to the allegations contained in Paragraph XXVII of this answer.

XXX

Answering Paragraph 32 of the complaint, interveners deny the allegations thereof, and further allege that the record shows and the Commission found, that the care and service necessary to switch cars of livestock through the

Junction yards to plaintiff's plant was and is greatly in excess of that normally incident to the delivery of livestock or any of the other types of freight mentioned by plaintiff in said Paragraph 32. The Commission after a thorough analysis of the circumstances and conditions which would attend switching of livestock through the Junction yards to plaintiff's private track, and the additional services required, found:

> "Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants' operations." (274 I. C. C. 557, 571.)

[fol. 142] The Commission further found that any attempt to accord a like service to other packers "together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations * * *." (274 I. C. C. 557, 572.)

Intervenors further allege, in response to sub-paragraph (b) of said Paragraph 32 that the Commission found:

> "The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those connected with the delivery here sought." (274 I. C. C. 55., 574.)
>
> * * * * *
>
> "The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought." (274 I. C. C. 557, 574.)

With reference to other points mentioned in said subparagraph (b) of Paragraph 32, the Commission found:

> "There is no showing of a similarity in any respect of the services required and circumstances affecting services. There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred." (274 I. C. C. 557, 575.)

Interveners further allege that, on the evidence of record before the Commission and the Commission's abundantly supported findings, there is no basis in fact for the allegations that the services required in effecting delivery of livestock through the Junction's yards to plaintiff's private track is only that normally incident to the delivery of livestock at other points, and that the record overwhelmingly proves the contrary of said allegations.

[fol. 143] XXXI

Interveners deny the allegations of Paragraph 33 of the complaint and allege, in further response thereto that both the Commission and the courts in *Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 178, *Swift & Co.* v. *U. S.*, 316 U. S. 216, and numerous other decisions have held that delivery of direct shipments of livestock to the Union Stock Yards in Chicago was in all respects a reasonable and proper delivery and that such delivery complied with all the requirements of the Interstate Commerce Act with respect to such transportation. The plaintiff, however, does not now receive any of its direct shipments of livestock at the Union Stock Yards, but instead elects to receive such shipments at its pens at its so-called Omaha plant.

Interveners further allege that delivery to the stock yards is an "expeditious centralized delivery" and that the Commission properly considered the adverse effects that plaintiff's proposed private track deliveries would have upon the interests which would continue to receive their shipments of livestock at the Union Stock Yards.

XXXII

Interveners deny the allegations of Paragraph 34 of the complaint. Interveners further allege that it was the right and duty of the Commission to consider the effects that the proposed plant door delivery of livestock would have upon terminal operations generally in the stock yards area. In response to plaintiff's request that the Commission prescribe just and reasonable rules, regulations and practices with respect to the delivery of its livestock, it was incumbent upon the Commission to consider the transportation condi- [fol. 144] tions, circumstances, and services required to

effect the requested plant door delivery. The finding quoted in Paragraph 34 of the complaint is the Commission's conclusion, fully warranted by the facts of record, that the proposed plant door delivery would seriously burden and impede present terminal operations, and that finding is relevant to the issues raised by plaintiff's complaint before the Commission.

Interveners allege that said finding was not used to justify preference, prejudice or any of the other matters alleged by plaintiff in said Paragraph 34, but that the said finding supports and justifies the measure of the charge for the burdensome and costly services requested by plaintiff. With respect to preference to the interests receiving deliveries at the stock yards, the Commission expressly found a dissimilarity of conditions between deliveries at the stock yards and deliveries at plaintiff's private tracks and the evidence abundantly supports that finding. The identical services and basis of charges available to other packers who receive their shipments of livestock at the Union Stock Yards are also available to plaintiff and this case arises out of plaintiff's efforts to secure a preferred position. Interveners further allege that the measure of the yardage charges assessed by the Union Stock Yards has no relation to and is not a proper criterion for determining whether the Junction's switching charge in addition to the line-haul rates constitutes a not unreasonable charge for the burdensome and costly service requested by plaintiff.

XXXIII

Answering Paragraph 35 of the complaint, interveners deny the allegations thereof, and further allege that the evidence of record shows that the motive power available on the Junction, as contrasted with the number of locomotives, has not in fact been reduced. Interveners further [fol. 145] allege that nowhere in the Commission's report is it implied or stated that additional motive power is not available, and that the Commission's statements were not used for the purposes attributed thereto by the plaintiff.

XXXIV

Interveners deny the allegations of Paragraph 36 of the complaint and allege that the Commission's findings as to feeding and watering facilities on the Junction were made with reference to plaintiff's request that its direct shipments of livestock be funneled to its private tracks via the Junction's yards. There are no feeding or watering facilities within those yards, and the feeding and watering facilities at the Union Stock Yards, although reached by the Junction's tracks, are not the facilities of the Junction. It is those same facilities of the Union Stock Yards that plaintiff, in Paragraph 34 of its complaint, characterizes as unnecessary in connection with delivery of its direct shipments of livestock.

Interveners further allege that plaintiff's suggestion that the Junction be required to transport plaintiff's direct shipments of livestock to the stock yards for watering and feeding as the necessity may arise, then return such shipments to the Junction yards for switching to plaintiff's private tracks would multiply the burdens, delays, and costs entailed in effecting the delivery service sought by plaintiff.

XXXV

Answering Paragraph 37 of the complaint, interveners deny the allegations thereof and allege that the Commission's finding quoted in said paragraph is accurate, relevant to the issues herein, and fully supported by the evidence. Due to the congested condition of the Junction's [fol. 146] facilities, as found by the Commission, any movement of livestock through the Junction's yards for delivery by that carrier would necessitate, as the record shows, additional facilities and expansion of the said yards. As the Commission found, the space necessary for such expansion is not available. Interveners further allege that plaintiff's objections to the Commission's action in *Chicago Junction Case*, 71 I. C. C. 631, are not properly raised in this proceeding.

XXXVI

Interveners deny the allegations of Paragraph 38 of the complaint, except that interveners admit that the necessary

switch connection from the Junction tracks to plaintiff's private tracks is now in place and in operation, said connection being the one presently used for switching dead freight to plaintiff's private track. Interveners further allege that Section 1(9) of the Interstate Commerce Act does not specify the measure of the charges for the switching or other transportation services furnished over any switch connection, but that the said section merely provides for the installation and operation of such switch connection upon reasonable demand therefor. The Commission's order herein does not prohibit the operation of the switch connection between the Junction's tracks and plaintiff's private tracks for the delivery of livestock, but finds instead that the present charges for such service are not unreasonable or otherwise unlawful. By that order, all and any of plaintiff's rights under said Section 1(9) have been reserved. It is the measure of the charge, a matter entirely irrelevant to said Section 1(9), which plaintiff dislikes. There is, therefore, no violation of the said section.

Interveners further allege that although on the record before the Commission, plaintiff stated that the proposed [fol. 147] facilities for the receipt and processing of direct shipments of livestock, to be delivered by the Junction to plaintiff's private tracks, had already been started and would be completed during the year 1948, and that such construction did not depend upon whether or not plaintiff's complaint was granted, the said construction has not in fact been completed or appreciably commenced. Interveners further allege that plaintiff does not now have facilities for the receipt of its direct shipments of livestock on its private tracks by way of the switch connection with the Junction tracks, and that plaintiff is in effect seeking a declaratory judgment as to whether it might be entitled to certain relief under a hypothetical state of facts.

XXXVII

Interveners deny the allegations of Paragraphs 39, 40 and 41 of the complaint and allege that the facts of record as found by the Commission, show that interveners have complied with and fully discharged all of their obligations under the statutory sections cited by plaintiff in said para-

graphs or under any other applicable provisions or principles of law.

XXXVIII

Answering Paragraph 42 of the complaint, interveners deny the allegations thereof and allege that the Commission, by its decision and order herein, did not prohibit the delivery of plaintiff's direct shipments of livestock on its private tracks. The Commission did find that, in view of the transportation circumstances, conditions and services that would attend and be necessary to effect the proposed delivery, the charges then and now in effect were and are not unreasonable or otherwise unlawful. The costs which plaintiff incurs in trucking its livestock from the [fol. 148] so-called Omaha plant pens or the yardage charges which it would incur should it elect to receive its shipments at the Union Stock Yards are not related to and do not determine in any manner the proper charge for the private track delivery which plaintiff requested in its complaint before the Commission.

XXXIX

Interveners deny the allegations of Paragraph 43 of the complaint. Interveners further allege that the practice of delivering livestock to the Union Stock Yards in Chicago, which practice has been approved and found to be reasonable and proper by the Commission and the Courts, is an evolutionary result of a custom and practice dating back to the very inception of the Union Stock Yards. The record in this proceeding shows in great detail the manner in which that custom and usage was actively sponsored and fostered by the Chicago packers, including plaintiff. The record shows that in 1890, plaintiff and certain other packers informed the Stock Yards Company that unless they were given a proprietary interest in the Stock Yards Company and substantial payments in the form of securities of a New Jersey holding company which in turn owned the Stock Yards Company, they would construct their own facilities for the receipt of livestock which was then being delivered to the Union Stock Yards. Plaintiff and such other packers then instituted suit in the Illinois courts,

asking that the Union Stock Yards and Transit Company be compelled to permit the line-haul carriers to use the tracks of the Yard Company in making deliveries of livestock to the proposed private facilities of the packers. The bill of complaint alleged that the line-haul carriers were willing and able to make such delivery. Pursuant to these demands, a contract was entered into between plaintiff and certain other packers and the New Jersey [fol. 149] company by the terms of which the packers received a substantial proprietary interest in the Stock Yards Company and, in return therefor, agreed to abandon and discontinue the suits referred to above and to abandon their plans to construct private facilities for the receipt of their livestock in Chicago. In addition, each of the said packers covenanted and agreed that as long as the Stock Yards Company should continue to operate its yard facilities at Chicago, the packers would continue to use those facilities for the receipt of their livestock. Plaintiff and such other packers thereupon abandoned the suits referred to above as well as their plans to construct private facilities for the receipt of their shipments of livestock and for many years thereafter continued to utilize the Union Stock Yards' facilities as the exclusive site for the receipt of their livestock shipments. It was with reference to the identical evidence in the record before the Commission here that the Supreme Court stated:

> "It was the packers themselves who suppressed the competitive yards and alternative facilities for unloading their stock." (*Swift & Co.* v. *U. S.*, 316 U. S. 216, 230.)

With reference to that same factual showing, the Commission likewise stated:

> "For many years, the packers including the complainant, made the practice of which they now complain their own practice. They gave up their own terminal facilities at the Central Stockyards for a substantial consideration and by their covenants with the Yards Company, made the Union Stock Yards their own terminal facilities at Chicago." (*Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179, 188.)

Interveners further allege that the period during which the said packers sponsored and fostered the custom and usage of receiving their livestock shipments at the Union [fol. 150] Stock Yards was one of intensive industrial development within the stock yards area. As a result, space for expansion of the Junction's facilities no longer exists, and the Commission so found. That development, which progressed during the entire period when plaintiff and other packers actively promoted the centralized delivery of livestock at the Union Stock Yards, was encouraged and aided by the presence of adequate rail transportation facilities within the stock yards area. The adequacy of such transportation facilities depends and is contingent upon a continuance of the present centralized delivery service respecting delivery of livestock primarily because the entire development of the stock yards area was geared to such delivery. Because of the genesis of such industrial and rail facilities the disruption of such terminal operations, as demanded by the plaintiff herein, would render the transportation facilities inadequate to meet the needs of the industries located within the stock yards area.

In further answer to said Paragraph 43, interveners allege that the Commission properly considered the facts and circumstances relating to the inauguration of the practice and custom of delivering livestock at the Union Stock Yards, and that the said practice and custom, and the circumstances surrounding its inception and existence sustain the Commission's decision and order herein.

XL

Interveners deny the allegations of Paragraph 44 of the Complaint and interveners further deny that plaintiff is entitled to the relief prayed for in Paragraphs (5), (6) and (7) of the prayer for relief.

[fols. 151-153] XLI

Except as herein expressly admitted, interveners deny the truth of each and all of the allegations contained in the complaint insofar as they conflict with the allegations of this answer or with the findings, statements or conclusions included in the report and order entered by the Com-

mission on July 6, 1949 and the order of February 6, 1950, which report and orders are attached to the complaint herein as exhibits "B" and "C", and said report and orders are hereby referred to and made a part hereof.

Wherefore, having fully answered the complaint, interveners pray that the relief therein prayed be denied, and that the complaint be dismissed with costs to the interveners and that interveners have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Kenneth F. Burgess, Douglas F. Smith, Martin M. Lucente, Attorneys for Interveners.

Sidley, Austin, Burgess & Smith, Of Counsel.

[fols. 154-155] In United States District Court

[Title omitted]

Order Allowing Intervention of the Union Stock Yard and Transit Company of Chicago—November 15, 1950

This cause coming on to be heard on the motion of The Union Stock Yard and Transit Company of Chicago for leave to intervene as a party defendant and to file its answer to the complaint instanter, and it appearing to the Court that said Company has the right to intervene as prayed;

It Is Ordered that The Union Stock Yard and Transit Company of Chicago be and it is hereby granted leave to intervene in this cause as a party defendant, and is hereby made a party defendant to this cause; and

It Is Further Ordered that the answer of The Union Stock Yard and Transit Company of Chicago be filed instanter.

Enter.

Philip L. Sullivan, United States District Judge.

[fol. 156] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, INTERVENING DEFENDANT—Filed November 15, 1950

Now comes The Union Stock Yard and Transit Company of Chicago, intervening defendant, by its undersigned attorneys, and for answer to the complaint filed in this cause says:

1. This defendant admits the allegations of sections 1 and 2 of said complaint.

2. This defendant, as to section 3 of said complaint, admits that this Court has jurisdiction of the subject matter of said complaint, but denies the relevancy of all the statutory provisions cited.

3. This defendant admits the allegations of section 4 of said complaint, except that it denies that plaintiff, by its complaint before the Commission, sought an order which would require delivery of plaintiff's direct shipments of livestock to plaintiff's private sidetrack at rates and charges which should not exceed the rates and charges applicable to the delivery of all line-haul freight other than livestock to plaintiff's said sidetrack and to other industrial sidetracks connected with the rails of Chicago Junction Railway.

[fol. 157] 4. This defendant admits the allegations of section 5 of said complaint.

5. This defendant denies the allegations of section 6 of said complaint.

6. Answering section 7 of said complaint (except the definitions of words and phrases contained therein for the purpose of the complaint and the illustrations in connection with said definitions, all of which require no answer): This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth sentence of section 7(a); denies the allegations of the fifth and last sentences of section 7 (a); and admits the allegations of the sixth sentence of section 7(a). This defendant denies the allegations of the second

and third sentences of section 7(c), except that it admits The Chicago River and Indiana Railroad Company is a separate corporation and is a subsidiary of The New York Central Railroad Company; and that the terminal railroad of The Chicago River and Indiana Railroad Company and the terminal railroad known as Chicago Junction Railway are part of the railroad system of The New York Central Railroad Company; avers that Chicago Junction Railway is merely the name of the terminal railroad of Chicago Junction Railway Company, an Illinois corporation; and avers that The New York Central Railroad Company does not, directly or indirectly, own or control any of the capital stock of Chicago Junction Railway Company. This defendant admits that the allegations of the last sentences of sections 7(c) and (d) are generally true, but denies that they are true in all instances; admits the allegations of the third sentence of section 7(f); and [fol. 158] denies the allegations of the fourth, fifth, sixth and last sentences of section 7(f).

7. Answering the first section 8 of said complaint (i. e., the section 8 beginning on page 10 of said complaint): This defendant admits the allegations of section 8(a); admits the allegations of the first, second and third sentences and of clause (3) of the fourth sentence of section 8(b); denies that the yardage charges of this defendant are made for the limited uses alleged in the fourth sentence of section 8(b); denies the allegations of the last sentence of section 8(b); avers that the terminal railroad known as Chicago Junction Railway is for the most part owned by this defendant subject to a lease in perpetuity made by this defendant to Chicago Junction Railway Company on December 1, 1913; and avers that the remaining property of Chicago Junction Railway Company is owned by it subject to a lease made by it to The Chicago River and Indiana Railroad Company on May 19, 1922. This defendant admits the allegations of the first three sentences of section 8(c); denies the allegations of the last sentence of section 8(c); admits the allegations of section 8(d); denies the allegations of section 8(e); admits the allegations of sections 8(f), (g) and (h); avers that the services and activities of the commissionmen, traders and associations referred to in sections 8(f), (g)

and (h) are conducted under license from and subject to regulation by the Secretary of Agriculture; admits the allegations of the first sentence of section 8(i); and is without knowledge or information sufficient to form a belief as to the truth of the allegations of the second, third and last sentences of section 8(i).

[fol. 159] 8. Answering the second section 8 of said complaint (i.e., the section 8 beginning on page 13 of said complaint): This defendant admits the allegation of the opening paragraph of said section; and denies the allegations of sections 8(a) and (b).

9. Answering section 9 of said complaint: This defendant denies the allegations of section 9(a), except that it admits and avers (a) that the Chicago Junction Railway, as it then existed, was owned by this defendant from 1865 to 1897, and (except for some parts thereof owned by Chicago Junction Railway Company) has since been owned by this defendant subject to various leases, (b) that this defendant operated said Railway from 1893 to 1897, but only in the carriage of dead freight, (c) that during the period from 1898 until December 1, 1913, said Railway was operated by Chicago Junction Railway Company, an Illinois corporation, (d) that prior to the decision in *United States* v. *Union Stock Yard and Transit Co.*, 226 U. S. 286, decided December 9, 1912, Chicago Junction Railway Company and its management denied that it was a common carrier by railroad subject to the Interstate Commerce Act, and it therefore did not file tariffs with the Interstate Commerce Commission or otherwise submit to regulation under the Interstate Commerce Act, and (e) that in the decision above cited, Chicago Junction Railway Company was held to be a common carrier by railroad subject to the Interstate Commerce Act. This defendant admits the allegations of section 9(b), except that it denies that Chicago Junction Railway has been operated by The New York Central Railroad Company as the lessee thereof; and denies the allegations of sections 9(c), (d) and (e). This defendant denies the allegations [fol. 160] of section 9(f), except that it admits (a) that the lease by this defendant to Chicago Junction Railway Company dated December 1, 1913, contained the covenant by Chicago Junction Railway Company set forth in section

9(f), and (b) that the lease by Chicago Junction Railway Company to The Chicago River and Indiana Railroad Company dated May 19, 1922, made said covenant binding upon The Chicago River and Indiana Railroad Company and The New York Central Railroad Company. This defendant admits the allegations of the first paragraph of section 9(g); denies the allegations of the second paragraph of section 9(g), except that it admits that after the delivery of the letter of September 4, 1947, set out in section 9(g) The Chicago River and Indiana Railroad Company and The New York Central Railroad Company undertook to prepare a defense to the complaint filed by plaintiff with the Interstate Commerce Commission, and thereafter presented evidence and argument in defense of said complaint; and denies the allegations of section 9(h).

10. Answering section 10 of said complaint: This defendant denies that the Commission found that cars containing plaintiff's direct shipments of livestock may reasonably be delivered to plaintiff's private sidetrack; denies that the finding set out in the first paragraph of section 10 has any such meaning; denies that the Commission found that if such livestock were so delivered to plaintiff's sidetrack it would tend to disrupt defendants' terminal operations; avers that the Commission found that the handling of cars of livestock direct to plaintiff's plant would affect adversely the line-haul carriers' operations in carrying live- [fol. 161] stock to the Union Stock Yards; and admits the allegations of the second sentence of the first paragraph of section 10. This defendant denies the allegations of section 10(a), except that it admits that the charge for transportation by rail of a carload shipment of livestock from a given point of origin to plaintiff's sidetrack is $36 higher than the charge for transportation to the Union Stock Yards, to plaintiff's Omaha plant location, and to team tracks in the Chicago switching district. This defendant admits the allegations of section 10(b), except it denies that the switching charge referred to is a prohibitive penalty charge, and denies that direct shipments consigned to plaintiff's Chicago plant would always follow precisely the same movements through the outer and inner railroad terminals of the line-haul carriers as shipments consigned to the Union Stock

Yards; and avers that plaintiff's comparisons fail to take into account all of the costs and expenses incurred in handling livestock through its Omaha plant location. This defendant denies the allegations of sections 10(c), (d) and (e).

11. This defendant denies the allegations of sections 11, 12, 13, 14, 15, 16, 17 and 18 of said complaint.

12. This defendant denies the allegations of section 19 of said complaint, except that it admits the allegations of the third sentence of said section.

13. This defendant denies the allegations of section 20 of said complaint.

14. This defendant denies the allegations of section 21 of said complaint, except that it admits that if carload shipments of livestock were delivered on plaintiff's sidetrack the railroads would not have to incur the unloading expense [fol. 162] on such shipments, and that the railroads pay the unloading charges of this defendant on shipments of livestock delivered at the Union Stock Yards.

15. This defendant denies the allegations of section 22 of said complaint, except that it admits that Chicago, Burlington & Quincy Railroad Company would incur no cost (deducted from its revenue under the line-haul rates) for unloading of direct shipments of livestock, and would incur no trackage charge to the Junction with respect to shipments interchanged to that carrier, and that it does incur such unloading and trackage charges on livestock handled by it to the Union Stock Yards.

16. This defendant denies the allegations of section 23 of said complaint.

17. This defendant denies the allegations of section 24 of said complaint, except that it admits the allegations of the second sentence of section 24(a).

18. This defendant denies the allegations of sections 25, 26, 27, 28, 29, 30, 31 and 32 of said complaint.

19. This defendant denies the allegations of section 33 of said complaint, except that it admits it is not owned or operated by any of the railroads, and that such railroads do not control its services.

20. This defendant denies the allegations of sections 34 and 35 of said complaint.

21. Answering section 36 of said complaint: This defendant denies that the Commission erred in making or giving weight to the findings therein set out; admits that the largest facilities for feeding and watering livestock in the midwest are those of this defendant, and are reached only by Junction rails; admits the existence of the tariff men- [fol. 163] tioned in said section; and denies that its said facilities are used by all of the defendants before the Commission when feeding or watering becomes necessary under the federal 28-hour law.

22. This defendant denies the allegations of section 37 of said complaint.

23. Answering section 38 of said complaint: This defendant denies the allegations of the first sentence of said section; admits the existence of a switch connection connecting the rails of Chicago Junction Railway with a sidetrack of the plaintiff, and that such connection and track are now in place and in operation; is without knowledge or information sufficient to form a belief as to the truth of the allegation that said switch connection has been operated safely for many years, or of the allegation that the thousands of cars which pass over said connection furnish sufficient business to justify its operation, or of the allegation that livestock can now be received on plaintiff's private sidetrack and be unloaded onto plaintiff's private grounds by the use of portable chutes, trucks or otherwise; and denies the allegations of the fourth and last sentences of said section 38.

24. This defendant denies the allegations of sections 39, 40, 41, 42, 43 and 44 of said complaint.

25. Further answering said complaint, this defendant denies all allegations, if any, therein contained which have not been admitted or otherwise specifically answered herein.

26. Further answering said complaint, this defendant avers that in the proceeding before the Commission in which the order plaintiff seeks to set aside was entered the [fols. 164-165] parties thereto, including the plaintiff in this case, were accorded a full and fair hearing; that the findings and conclusions of the Commission are fully supported and justified by the evidence before the Commission.

27. Further answering said complaint, this defendant denies that plaintiff is entitled to the relief prayed for in paragraphs (5), (6) and (7) of the prayer of its said complaint or any part thereof.

Wherefore, this defendant prays that said complaint and this action be dismissed for want of equity.

Guy A. Gladson, Bryce L. Hamilton, Attorneys for Intervening Defendant, The Union Stock Yard and Transit Company of Chicago, 1400 First National Bank Bldg., Chicago 3, Illinois.

Dated: November 15, 1950.

[fols. 166-167] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING INTERVENTION OF THE CHICAGO LIVE STOCK EXCHANGE AND CHICAGO TRADERS LIVE STOCK EXCHANGE—November 15, 1950

Upon consideration of a motion for intervention filed by The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, and good cause appearing therefor:

It Is Ordered, that the above-named movants be and are hereby permitted to intervene and become parties defendant to the above-entitled cause; and that the answer of said intervenors tendered with said motion be filed forthwith.

Philip L. Sullivan, United States District Judge.

Dated: November 15, 1950.
Enter.

[fol. 168] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE CHICAGO LIVE STOCK EXCHANGE AND CHICAGO TRADERS LIVE STOCK EXCHANGE, INTERVENING DEFENDANTS —Filed November 15, 1950

Now comes The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, intervening defendants, and for answer to the complaint filed in this cause say:

1. For answer to paragraph 4 of the complaint, intervening defendants admit that an amended complaint was filed by the plaintiff with the Interstate Commerce Commission in the form shown by Exhibit A to the complaint and that after hearing the Interstate Commerce Commission issued a report and order as shown by Exhibit B to the complaint, and that thereafter the Interstate Commerce Commission issued an order dismissing plaintiff's petition for reargument and reconsideration and reversal of the order theretofore made as shown by Exhibit C to the complaint.

2. Intervening defendants admit the allegations in paragraphs (8)(f), (8)(g) and the first sentence of paragraph (8)(i). Intervening defendants deny the allegation in the fourth sentence of paragraph (8)(i) in the complaint.

3. Intervening defendants deny each and every allegation in the complaint which charges that particular rates and practices are unlawful or which charge that the Interstate Commerce Commission erred in any respect in disposing of the aforementioned complaint and particularly deny the allegations to such effect in paragraphs 6, 8(a), 8(b), 9(a), 9(c), 9(f), 9(h), 10(c), 10(e), 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44.

4. Intervening defendants admit that various excerpts from the report and order of the Commission quoted in the complaint are true excerpts but deny that such excerpts [fols. 169-172] have the significance and meaning which the complaint attaches to them.

5. Intervening defendants deny that the Interstate Commerce Commission in issuing its report and order erred or

misconstrued the law; or acted capriciously, arbitrarily, unlawfully, or in a manner not authorized by statute, or contrary to and without support in the evidence; or that said order and ultimate conclusion of the Commission are unsupported by necessary preliminary findings or are contrary to and without support in the evidence; or that the Interstate Commerce Commission erred in the weight given by it to the evidence or any portion thereof.

6. Intervening defendants are without knowledge or information sufficient to form a belief as to the allegations in the complaint other than those admitted or denied.

7. Intervening defendants deny that plaintiffs are entitled to the relief prayed in paragraphs (5), (6), and (7) of the prayer to the complaint.

Wherefore, these intervening defendants pray that the said complaint and this action be dismissed.

Robert N. Burchmore, John S. Burchmore, Nuel D. Belnap, Attorneys for Intervening Defendants, The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, 2106 Field Building, Chicago 3, Illinois.

[fols. 173-174] In United States District Court

[Title omitted]

Amendment to Answer of the Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, Intervening Defendants—Filed January 23, 1951

Now come The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, intervening defendants, and, by leave of Court first had and obtained, hereby amend paragraph 3 of their answer heretofore filed in this cause by adding thereto the following sentence:

Intervening defendants deny the allegations of paragraph 9(g) of said complaint, except they admit that the letter dated September 4, 1947, set forth in said paragraph was addressed as alleged in said paragraph,

and that The New York Central Railroad Company presented evidence and argument to the Interstate Commerce Commission in defence to the complaint made by plaintiff before said Commission; and said intervening defendants aver on information and belief that said letter was written because The Union Stock Yard and Transit Company of Chicago had been led to believe that plaintiff had caused the New York Central Lines to decide not to contest plaintiff's complaint in said proceeding before the Interstate Commerce Commission.

Except as above amended, said answer of intervening defendants shall stand as filed.

Robert N. Burchmore, John S. Burchmore, Nuel D. Belnap, Attorneys for Intervening Defendants, The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange.

[fols. 175-176] In United States District Court

[Title omitted]

Order—February 5, 1951

This cause coming on to be heard on the motion of the National Live Stock Producers Association and the Chicago Producers Commission Association, for leave to intervene in and to be made parties to the above entitled cause and to file their answer to the complaint heretofore filed in said cause, the Court, upon consideration thereof, and being fully advised in the premises, finds that said motion should be granted.

It Is Therefore Ordered, Adjudged and Decreed that the said applicants for intervention be and they are hereby given leave to intervene in and they are hereby made parties to the above entitled cause.

It Is Further Ordered that said applicants for intervention may file instanter their separate answer to the bill of complaint heretofore filed herein in the same manner and

with like effect as if named in the original bill as parties thereto.

Enter.

Philip L. Sullivan, United States District Court Judge.

[fol. 177] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE NATIONAL LIVE STOCK PRODUCERS ASSOCIATION AND CHICAGO PRODUCERS COMMISSION ASSOCIATION, INTERVENERS—Filed February 5, 1951

Now comes the National Live Stock Producers Association and Chicago Producers Commission Association, intervening defendants, hereinafter referred to as interveners, by their undersigned attorney for their answer to the complaint filed in this cause, allege and say:

I

Interveners admit the allegations of paragraphs 1 and 2 of the complaint.

II

Answering Paragraph 3 of said complaint, interveners admit that the complaint is brought against the United States and the Interstate Commerce Commission, and that the jurisdiction is conferred by the relevant statutes set forth in said Paragraph 3.

III

Interveners admit the allegations of Paragraph 4, except that they deny that Subparagraph (a) of said Paragraph 4 constitutes a true and accurate summary of the complaint filed by the plaintiff before the Interstate Commerce Commission in Docket No. 29809, Swift & Company vs. The Atchison, Topeka & Santa Fe Railway Company, et al.

IV

Interveners admit the allegations of Paragraph 5 of the complaint.

[fol. 178] V

Interveners deny the allegations of Paragraph 6 of said complaint.

VI

Interveners admit that the words and phrases under Paragraph 7 are used in the complaint, but interveners deny that the respective definitions are complete or accurate, and, further, deny the argumentative statements and the conclusions in connection with each of the terms alleged to be defined under said Paragraph 7 of the complaint.

VII

Interveners admit the allegations of Subparagraph (a) of Paragraph 8 on page 10 of the complaint and that the persons, corporations and Associations named in Subparagraphs (b), (f), (g) and (h) of said Paragraph 8 intervened on behalf of defendants in the proceedings before the Commission. Interveners aver that further than that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations set forth in Subparagraphs (b), (c), (d), (e), (f), and (g) of said Paragraph 8.

VIII

Answering further, interveners deny the allegations of Subparagraph (h) of said Paragraph 8 insofar as it relates to the National Live Stock Producers Association, and aver that the enumeration of the functions of the Chicago Producers Commission Association is not complete and that the operations of said Association on the Chicago Public Live Stock Market at the Union Stock Yards are conducted under the supervision of the Secretary of Agriculture under the provisions of the Packers & Stockyards Act, (42 Stat. 159, 1921, as amended).

IX

Furthermore, interveners deny all the allegations of Subparagraph (i) of said Paragraph 8, except the first sentence insofar as it may apply to the Chicago Producers Commission Association relating to shipments consigned direct to packers at the Public Live Stock Market at Chicago.

[fol. 179]

X

Interveners admit the citation at the beginning of Paragraph 8 on page 13 of the complaint and deny the allegations in Subparagraphs (a) and (b) of said paragraph.

XI

Answering Paragraph 9, interveners deny the first paragraph of Subparagraph (a) of said Paragraph 9, and aver that they are without sufficient knowledge or information to form a belief as to the truth of the other allegations in said Paragraph 9.

XII

Interveners deny the allegations of Paragraph 10 of the said complaint.

XIII

Interveners deny the allegations of Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of said complaint.

XIV

Answering Paragraph 21 of the complaint, interveners deny the allegations of Paragraph 21 of the complaint, except the fourth sentence thereof.

XV

Interveners deny the allegations of Paragraphs 22 and 23 of the complaint.

XVI

Interveners deny the allegations of Paragraph 24 of the complaint, except that interveners admit that part of Subparagraph (a) of said paragraph to the effect that the Chicago, Burlington & Quincy Railroad Company is subject to the Federal 28-Hour Law in the delivery of live stock to the socalled Omaha plant pens.

XVII

Interveners deny the allegations of Paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 35, 36, 37, 38, 39, 40, 41, 42, and 43.

[fols. 180-181] XVIII

Answering Paragraph 44 of the complaint, interveners deny that the plaintiff is entitled to the relief it seeks in Paragraphs 5, 6, and 7 of prayer in said paragraph.

XIX

Further answering said complaint, interveners deny all allegations not specifically admitted or answered, and aver that the report and order of the Interstate Commerce Commission attacked therein, are fully supported and justified by the record after a full and fair hearing to all parties in the proceedings, including the plaintiff herein.

Wherefore, interveners respectfully request that the relief prayed for in said complaint be denied and that the complaint be dismissed, and that this Honorable Court enter such further order or orders as it may deem proper in the proceeding herein.

Lee J. Quasey, Attorney for Interveners, National Live Stock Producers Association and Chicago Producers Commission Association.

January 30, 1951.

[fols. 182-183] In United States District Court

[Title omitted]

Order Designating Three-Judge Court—Filed December 8, 1950

The undersigned Chief Judge of the Court of Appeals for the Seventh Circuit, having been notified by Honorable Philip L. Sullivan, United States District Judge for the Northern District of Illinois, Eastern Division, of an application for injunction and other relief in the above entitled cause, does hereby, pursuant to Sec. 2284, of the Revised Judicial Code, designate the Honorable F. Ryan Duffy, Circuit Judge of the United States Court of Appeals for the Seventh Circuit, and the Honorable Michael L. Igoe, a United States District Judge for the Northern District

of Illinois, Eastern Division, to serve as members of a three-judge district court to hear and determine the above-designated action or proceeding now set for hearing on February 8, 1950, at 10:30 a.m., and for such further time as may be required.

Dated this 7th day of December, 1950.

J. Earl Major, Chief Judge, United States Court of Appeals.

[fol. 184] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF FILING OF DEPOSITION—Filed February 16, 1951

To Messrs. William N. Strack, John P. Staley, Ross Dean Rynder, 4115 South Packers Avenue, Chicago 9, Illinois, Attorneys for Swift & Company, Plaintiff:

Hon. Otto J. Kerner, Jr., United States District Attorney, United States Court House, Chicago 4, Illinois, Attorney for United States of America and Interstate Commerce Commission, Defendants;

Messrs. Kenneth F. Burgess, Douglass F. Smith, Martin M. Lucente, 11 S. LaSalle Street, Chicago 3, Illinois, Attorneys for The Atchison, Topeka & Santa Fe Ry. Co., et al., Interveners.

Messrs. Guy A. Gladson, Bryce L. Hamilton, 1400 First National Bank Building, Chicago 3, Illinois, Attorneys for The Union Stock Yard and Transit Company of Chicago, Intervener.

Mr. Lee J. Quasey, Room 1507, 139 N. Clark Street, Chicago 2, Illinois, Attorney for National Live Stock Producers Association and Chicago Producers Commission Association, Interveners.

You and each of you are hereby notified that the deposition of Guy A. Gladson, taken on February 3, 1951, pur-
[fols. 185-186] suant to written notice given on January 23, 1951, in the above-entitled proceeding, has been filed with

the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division.

Robert N. Burchmore, John S. Burchmore, Nuel D. Belnap, 2106 Field Bldg., Chicago 3, Ill., Attorneys for The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, Interveners.

Proof of service (omitted in printing).

[fol. 187] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEPOSITION OF GUY A. GLADSON—Filed February 16, 1951

The deposition of Guy A. Gladson of 426 Central Avenue, Wilmette, Illinois, now temporarily residing at Anna Maria Island, in the State of Florida, was taken before me, a Notary Public in and for the County of Pinellas, State of Florida, on the 3rd day of February, 1951, at the offices of Messrs. Mann, Harrison & Stone in the First National Bank Building in the City of St. Petersburg, County of Pinellas, Florida, pursuant to the annexed notice, on behalf of the intervening defendants, the Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, in the above-entitled action pending in the above-named court. Mr. Nuel D. Belnap of 2106 Field Building, Chicago, Illinois, appeared as attorney for said intervening defendants, and there were no other appearances.

[fol 188] GUY A. GLADSON, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Belnap:

Q. Please state your name.
A. Guy A. Gladson.
Q. And what is your business or profession?
A. I am a lawyer.

Q. How long have you been engaged in the practice of law?

A. Since 1919.

Q. Are you a member of any law firm?

A. I am.

Q. What is the firm?

A. Winston, Strawn, Shaw & Black, formerly Winston, Strawn & Shaw.

Q. Their offices are where?

A. First National Bank Building, Chicago.

Q. Was the firm of Winston-Strawn counsel for the Union Stockyard and Transit Company of Chicago in September, 1947, and for some time prior thereto?

A. Yes, they were. The firm has been counsel for the stockyards company since it was built in the '60's.

Q. Mr. Gladson, I hand you a copy of the complaint filed by Swift and Company as plaintiff, versus United States of America and the Interstate Commerce Commission, United States District Court for the Northern District of Illinois, Eastern Division, Civil Action File Number [fol. 189] 50-C-1017. I call your attention to a letter which is quoted in that pleading in Paragraph Numbered 9(g), the letter appearing in full on pages 19 and 20 of the pleading, it is quoted, carries the signature, Winston, Strawn and Shaw, addressed to Mr. Sidney C. Murray, General Counsel, New York Central Lines. Do you know anything about that letter?

A. That letter was prepared—the original of that letter was prepared by Mr. Bryce Hamilton, one of my partners and myself and it was signed over the firm name by me.

Q. In the first paragraph of that letter, reference is made to a telephone conversation or a telephone inquiry addressed to Mr. W. C. Douglas, Assistant Vice President of the River Road and the New York Central. Do you know anything about that telephone inquiry?

A. Yes. Yes, I made that phone call to Mr. Douglas near the end of August, 1947.

Q. Who is Mr. Douglas?

A. He was Assistant Vice President of the New York Central Lines in Chicago. That included not only the New York Central Company but also the Chicago River and

Indiana Railroad Company which operates the Chicago junction properties.

Q. And in the letter there is a reference to the River Road.

A. The River Road is the Chicago River and Indiana Railway which is the lessor of the Chicago Junction Railway Company; the railway served the stockyards district in Chicago.

[fol. 190] Q. Are you personally acquainted with Mr. Douglas?

A. I am. I've known Mr. Douglas for many years.

Q. Do you know what kind of work he does for the New York Central Lines, including the River Road?

A. At that time he was a chief traffic officer of those lines in Chicago.

Q. Do you recall what was said by you and what was said by Mr. Douglas in the phone conversation to which you refer?

A. Well, I asked Mr. Douglas what part, if any, the New York Central Lines, that is the River Road and the New York Central Railroad Company were going to take in the defense of the complaint that was filed by Swift and Company which you showed me this morning.

Q. Well now I showed you, Mr. Gladson, the complaint before the court.

A. Well, I was referring to the complaint filed with the Interstate Commerce Commission, I.C.C. Docket Number 29809.

Q. Is that the complaint in which was issued the order which is the subject of the court proceeding?

A. Yes, that is the complaint.

Q. Now, having inquired of Mr. Douglas as to what action the New York Central and Railroad Company were going to take in defense of that complaint, what did he say?

A. He said they were not going to defend the complaint —that Swift and Company had swung the traffic club and had threatened to take away a large amount of linehaul business from the New York Central lines if they did so. [fol. 191] He said that the loss of business of Swift and Company might well amount to a million dollars a year to the New York Central Lines.

Q. Following that telephone conversation, did you take any action predicated thereon?

A. Yes, I came to the conclusion that the refusal of the New York Central Lines, the River Road particularly, to defend the Interstate Commerce Commission complaint in view of the fact that they apparently had a good defense would be a violation of one of the provisions in the lease from the Union Stockyard and Transit Company of the railroad properties to the River Road and on that basis Mr. Hamilton and I prepared the letter that was written to Mr. Sidney Murray, General Counsel of the New York Central Lines, on September 4, 1947.

Q. Prior to that telephone conversation with Mr. Douglas near the end of August, 1947, had you had any talks with him about the complaint of Swift and Company before the Interstate Commerce Commission and the action which the New York Central would take as defendant in that proceeding?

A. Yes, I had a conversation with Mr. Douglas the week or two before.

Q. Did you call on him personally?

A. Yes, I saw him in his office and talked with him.

Q. Was there anyone else present?

A. Nobody else present.

Q. Do you remember what you said and what Mr. Douglas said?

A. Yes, I remember.

[fol. 192] Q. Will you tell us what you said and what Mr. Douglas said at that time.

A. I asked Mr. Douglas what effect on the railroad, meaning the New York Central Lines, particularly the lines that served the packing houses and stockyards district, direct delivery of livestock to Swift and Company and to the other packers, would have on the operation. He said his operating people had told him that any effort to make direct deliveries would tie up the railroad. The congestion would be so great that they could not operate.

Q. Did he indicate to you at that time as to whether or not the New York Central intended to produce facts showing that circumstance as a defense to the complaint?

A. He said so far as he knew no decision had been arrived at at that time. The purpose of my subsequent telephone

call was to ascertain what they had decided to do. At that time he told me they were not going to defend.

Q. Now, do you know whether your letter had the effect of changing the position of the New York Central in the case?

A. I don't know. Mr. Sidney Murray, general counsel of these lines in Chicago, to whom the letter was addressed, called me after the letter had been received and told me he thought that our conclusion as to possible violation of the lease was wrong but he also told me that they were going to defend the lawsuit or the complaint.

[fol. 193] Q. By the complaint, do you mean the complaint before the Interstate Commerce Commission?

A. Yes, I do.

Q. Did any other of the parties to the proceeding before the Interstate Commerce Commission or any of their counsel or any of their representatives have anything to do with the writing of that letter to Mr. Murray of September 4, 1947?

A. No. The only persons that had anything to do with the writing of that letter were Mr. Hamilton and myself.

Q. Mr. Gladson, since the notice was given of the taking of this deposition, the District Court has reassigned the matter for trial on February 27, 1951. Will you be in Chicago at the time of that trial?

A. No, I will still be on vacation.

Q. What are your plans as to when you intend to return to Chicago?

A. I expect to stay in Florida until the second week in March.

Q. Are you in Florida as a result of any suggestion or request by me or any other representative of the Chicago Livestock Exchange or the Chicago Traders Livestock Exchange?

A. No, I came to Florida to take a much needed vacation.

Q. When did you arrive here? When did you leave Chicago?

A. I left Chicago about the 20th of January.

Mr. Belnap: That is all. Thank you, Mr. Gladson.

[fol. 194] I have read the foregoing deposition, page 1 through 7, and the same is transcribed as I testified to it.

Guy A. Gladson.

[fol. 195] STATE OF FLORIDA,
County of Pinellas, ss:

I, June R. Linney, a Notary Public in and for the County of Pinellas, State of Florida, do hereby certify that Guy A. Gladson was by me first duly sworn to testify the whole truth, and that the above deposition by him signed was recorded stenographically by me and reduced to typewriting by me.

I further certify that said deposition was examined and read over by said Guy A. Gladson and was signed by him in my presence, and that said deposition constitutes a true record of the testimony given by said Guy A. Gladson.

I further certify that said deposition was taken at the time and place specified in the annexed notice, and that the taking of said deposition commenced on the 3rd day of February, 1951, at 11:00 A. M., Eastern Standard Time, and was completed at 11:15 A. M., Eastern Standard Time, on the same day.

I further certify that Nuel D. Belnap, Esq., of 2106 Field Building, Chicago, Illinois, appeared as attorney for intervening defendants, the Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, and that said Nuel D. Belnap was present during the entire examination.

I further certify that I am not an attorney or counsel of any of the parties to said action, or a relative or an employee of any attorney or counsel connected with said action, or financially interested in said action.

Witness my hand and seal this 3rd day of February, A. D. 1951.

June R. Linney, Notary Public, State of Florida at Large. My Commission Expires: May 10, 1954. (Notarial Seal.)

[fol. 196] NOTICE OF TAKING OF DEPOSITION UPON ORAL EXAMINATION

To Messrs. William N. Strack, John P. Staley, Ross Dean Rynder, 4115 South Packers Avenue, Chicago 9, Illinois, Attorneys for Swift & Company, Plaintiff; Hon. Otto J. Kerner, Jr., United States District Attorney, United States Court House, Chicago 4, Illinois, Attorney for United States of America and Interstate Commerce Commission, Defendants; Messrs. Kenneth F. Burgess, Douglas F. Smith, Martin M. Lucente, 11 South LaSalle Street, Chicago 3, Illinois, Attorneys for The Atchison, Topeka & Santa Fe Ry. Co., et al., Interveners; Messrs. Guy A. Gladson, Bryce L. Hamilton, 1400 First National Bank Building, Chicago 3, Illinois, Attorneys for The Union Stock Yard and Transit Company of Chicago, Intervener:

Please take notice that at 11:00 A. M., Eastern Standard Time, on Saturday the third day of February, 1951, at the offices of Messrs. Mann, Harrison & Stone in the First National Bank Building, St. Petersburg, Florida, we will take the deposition of Guy A. Gladson, one of the attorneys for The Union Stock Yard and Transit Company of Chicago, who resides at 426 Central Avenue, Wilmette, Illinois, and is now near St. Petersburg, Florida, upon oral examination pursuant to the Federal Rules of Civil Procedure, before June R. Linney, a Notary Public, or before some [fols. 197-198] other officer authorized by law to take depositions; at which time and place you may appear and cross-examine if you so see fit.

Robert N. Burchmore, John S. Burchmore, Nuel D. Belnap, 2106 Field Bldg., Chicago 3, Ill., Attorneys for The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, Interveners.

Received a copy of the above notice this 23rd day of January, 1951.

Wm. N. Strack, John P. Staley, Ross Dean Rynder, Attorneys for Swift & Company, Plaintiff. Otto J. Kerner, Jr., U. S. District Attorney, Attorney for United States of America and Interstate Com-

merce Commission, Defendants. Kenneth F. Burgess, Douglas F. Smith, Martin M. Lucente, Attorneys for The Atchison, Topeka & Santa Fe Ry. Co., et al., Interveners. Bryce L. Hamilton, Attorney for The Union Stock Yard and Transit Company of Chicago, Intervener.

[fol. 199] IN UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Proceedings—Filed April 2, 1951

Had in the above-entitled cause before Honorable F. Ryan Duffy, Judge of the United States Court of Appeals for the Seventh Circuit, Honorable Philip L. Sullivan and Honorable Michael L. Igoe, Judges of the United States District Court for the Northern District of Illinois, sitting as a Statutory Three-Judge Court at Chicago, on February 27, 1951.

APPEARANCES

Mr. William N. Strack, Mr. R. D. Rynder, Mr. John P. Staley, on behalf of the plaintiff.

Mr. John F. Baecher, Special Assistant to the Attorney General, and Hon. Otto Kerner, Jr., U. S. Attorney, by Mr. Maurice C. Handelman, Asst U. S. Attorney, on behalf of the defendants United States of America and Interstate Commerce Commission.

[fol. 200] Messrs. Walter, Burchmore & Belnap, by Mr. Nuel D. Belnap and Mr. Adolph Radosta, on behalf of the defendant-intervenors Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange.

Mr. Bryce L. Hamilton, on behalf of the defendant-intervenor Union Stock Yards and Transit Company.

Mr. Douglas F. Smith, on behalf of the defendant-intervenor railroads.

[fols.201-208] Judge Duffy: The case called is Swift & Company v. United States of America, Interstate Commerce Commission, Defendants, and numerous intervenors.

I believe that there are two matters to come up this morning.

Mr. Rynder: Your Honors, as we understood it, the matter to go up this morning was the introduction or proposed introduction of a deposition taken on February 3rd of this year of Mr. Guy A. Gladson. The deposition was taken by Mr. Belnap, representing one of the defendants in this court. I think that perhaps I should say only at this time that we shall object to the introduction of the deposition upon the ground that the record made before the Interstate Commerce Commission may not be supplemented in this way.

Judge Duffy: Shouldn't we hear first from the one that wants to make the introduction of the evidence? I would observe that it is certainly very unusual to take evidence in a three-judge court. I have never heard of it, and I have sat in numerous cases.

Mr. Rynder: I was about to suggest that we should hear from Mr. Belnap.

Judge Duffy: We will hear from the party that proposes to introduce evidence.

[fol. 209] Mr. Belnap: Mr. Gladson of Winston, Strawn & Shaw was the author of the letter, along with Mr. Hamilton, his partner. I took Mr. Gladson's deposition, in which the things that he testifies about are simply the circumstances which impelled him to write the letter. For convenience in making the record, I would like to offer that deposition as Defendants' Exhibit 1. May it be so marked?

Judge Duffy: It may be so marked for identification.

Mr. Belnap: For identification.

(Whereupon said document was marked for identification Defendants' Exhibit 1.)

Mr. Belnap: Now in the deposition—it is a very short one—what it comes down to is just this: Mr. Gladson states that he had conferred with Mr. Douglas, the traffic official of the New York Central in charge of its matters here, and who was the responsible traffic officer also of this Junction Railroad, which is the defendant in the case before the Commission; and Mr. Douglas told him that the New York Central was not going to defend the proceeding before the Commission; that they were not going to introduce

any evidence as to the congestion and the difficult operating conditions which would result if the Swift demand were [fols. 210-230] granted by the Commission; and that he was not going to so defend, because Swift & Company had threatened to divert from the New York Central a very substantial amount of line haul traffic.

I don't offer by Mr. Gladson's deposition to prove what Swift & Company represented to Mr. Douglas, the representative of the New York Central; as far as the deposition is concerned, that is hearsay, and I do not rely on it as proving any other fact than that fact was the representation to counsel of the Yards Company. It was a representation to him by the traffic officials of the New York Central Railroad, the operator of the Junction properties, and the railroad which would have to produce evidence if the Commission was to be advised of the circumstances which would flow from the granting of the Swift demand.

[fols. 231-233] February 27, 1951.

Court reconvened.

Counsel present: Mr. Baecher, Mr. Handelman, Mr. Belnap, Mr. Radosta, Mr. Hamilton, Mr. Smith.

Judge Duffy: In the matter of Mr. Belnap's motion to offer in evidence the deposition of Mr. Guy Gladson, the members of this Court have had an opportunity to confer on the matter and are ready at this time to announce the ruling, and that is that the offer will be denied; the deposition will not be received in evidence.

We note that the plaintiff's attorney is not here. We are unable to reach him. But in view of the fact that we are deciding in favor of his contention, I suppose that is not a very serious matter.

The Court will be in recess.

[fols. 234-235] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY PLAINTIFF—April 2, 1951

[fol. 236] General Findings of Fact

1. Swift & Company, the plaintiff herein, operates a large meat packing plant in the stock yard area in Chicago, this plant being located upon and served only by the rails of the Chicago Junction Railway.

2. All of the shipments involved in this case are "direct" carload shipments of live stock consigned to plaintiff for processing at said Chicago plant. "Direct" shipments of live stock are those purchased by a meat packer in producing areas and shipped to his plant for processing and distribution. The term "direct" is used in railroad and stock [fol. 237] yard terminology to distinguish this class of live stock from live stock consigned by producers or others to commission men at a public live stock market for sale upon such market. Upon direct shipments no stock yard services, such as unloading from cars, holding, furnishing pen space, feeding, driving, etc., are necessary if the meat packer is prepared to receive and care for the live stock at his plant. During transportation such direct shipments are the property of the meat packing company by whom they have been purchased. (Tr. 25, 26.)

3. This method of sale by producers direct to meat packers, without the intervention of commission men, has increased in recent years until, at the time of the hearing before the Commission, approximately 64 percent of the hogs, 25 percent of the cattle, 40 percent of the calves, and 39 percent of the sheep and lambs marketed to meat packing plants having Federal inspection, are shown by reports of the Department of Agriculture to have been sold direct by producers to such meat packing plants. (Tr. 1176, 1186.)

4. The shipments of directs here involved to plaintiff's Chicago meat packing plant averaged 6,489 carloads of live stock per annum during the five years immediately preceding the hearing before the Commission. (Tr. 559.) These

shipments do not now reach the public stock yard of the Union Stock Yard and Transit Company of Chicago (one of the interveners herein) and would not do so had the prayer of the complaint been granted by the Commission. These directs are now shipped to certain unloading pens owned by plaintiff, at 2320 South Halsted Street, Chicago, on a sidetrack connected with the rails of the Chicago, Burlington & Quincy Railroad Company, one of the defendants before the Commission. Deliveries of live stock to this sidetrack are made at the flat Chicago rates, without addition of switching or terminal charges, regardless of whether the shipments [fol. 238] reach Chicago via the C., B. & Q. R. Co. as the line-haul carrier, or via the rails of some other line-haul defendant before the Commission, such as the Atchison, Topeka and Santa Fe Railway Company, Chicago and North Western Railway Company, etc.

5. The delivery to the sidetrack of the C., B. & Q. R. Co. at 2320 South Halsted Street does not constitute a convenient or prompt delivery to plaintiff's plant in the stock yard area, located solely on the rails of the Chicago Junction. From said location at 2320 South Halsted Street, such live stock must be moved by plaintiff by motor vehicle through crowded city streets, a distance of two and one-half or three miles, to the western entry of the stock yard area at approximately 39th Street and Ashland Avenue, and thence over plaintiff's property to its meat packing plant. Plaintiff had to expend about $50,000. per annum, as of the time of the hearing, for maintenance and operation of motor vehicles used exclusively to transport such live stock from the unloading pens at 2320 South Halsted Street to its plant in the stock yard area. (Tr. 29, 30.)

6. The Union Stock Yard and Transit Company of Chicago, or a company which holds its securities, is the owner in fee of the property of the Chicago Junction Railway. Since 1922 the Junction property has been leased to and operated by the New York Central Railroad Company, one of the line-haul defendants in the complaint before the Commission. Said lease by the stock yard interest to the New York Central was authorized by the Commission in *Chicago Junction Case*, 71 I. C. C. 631, decided May 16, 1922.

7. The Union Stock Yard and Transit Company, an inter-

vener herein, would suffer not diminution of revenue for stock yard services if the prayer of the complaint had been granted by the Commission. Its concern arose because [fol. 239] many of the meat packing companies now operating in the stock yard area elect to receive their direct shipments through the facilities of the stock yard company. If the prayer of the complaint had been granted, and such other meat packing companies should be in position to do so, and each should demand railroad delivery of their direct shipments upon plant sidetracks, the yard company would lose the revenue it now receives for unloading, yardage, feeding, etc., in connection with such direct shipments now received through the stock yard facilities.

8. The Commission men, members of the live stock exchanges, interveners herein, do not now receive any compensation for services in connection with direct shipments, whether delivered through plaintiff's private unloading facilities at 2320 South Halsted Street; at team tracks of various line-haul railroads at various points in Chicago; or through the stock yard for meat packing companies which elect to take delivery of their purchases of directs through the stock yard facilities.

9. The line-haul rates to Chicago are treated by the railroad carriers as including delivery of all carload traffic (other than live stock) upon the many industrial sidetracks connected with the Junction rails and served only by the Junction motive power. This is effected by an arrangement by which the Junction (as of the time of the hearing before the Commission) received out of the line-haul rates to Chicago a division of 3.15 cents per hundred pounds, minimum 60,000 pounds, or $18.90 per car. The balance of the rate is retained by the line-haul carrier which transports the car from the origin point to Chicago and thence to its connection with the Junction track. Plaintiff sought an order which would, in a similar manner, make the line-haul live stock rates to Chicago apply to its direct live stock, delivered to its plant sidetrack connected with the Junction rails. (Tr. 910, 914.)

[fol. 240] 10. Interstate shipments of live stock are delivered by the line-haul defendants to the unloading chutes of the stock yard company (reached only by the Junction

rails) without the addition of a switching or terminal charge in addition to the line-haul rates. (Tr. 64.)

11. In making deliveries of loaded live stock cars to the stock yard pens, in consolidated trains, the loaded live stock cars follow precisely the same rail movement from the line-haul defendants' break-up yards at various points in the Chicago area, to the eastern limits of the Junction Ashland Avenue yards, for precisely the same distance, as would be followed by plaintiff's shipments of live stock to its private sidetrack. (Tr. 357.) Beyond this point, the distance to the Swift sidetrack on the Junction is somewhat less than to the stock yard unloading pens. (Tr. 393, 395.) The total distance over which the live stock would be transported to the Swift sidetrack would always be slightly less than to the stock yard unloading pens.

12. From their outer break-up yards to the industries on the Junction tracks, loaded freight cars are moved by the line-haul defendants and the Junction in three ways. (A train, as used in the record, means any movement of an engine with one or more cars attached.)

(a) Switching movement of live stock cars only, destined to the stock yard, and handled by line-haul switching engines.

(b) Switching movement of dead freight only, handled by line-haul switching engines to the Junction Ashland Avenue yard, and thence by Junction motive power to the numerous private sidetracks connected with the Junction rails.

(c) Combined or consolidated trains, consisting of live stock for the stock yard and dead freight for the Junction sidetracks. Thirty-seven percent of the trains are consoli- [fol. 241.] dated trains, containing both live stock for the stock yard and dead freight for the Junction sidetracks. In connection with this class of trains, the dead freight is set out at the Ashland Avenue yard of the Junction by the line-haul switching engines and the engine then proceeds with live stock cars to the stock yard unloading pens; while the dead freight is switched by Junction motive power to the proper industrial sidetrack. This latter movement, both by the line-haul carrier's switching engine and by the Junction engine, is precisely the same movement as would be given a

carload of live stock consigned to the Swift sidetrack. (Tr. 304-396.)

13. If the prayer of the complaint had been granted by the Commission, live stock consigned to the stock yard unloading pens, whether directs to meat packers or market stock to commission men, would still receive a service superior, from the standpoint of time, to live stock delivered to plaintiff's sidetrack. This would necessarily be so if present operating methods are continued. That is to say, line-haul switching engines would proceed to the east end of the Ashland Avenue yards, as they do now, with cuts of cars containing (1) dead freight for Junction side tracks; (2) live stock cars for the Swift sidetrack, together with live stock for the stock yard or dead freight; and (3) live stock for the stock yard. At the east end of the Ashland Avenue yard, the dead freight and live stock for the Swift sidetrack would be pushed onto the Junction receiving tracks and there left for subsequent delivery by Junction motive power; while the line-haul switching engine would proceed immediately to the stock yard chutes with the live stock consigned to that point. The Swift live stock would have to wait later delivery to its plant, at the operating convenience of the Junction. With respect to cuts of cars containing only live stock for the stock yard, there would be no [fol. 242] change in the operating practice under which such live stock would be taken there direct by the line-haul switching engines. (Tr. 357-361.)

14. The operator of the meat packing plant is the essential link between the producer of live stock and the consumer of meat. He pays his money to the producer at the time of purchase of the live stock; processes the live stock; and seeks the markets available for the sale of the edible and inedible products.

15. Live stock is the one essential supply which comes to the meat packing plant. All other supplies are accessories used in the operation of the plant and in the preparation of the meat products for shipment. In refusing to deliver live stock to a meat packing plant, or in placing an impossible rate barrier in the way of such delivery, a railroad cuts off the one supply essential to the operation of the plant, while according sidetrack delivery to all other

supplies which are merely incidental to the processing of live stock.

16. The commission men, members of the live stock exchanges which have intervened, although performing a useful service for their patrons, do not engage in the vital and essential functions of live stock production and processing. They do not raise and care for the live stock as does the producer; they do not transport the live stock to market or packing plant; nor process the live stock or sell the products.

The Charge for Delivery to Plaintiff's Sidetrack

17. Examination of the record, and the Commission's decision, leaves no doubt that the Commission intended to establish, or approve, a charge in addition to the line-haul rates which would effectively prohibit the delivery of carloads of live stock to the Swift sidetrack connected with the Junction rails.

[fol. 243] 18. The switching or penalty charge approved by the Commission is greater than would be incurred if the live stock were consigned to the stock yard (a non-transportation agency) and plaintiff should pay the stock yard for the services it does not desire. The yardage charges of the Union Stock Yard and Transit Company are stated by the Commission (274 I. C. C. 565) to have been 65 cents per head on cattle, 21 cents on hogs, and 15 cents on sheep. The switching charge approved by the Commission was $28.80 per car at the time of the hearing, and has since been increased to $36.00 per car. The yardage charges are those plaintiff would be required to pay to the Union Stock Yard and Transit Company for stock yard services (after railroad transportation has ended) to recover possession of its direct shipments of live stock. (Tr. 27, 28.)

Using the average loading of such cars as stated by the Commission (25 cattle, 70-75 hogs, and 100-125 sheep) such yardage charges as of the time of the hearing would have been $16.25 per car on cattle; $14.70 to $15.75 on hogs; and $15.00 to $18.75 on sheep. Thus the additional charge to be assessed for a delivery on plaintiff's sidetrack was intended by the Commission to be sufficiently high to prevent plaintiff (or any other meat packer similarly situated)

from having its live stock switched direct to its sidetrack on the Chicago Junction; to force delivery to the facilities of the yard company; and insure to the intervener, the stock yard company, its charges for stock yard services rendered after railroad transportation has ended.

19. The switching or penalty charge approved by the Commission for delivery of plaintiff's direct shipments of live stock on its private sidetrack ($28.80 at the time of the hearing, since increased to $36.00 per car) is, by the total amount thereof:

(a) In excess of the amounts for which defendant rail [fol. 244] carriers deliver live stock over the Junction rails to the pens of the yard company, adjacent to plaintiff's sidetrack and on the same switching line.

(b) In excess of the charges made by all line-haul defendants for delivery of live stock to plaintiff's location at 2320 South Halsted Street, Chicago, on the rails of defendant, Chicago, Burlington & Quincy Railroad Company.

(c) In excess of the amounts for which defendants deliver live stock on their own team tracks at various points in the Chicago switching district.

(d) In excess of the rates and charges for which defendants deliver carloads of live stock to competitive meat packing plants throughout central and western trunk line territories, whether such deliveries be on the sidetrack of the line-haul carrier or through the facilities of a separate switching line.

(e) In excess of the total rates and charges at which all defendants, including the New York Central and the Junction, deliver all other classes of carload freight, including perishable freight, to plaintiff's private sidetrack on the Junction railroad and to all other industrial sidetracks served by that line.

20. The penalty or switching charge bears no stated, rational, or ascertainable (so far as can be deduced from the decision) relation to the:

(a) Rates and charges assessed by defendants for delivery of carloads of live stock to the unloading pens of the stock yard company, adjacent to plaintiff's sidetrack and on the same railroad, Chicago Junction.

(b) Charges for delivery of carloads of live stock at other points on the lines of defendants in Chicago or at competitive points in central and western trunk line territories.

[fol. 245] (c) Total charges for delivery of all carloads of dead freight, including perishables (such as butter, eggs, dressed poultry, fresh meats, etc.) to plaintiff's sidetrack and to all the other sidetracks and industries located on the Junction rails; and

(d) Cost of performing the terminal services in connection with the line-haul rates and services, including the deliveries under those rates required by the Commission or voluntarily accorded by the defendant railroads.

21. The Commission in this connection disregarded the fact that in making the delivery sought by plaintiff on its private sidetrack the line-haul defendants would avoid payment to the stock yard company of its unloading charges ($2.08 per double deck car and $1.53 per single-deck car at the time of the hearing); and the trackage charge of $1.50 per car each way paid by the line-haul defendants to the Junction for the use of its tracks in reaching the stock yard unloading pens.

22. Said switching charge for live stock represents a rate established by the Junction many years ago (and since increased by stages to $36.00 per car) at a time when the Junction was both owned and operated as an adjunct to and facility of the yard company, for the express purpose of forcing the delivery of all live stock to the yard company for unloading and yarding, and to prevent the delivery of live stock by railroad at any other point on the Junction rails, in order that the yard company might obtain compensation for its non-transportation services on all live stock destined to the packing house district.

23. That the switching charge was intended as a prohibitive or penalty charge is evident from the fact that the Commission found the physical factors of railroad operation, such as track arrangements, availability of motive power, congestion of tracks, etc., are not controlling [fol. 246] to prevent the delivery desired by plaintiff, provided said charge is made in addition to the live stock

line-haul rates to Chicago, now applicable to deliveries to the stock yard unloading pens.

Delivery of Carload Freight, Including Live Stock, Upon Private Sidetracks

24. Delivery of carload freight upon the sidetracks of industries having such sidetracks has become the universal practice throughout the United States.

25. Delivery of live stock upon the private sidetracks of meat packing plants has become an almost universal practice throughout the United States, in instances where such delivery is requested by the consignee; and has been required by the Commission in instances where delivery could also be made through the facilities of a public live stock market. *Baltimore Butchers Live Stock Co.* v. *P., B. & W. R. R. Co.*, 20 I. C. C. 124; *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55; *United States* v. *Baltimore and Ohio R. Co.*, 333 U. S. 169, 92 L. ed. 618; *Neuhoff Packing Co.* v. *Louisville & N. R. Co.*, 268 I. C. C. 271. Delivery of live stock upon the private sidetracks of meat packing plants throughout central and western trunk line territories, at points which are competitive with plaintiff's Chicago plant, has been generally accorded by the line-haul defendants at the flat line-haul rates, without addition of penalty or switching charges. (Exhibit 12.)

26. There are no physical obstacles to delivery of live stock upon plaintiff's sidetrack. That sidetrack has a switch connection with the Junction (New York Central) tracks at approximately Ashland Avenue and 39th Street. Over that switch connection defendants have for many years delivered and received the thousands of cars of inbound supplies and outbound products shipped to and from the Swift plant. (Tr. 49.)

[fol. 247] Level of Live Stock Rates to Chicago

27. The live-stock rates to Chicago and other mid-western points have been prescribed by the Commission, upon a distance basis, under which, for equal lengths of haul, one shipper pays the same rates as any other shipper. *Live-stock—Western District Rates*, 176 I. C. C. 1, plus general rate increases since authorized. In *Omaha Live Stock*

Exc. v. *Chicago & N. W. Ry. Co.*, 178 I. C. C. 1, 14, referring to this scale of rates, the Commission said:

> "Those rates * * * have also been designed to cover, not only line-haul service, but also terminal service involving both receipt of shipments at points of origin and their delivery at destination."

With reference to the same scale of rates, in *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 542, the Commission said, concerning this same scale of rates to Chicago:

> "The through rates prescribed in the latter proceeding were designed to cover the cost of normal terminal services, including unloading charges."

And required live stock to be delivered by defendants to the unloading pens of the Union Stock Yards on the Junction rails and to the pens at 2320 So. Halsted St., without the addition of a terminal charge which had theretofore been in effect.

Basis for Commission's Decision

28. The switching of live stock cars with the degree of care required to avoid damage to the animals by sudden shocks or jolts, such as that "incurred in kicking" cars in switching service, is a part of the normal terminal service incurred in the transportation and delivery of live stock, not only at Chicago and on the Junction rails, but [fol. 248] wherever live stock is delivered in railroad cars, including delivery to the Union Stock Yards; and the Commission has required deliveries to the stock yard facilities without the addition of a terminal, switching, or penalty charge.

29. The Commission makes no finding that delivery on the Swift sidetrack of its average number of direct shipments of live stock (6,489 cars) would overburden the Junction facilities. The decision is based upon the speculative possibility that if Swift's demand were granted, other meat packing plants on the Junction rails would request similar services and thus overtax the terminal facilities of the Junction (New York Central).

30. The refusal of the Commission to require delivery of live stock upon the Swift sidetrack at the flat Chicago rates is based almost exclusively upon its findings with respect to congested traffic conditions, limited trackage, motive power, etc., on the Junction. This congested condition already exists with respect to all the immense terminal traffic handled on the Junction rails, including deliveries to the unloading pens of the Union Stock Yard and Transit Company.

Rate Basis Applicable to Junction Industries

31. In its decision the Commission made an inadequate, incomplete and incorrect statement as to the rates applicable on interstate traffic destined to industries having private sidetracks on the Junction rails. Each of the line-haul railroad carriers publishes rates to Chicago on hundreds of commodities. Under a joint rate arrangement all such traffic, except live stock, is switched to and delivered to industrial sidetracks on the Junction rails at the flat line-haul rates to Chicago, without addition of terminal, switching, or penalty charges. For its compensation for such terminal switching the Junction received at the time of [fol. 249] the hearing, a division of the rate amounting to 3.15 cents per hundred pounds, minimum 60,000 pounds, or $18.90 per car. This divisional arrangement is set forth in Chicago Switching Committee division sheet No. 12-K. (Tr. 52-71.) This fact was stated by the Commission in *Chicago Junction Case*, 71 I. C. C. 631, 634, as follows:

> "Thus the Junction organization performs purely a switching service as to those movements, the charges therefore constituting a part of the through rates published by the line-haul carriers."

This condition was restated by the Commission in *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 539, as follows:

> "Also, there is no terminal charge on so-called dead freight moved by defendants from and to the Union Stock Yards."

This condition has continued to the present time as shown by the record in this case (Tr. 52-63).

32. The switching distance on the Junction tracks from the Ashland Avenue yard to the Swift sidetrack is one-half to three-quarters of a mile; and from the Ashland Avenue yard to the unloading facilities of the Union Stock Yards a mile to a mile and a half. (Tr. 57.) To certain industries on the Junction the traffic is switched about four miles from the Ashland Avenue yard, all at the flat Chicago line-haul rates, without additions thereto. (Tr. 58.)

Findings Relevant to Sec. 2 of Interstate Commerce Act

33. Approximately half of the live stock receipts at the Union Stock Yards reach there by motor carrier and no rail service is involved. (Park Ex. 43.) In 1946 (the last year covered by the railroad exhibits) 65,139 carloads of live stock were delivered by railroad at the unloading pens [fol. 250] of the Union Stock Yards on the Junction rails. Of these rail shipments, approximately half (Parkhurst ex. 29) are market stock consigned by producers to commission men operating on the public market. The remaining half of the rail receipts are "directs" consigned to meat packing companies other than Swift, including Armour and Company, Wilson & Company, Agar Packing and Provision Company, and 18 others, who operate plants in or adjacent to the stock yard area. (Parkhurst ex. 29.) Such directs are the property during transportation of the consignee, are not offered for sale on the market, and are consigned to the stock yard because the consignee prefers to accept delivery through those facilities, or because he can not obtain delivery at his plant except at an additional switching charge which exceeds the yardage charges.

34. For any given interstate line-haul rate on live stock to Chicago the defendants perform the line-haul transportation to Chicago and deliver it to the unloading pens at the Union Stock Yard and bear the expense of unloading performed by the stock yard employees.

35. For transportation from the same origin point over the same rails, for delivery upon plaintiff's sidetrack reached only by and located upon the rails of the Chicago

Junction, the same carriers charge plaintiff the same interstate line-haul rate, plus a terminal or switching charge of $28.80 as of the time of the hearing, since increased to $36.00. In the case of every line-haul carrier from the west to Chicago, the movement would be exactly the same distance, over the same rails, to the east end of the Junction Ashland Avenue yard. Thence the car for the stock yards would be moved to the unloading chutes by the line-haul switching engine, and to the Swift sidetrack by a Junction switching engine. The distance to the Swift track would be slightly less than the distance to the stock yard chutes. [fol. 251] Both points of delivery are reached only by the Junction rails.

36. The only distinction in the deliveries is that, under trackage agreements or contracts, the movement from the east end of the Ashland Avenue yard to the stock yard chutes is by switching engines of the line-haul carriers; while the movement from the east end of the Ashland Avenue yard to the Swift sidetrack is by switching engines of the Junction. (Tr. 361.)

37. The movement of a live stock car to each of the said points on the Junction is:

(a) of a like kind of traffic, namely live stock in carloads.

(b) a like and contemporaneous service, being over the same rails, for the same or a less distance to the Swift sidetrack, to points near each other on the same terminal line (Chicago Junction).

38. Trackage rights are voluntary agreements between rail carriers under which one carrier is permitted to operate its motive power and move cars over the tracks of another carrier.

39. The facts with respect to trackage rights of line-haul carriers to use their own switch engines to deliver live stock over Junction rails to the stock yard, and the non-existence of such rights with respect to deliveries to the Swift sidetrack is the only distinction found by the Commission which could support the inequality of live stock rates to the two terminal deliveries on the Junction rails.

40. In its decision the Commission erred in failing to

find and state that the yardage charges of the stock yard company are for a non-transportation service rendered by the stock yard company after railroad transportation has ended. (Tr. 269-273.)

[fol. 252] 41. At the time of the hearing in this case the line-haul railroads were paying the stock yard (out of their line-haul rates) $2.08 per double-deck car and $1.73 per single-deck car for unloading live stock cars consigned to the stock yard. They were also paying the Junction a trackage charge of $1.50 per car, in each direction, for the privilege of using the Junction tracks to reach the stock yard chutes. Neither of these charges would be incurred if the car were delivered on the Swift sidetrack. (Tr. 82).

42. The direct shipments to the Swift plant are not consigned to, or in care of the stock yard. The stock yard is a stranger to the transportation contract between Swift and the line-haul railroad. A delivery of such a shipment to the stock yard would result in Swift having to pay to the stock yard the latter's yardage and other charges in order to obtain possession of its live stock.

Findings Relevant to Sec. 1 (9) of Interstate Commerce Act

43. An application for operation of the switch connection to its private sidetrack for the delivery of live stock, without discrimination in rates and charges, was made by plaintiff to defendants in writing, and was denied by defendants. (Tr. 74, 75.)

44. The switch connection is practicable, has been in place for many years, and used for the delivery and receipt of carloads of dead freight, including perishables. The Commission has in fact ordered the switch connection to be used for the delivery of live stock, but at an intended prohibitive penalty or switching charge.

45. That the switch connection will furnish sufficient business to justify its maintenance and operation is shown by the fact that it has been operated for many years for the receipt and delivery of all freight other than live stock. [fol. 253] The Swift receipts of direct shipments of live stock have averaged 6,489 cars per year, which would be

added to the traffic already received or delivered over said switch connection.

46. The defendants are using switch connections of a similar character for the delivery of live stock to the stock yard chutes; for the delivery of dead freight to all industrial sidetracks on the Junction; and throughout central and western trunk line territories for the delivery of carloads of live stock to the private sidetracks of meat packing companies; all at the flat line-haul rates, without the addition of switching, terminal, or penalty charges.

Findings Relevent to Sec. 3 (1) of Interstate Commerce Act

47. The defendants deliver all dead freight to all industrial sidetracks on the Junction, including that of plaintiff, at the line-haul rates without the addition of a penalty or switching charge.

48. One or more of the defendants, including the New York Central, deliver carloads of live stock to the private sidetracks of meat packing plants at some thirty points in central and western trunk line territories without the addition of switching or penalty charges. These points are located in Illinois, Indiana, Iowa, Wisconsin, and Missouri, and are in competition with plaintiff's Chicago plant in the purchase and processing of live stock and sale of the products. (See ex. 12, and summary, pp. 89-90 plaintiff's brief.) With respect to such deliveries at other points, the commodity is the same; and the switching distances do not vary greatly from the switching distance on the Junction tracks to plaintiff's sidetracks. The rates paid are the same distance scale of live stock rates which apply from the same origin points to Chicago.

[fol. 254] 49. The only conclusion apparent from the decision is that the Commission distinguished between deliveries of live stock to plaintiff's sidetrack and deliveries at other points in the same general territory solely upon the ground that plaintiff had failed to show the same or a similar degree of track congestion at the other delivery points.

50. If it be true that the measure of transportation services rendered live stock is substantially greater than that accorded dead freight, the fact is that the rates pre-

scribed by the Commission for the transportation of live stock have been found by it to be adequate to cover the receipt, line-haul transportation, and delivery of live stock to all points to which the scale applies, including deliveries to the stock yard pens on the Junction.

51. The Federal 28-hour law (45 U. S. C. A. 71) is applicable to all interstate transportation of live stock, and does not distinguish a delivery of live stock to the Swift sidetrack from a delivery of live stock at any other destination or terminal.

52. Delivery of a loaded car on a plant sidetrack and removal of the empty car, with such incidental use of tracks or terminal yards as may be necessary, are burdens which railroad carriers necessarily assume in connection with the transportation of all carload freight, including live stock. This burden is assumed by one or more of the line-haul defendants, including the New York Central, with respect to live stock, in deliveries to the stock yard on the Junction; to the delivery at 2320 South Halsted Street; with deliveries on the railroad team tracks in Chicago; and with deliveries at all other points in central and western trunk line territories.

53. If that burden is not, under present operating practice, assumed by the Junction in connection with live stock deliveries to the stock yard, it is a fact that one of its co-[fol. 255] defendants necessarily assumes that burden in connection with all live stock delivered to the stock yard on the Junction tracks; and that the Junction assumes that burden with respect to all dead freight delivered to industries upon its rails.

54. Switching and delivery of live stock cars to the location at 2320 South Halsted Street is not all performed by the Chicago, Burlington & Quincy Railroad Company. More than half of the live stock there delivered reaches Chicago via line-haul defendants other than the C., B. & Q. R. Co. Upon arrival at the outer break-up yards of such other carrier, the live stock cars are switched out of the line-haul trains; segregated for the various deliveries, such as those to the stock yard on the Junction; to the location on the C., B. & Q. R.; and for eastern railroad connections. Thereafter such cars are switched by lines other than the

C., B. & Q. R. Co. to the Western Avenue yard of the Burlington; whence it is delivered by a Burlington engine. (Tr. 557, 559, 588.)

Findings Concerning History of Chicago Junction

55. The intervener, Union Stock Yard and Transit Company of Chicago, was incorporated in 1865 to provide a central stock yard in Chicago. The stockholders were then the line-haul carriers transporting live stock to Chicago. Between 1870 and 1878 said railroad companies disposed of their holdings in the stock yard company. Prior to 1897 the stock yard company operated the railroad facilities, which for the major portion are now the Junction properties, as a part of its stock yard business. The railroad facilities were ultimately leased to a new corporation, the Chicago Junction Railway Company. The Chicago Junction Railways and Union Stock Yards Company (a New Jersey corporation) held 90 percent of the shares of the [fol. 256] stock yard company and practically all the shares of the Junction Company. During this period the Junction Company was operated as an adjunct to the business of the stock yard company. The Junction Company took the position that it was not a common carrier engaged in interstate commerce and filed no tariffs with the Interstate Commerce Commission until it was required to do so as a result of the decision in *United States* v. *Union Stock Yard & T. Co.*, 226 U. S. 286; 57 L. Ed. 226. The Junction was in effect a subsidiary of the stock yard company until it was leased to the New York Central in 1922. (See *United States* v. *Union Stock Yard & T. Co.*, 226 U. S. 286; 57 L. Ed. 226; *Chicago Junction Case*, 71 I. C. C. 631; *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531.)

56. In Article VI of the lease from the Yard Company to the Chicago Junction Railway Company dated December 1, 1913, the Junction agreed to

> "conduct, manage and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards."

In the lease of May 19, 1922, of the Junction property to the New York Central, following the authority granted by the Commission in *Chicago Junction Case*, 71 I. C. C. 631, the New York Central undertook to perform the above-quoted covenant of the earlier lease of the Junction.

57. In a letter under date of September 4, 1947, from general counsel for the yard company to general counsel for the New York Central it was stated:

> "It is our considered opinion that the River Road and the Central are obligated under the terms of the foregoing provision of the lease of 1913 to defend this case and to take every other step appropriate to pre- [fol. 257] vent irreparable injury to the yard company and that any failure to do so will be a breach of this covenant of the lease."

Said opinion of general counsel for the yard company was concurred in and acted upon accordingly by the New York Central. (Exhibit 57, and record.)

58. During the period 1891 to 1907, the yard company, including the Junction, spent large sums of money as a bonus by which to insure that all deliveries of live stock in the Chicago area should be made through the yard company facilities for the purpose of collecting its yardage charges in connection with such deliveries and it used the Junction as one of the instrumentalities for that purpose. (Exhibit 42, parts 47 and 49.)

59. The Commission erred in fact in finding that defendants, including the Junction (New York Central), have established "an expeditious centralized delivery" of direct shipments of live stock with respect to which stock yard services are neither required nor desired. Delivery to the stock yard is not in fact a delivery to the consignee of his direct shipments, but a delivery to a non-transportation agency, for services to be performed after railroad transportation has ended, and from which release of the consignee's direct shipments can not be obtained except upon payment of yardage and other charges unnecessary in the delivery of plaintiff's direct shipments upon its sidetrack.

Conclusions of Law

Jurisdiction

1. The complaint herein is brought by Swift & Company, an Illinois corporation, seeking an order of this court which will vacate, set aside, and annul a decision and order of the Interstate Commerce Commission known on the records of the Commission as docket No. 29809, *Swift & Co.* v. *Atchison, T. & S. F. Ry. Co.*, 274 I. C. C. 557.

[fol. 258] 2. The case is properly before this court (composed of one Circuit Judge and two District Judges) under the provisions of 28 U. S. C. A. secs. 1253, 1336, 1398, 2101, 2284, 2321, 2323, 2324, and 2325. The review sought by plaintiff in this court is subject to the provisions of sec. 1009 (e) of the Administrative Procedure Act, 5 U. S. C. A. secs. 1001-1011. This court has jurisdiction of the parties and of the subject-matter of the complaint.

Prohibitive Penalty Charges Unlawful

3. Penalty charges, intended to prevent rather than to facilitate ordinary and customary services of transportation by railroad common carriers engaged in interstate commerce, are plainly in violation of various sections of part I of 49 U. S. C. A., known as the interstate commerce act.

4. The fact that railroad carriers must exercise in the transportation and delivery of live stock in carloads to plaintiff's sidetrack such normal and reasonable care as the safe transportation and delivery of live stock require, does not distinguish a delivery to plaintiff's sidetrack from other deliveries of live stock, in the Chicago area or elsewhere, or justify the imposition of penalty or switching charges which would otherwise be discriminatory and unlawful under the various provisions of part I of the interstate commerce act.

5. The action of the Commission in adopting as a finding in support of a prohibitive penalty charge for delivery of plaintiff's direct shipments of live stock upon its private sidetrack the fact that cars loaded with live stock may not safely be "kicked" in switching service on the Junction is arbitrary, capricious, and an abuse of discretion, because

it does not distinguish such a delivery from deliveries to the pens of the yard company on the Junction tracks, or deliveries of live stock upon sidetracks of meat packing plants to which it is now delivered at the line-haul rates by the railroad defendants.

[fol. 259]

6. The Commission erred in giving controlling weight to or confining its "necessary considerations" to what may be termed the purely physical factors of railroad operation on the Junction tracks, such as track lay-out, limited motive power, congestion of trackage space, etc., to the practical exclusion of questions such as discrimination in deliveries by the railroad defendants, discrimination against a particular commodity, a particular delivery, or a particular shipper; as well as the requirements of the act which enforce equality in rates for similar services in connection with the same commodity.

7. To its available capacity, the facilities of a railroad common carrier must be used on equal terms and without discrimination for all commodities which the carrier holds itself out to transport. The theory here adopted by the Commission is condemned by the statute and by the general practice of railroad common carriers.

8. If the total carload quantities of live stock offered for delivery at various private sidetracks on the Junction rails should at some future time, in connection with all other traffic so transported, overtax the terminal facilities, the difficulty will have to be resolved in the light of settled principles of law, and not by discrimination against a particular commodity or shipper.

9. If the delivery of loaded live stock cars to sidetracks on the Junction should (together with the volume of all other traffic) ultimately result in a higher rather than a lower cost per car (a question which can not be resolved at this time) the additional cost, when and if realized, should be distributed equally over all traffic rather than be charged against one commodity and one class of delivery alone.

[fol. 260]

10. Sec. 1(10) of the interstate commerce act defines "car service" to include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the trans-

portation of property. Sec. 1(11) makes it the duty of all common carriers by railroad to furnish safe and adequate car service at all times. The failure or inability of the railroad defendants to furnish adequate car service on the Junction tracks affords no excuse for a discrimination against a particular commodity or shipper, which are by other sections of the act declared to be unlawful.

11. The correct and controlling principle of law in this respect was early stated by the Commission in *Riddle, Dean & Co.* v. *N. Y., L. E. & W. R. R. Co.*, 1 Int. Com. Repts. 787, 791:

> "It is the duty of a common carrier to provide adequate equipment for the business of his line; if in time of special pressure some one must wait, the annoyance must be distributed with all possible equality. * * * The common carrier has no right to select either goods or customers."

Error Under Sec. 1 (3) (a) of Interstate Commerce Act in Treating Junction as Independent Carrier

12. The Commission erred as a matter of law in treating the Chicago Junction Railway as an independent common carrier by railroad, dependent solely upon its own resources for trackage and equipment. Since the lease of the Junction property by the yard company to the New York Central, pursuant to the decision of the Commission in *Chicago Junction Case*, 71 I. C. C. 631, the Junction Railway has been, under the provisions of sec. 1 (3) (a) of part 1 of the interstate commerce act, an integral part of the New York Central. The New York Central, as operator of the Junction, may not effect discriminations in the operation of the Junction which would be unlawful if practiced by [fol. 261] the New York Central upon and by means of its own main line. This construction of sec. 1 (3) (a) was settled by the Supreme Court in *United States* v. *Baltimore and Ohio R. Co.*, 333 U. S. 169, 176; 92 L. ed. 618, 627, where the court said:

> "It is just as prejudicial to shippers and the public for a railroad that uses a portion of track under lease or contract to discriminate, as it is for the discrimina-

tion to be inflicted by a railroad that owns its entire track."

13. Because of the provisions of sec. 1 (3) (a) the Commission erred in making and giving weight to its subordinate finding of fact (p. 574) to the effect that the Junction (as such) does not participate in joint rates on live stock; it being a fact that the lessee of the Junction, the New York Central, participates in joint and other rates on live stock between all points on its line and points on the lines of other railroads, both in western trunk line and southwestern territories.

14. For the same reason the Commission errs as a matter of law in making and giving weight to its subordinate finding respecting the limits of Junction motive power (p. 566), thereby treating the Junction as if it were divorced from its lessee, the New York Central. Similarly the Commission errs in making and giving weight to its subordinate finding (p. 560) as to the land available for expansion of Junction facilites; although one of the reasons stated by the Commission for authorizing the lease of the Junction by the New York Central was that the New York Central could provide such facilities for interchange and classification of traffic on its own rails. Likewise the Commission erred in making and giving weight to its subordinate finding (p. 568) that the yards of the Junction are not burdened with livestock cars, either loaded or empty; because the New York Central, lessee of the June-[fol. 262] tion (as well as the other line-haul railroad defendants) necessarily burden their yards with loaded and empty live stock cars; the delivery of a loaded car and removal of an empty car being an incident to the transportation of all carload freight.

15. The error of the Commission in failing properly to construe sec. 1 (3) (a) constitutes a sufficient ground for remanding the case to the Commission with directions.

Error in Failing to Find Violation of Sec. 2 of Interstate Commerce Act

16. The Commission erred, as a matter of law, in failing to find that defendant railroad lines violate sec. 2 of part I

of the interstate commerce act in effecting delivery of loaded live stock cars to the unloading pens of the yard company on the Junction tracks at the flat Chicago rates, while denying delivery of loaded live stock cars upon plaintiff's private sidetrack, also on the Junction tracks, except upon payment of the flat line-haul rates to Chicago, plus $28.80 (presently $36.00) per car.

17. Transportation of live stock from any given point on defendants' lines to the stock yard pens on the Junction and to plaintiff's private side track on the Junction constitutes the doing of a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions. The equality of rates required by section 2 relates only to carriage of a like kind of traffic for a similar distance over the same rails, and excludes from consideration matters of competition, carrier preference or dislike for certain types of traffic, etc. *Wight* v. *United States*, 167 U. S. 512, 518; 42 L. ed. 258, 259.

18. Existence of voluntary trackage rights over the Junction rails by line-haul defendants can not justify what would otherwise be a violation of sec. 2. This situation may [fol. 263] be remedied either by according to such line-haul defendants trackage rights to make deliveries upon plaintiff's sidetrack, or by having the Junction perform that service under the same total rates that apply to the stock yard unloading pens.

19. The Commission has held that trackage arrangements are not permitted to "work unjust discrimination" under sec. 2. *Huerfano Coal Co.* v. *C. & S. E. R. R. Co.*, 41 I. C. C. 657. With reference to a similar situation the Supreme Court said (*United States* v. *Baltimore and Ohio R. Co.*, 333 U. S. 169, 175; 92 L. ed. 618, 627):

> "It would be strange had this legislation left a way open whereby carriers could engage in discriminations merely by entering into contracts for the use of trackage. In fact this court has long recognized that the purpose of Congress to prevent certain types of discriminations and prejudicial practices could not be frustrated by contracts, even though the contracts were executed before enactment of the legislation."

20. That the equality clause of sec. 2 applies to all deliveries of the same commodity in the same terminal district has been decided by the Commission and affirmed by the Supreme Court. Said the Commission in *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 44 I. C. C. 455, at pp. 464 and 466:

> "Section 2 is primarily directed against discrimination between shippers located in the same community. It is aimed to put all shippers within a switching district upon a substantial equality. * * * Where the industries are situated within the switching district of the same city and are substantially equidistant from the respective interchange tracks, we are of the opinion that the service which the line-haul carrier renders, whether the traffic is ultimately destined to industry B or industry C, is like service within section 2. * * * Where the short delivery service within the switching district is substantially the same in either instance, we [fol. 264] are of the opinion that the line-haul carrier is receiving a greater compensation from one shipper than from another for a like service when it absorbs the switching charges of one switching line and not those of another."

This conclusion of the Commission with respect to the meaning of sec. 2 was sustained by the Supreme Court in *Seaboard Air Line Railway Co.* v. *United States*, 254 U. S. 57, 62; 65 L. ed. 129, 133, where the court said:

> "We are of opinion that the Commission was correct in regarding the service in question as a like and contemporary service rendered under substantially similar circumstances and conditions, and amply sustained as matter of law in *Wight* v. *United States*, 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. Rep. 822."

21. This construction has also been followed by the Commission in its recent decision in docket No. 30385, *Williams Line Manufacturing Co.* v. *Southern Ry. Co.*, decided November 22, 1950.

22. That trackage rights, or their absence, may not be used as an excuse for unjust discriminations prohibited by sec. 2 was specifically declared by the Supreme Court in

United States v. *Pennsylvania R. Co.*, 266 U. S. 191; 69 L. ed. 243.

23. The Commission erred in failing to note and find that yardage charges of the stock yard company for services performed by it in connection with live stock consigned to the yard company for unloading and delivery are for a stock yard service performed after railroad transportation has ended and may not be considered in determining the application of sec. 2 to the service rendered by railroad common carriers. Stock yard services are not within or performed under the requirements of sec. 2, part I of the interstate commerce act. They are subject to and controlled by the *Packers and Stockyards Act, 1921*, 7 U. S. C. A. 181. The [fol. 265] Commission held in *Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179, that transportation of live stock to a public live stock market (that is to say, everything included within the railroad rate and service) ended with the unloading of the live stock into pens at the public market and that the yardage services thereafter performed by the stock yard were beyond the jurisdiction of the Commission, and subject to the authority of the Secretary of Agriculture, as provided in said *Packers and Stockyards Act*. This ruling of the Commission was sustained in precise terms in *Swift & Co.* v. *United States*, 316 U. S. 216, 86 L. ed. 1391.

24. The only discrimination in railroad rates and services permissible in connection with delivery of live stock to a public market is that provided in sec. 15 (5), part I of the interstate commerce act, to the effect that live stock consigned by railroad to a public stock yard shall be unloaded and reloaded in transit (when necessary) and be unloaded at destination by the railroad without extra charge above the railroad rate. It is settled law and practice that this service is not required, without extra compensation, with respect to live stock consigned to a private sidetrack. *Live Stock Loading and Unloading Charges*, 58 I. C. C. 164; *Omaha Packing Co.* v. *A., T. & S. F. Ry. Co.*, 66 I. C. C. 44; *Swift & Co.* v. *United States*, 316 U. S. 216; 86 L. ed. 1391. But with respect to deliveries other than to a public stock yard, sec. 15(5) provides:

"Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now ex-

isting by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards."

25. With respect to the duties of railroad carriers concerning live stock not consigned to a public market, the [fol. 266] Supreme Court said in *Covington Stock Yards Co. v. Keith*, 139 U. S. 128, 35 L. ed. 73:

> "The transportation of live stock begins with their delivery to the carrier, to be loaded upon its cars, and ends only after the stock is unloaded and delivered or offered to be delivered to the consignee, if to be found, at such place as admits of their being safely taken into possession. * * *
>
> "It was not within the power of the railroad company, by such an agreement as that of November 19, 1881, or by agreement in any form, to burden the appellees with charges for services it was bound to render without any other compensation than the customary charges for transportation."

That this continued to be the law is confirmed by the decision of the Supreme Court in *Atchison, T. & S. F. R. Co. v. United States*, 295 U. S. 193, 79 L. ed. 1382, decided after the passage of sec. 15(5) of the interstate commerce act and the *Packers and Stockyards Act, 1921*, where the court said (p. 198):

> "Transportation of ordinary livestock in carload lots from and to points other than public stockyards has always been deemed to include furnishing of facilities at the place of shipment for loading and at destination for unloading and suitable ways for convenient ingress and egress."

26. The factors included within railroad transportation are the only factors which may be considered by the Commission in determining the application of sec. 2 to the facts of this case.

27. The Commission erred in failing to decide that delivery to the stock yard pens at the flat Chicago rates,

while according delivery to the Swift sidetrack only at the flat Chicago rates plus a charge of $28.80 or $36.00 per car, constitutes a violation of sec. 2 of the interstate commerce act on the part of the railroad defendants (including the [fol. 267] Junction-New York Central). The proceeding should therefore be remanded to the Commission for further decision not inconsistent with this opinion.

Error in Failing to Find Violation of Sec. 1 (9) of Interstate Commerce Act

28. Sec. 1(9) of the interstate commerce act, with respect to the operation of a sidetrack connection for the delivery of live stock, where the switch connection is already in place, has recently been construed by the Commission in *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55; and that construction sustained, after contest, by the Supreme Court in *United States* v. *Baltimore and Ohio R. Co.*, 333 U. S. 169; 92 L. ed. 618. Under these decisions the prerequisites to operation of the switch connection without discrimination are: (1) that the connection may be operated with safety; and (2) that it will furnish sufficient business to justify its maintenance.

29. These conditions are met by plaintiff in the present case. The decision does not suggest that the switch connection may not be operated with safety. It has been so operated for many years. Swift has requested the operation, without discrimination, in writing. Delivery of the Swift direct shipments thereover would add approximately 6,489 cars per year to the number now being operated over the switch connection. We assume that this is at least adequate to justify the maintenance of the connection.

30. The requirement of the statute, when these conditions have been met, is that the switch connection shall be operated "without discrimination in favor of or against any such shipper." The prohibited "discrimination" has no modifying adjective, such as "unjust discrimination" prohibited by sec. 2. It is not phrased in terms leaving a substantial field for judgment, as is sec. 3(1), which prohibits "undue [fol. 268] or unreasonable preference or advantage" and "undue or unreasonable prejudice or disadvantage." The word "discriminate," without modifiers, usually connotes a

difference in treatment in favor of one as compared with another. Using it in this sense, it is certain that the switch connection is being operated with discrimination against plaintiff and its traffic, at least in the following respects:

(a) Similar switch connections of the Junction (New York Central) and of the other railroad defendants are being operated so as to effect delivery of carloads of live stock to the unloading pens of the stock yard company without addition of switching or penalty charge, while delivery of live stock over the Swift connection is effected only at the flat Chicago rates, applicable to the stock yard deliveries, plus a charge of $28.80 or $36.00 per car.

(b) Of such deliveries to the stock yard pens, over 30,000 cars per year are to competing meat packing companies such as Armour, Wilson and others, of their direct shipments of live stock. While these other companies pay yardage charges to the stock yard company for stock yard services, such services are rendered after railroad transportation has ended. Therefore, the railroad defendants, including the Junction (New York Central), deliver live stock to plaintiff's competitors in the stock yard area for $28.80 or $36.00 per car less than to Swift, so far as transportation charges are concerned, and transportation charges are the only factors which may be considered in this connection.

(c) The defendants operate switch connections at many other points on their lines to the private sidetracks of competing meat packing companies in central and western trunk line territories, over which direct shipments of live stock are delivered without additions to the line-haul rates; such [fol. 269] rates being under the same scale which applies to Chicago, including the stock yard unloading pens. Such points are more particularly mentioned in connection with the findings and conclusions under sec. 3(1).

(d) The switch connection and similar Junction connections are operated by defendants, including the Junction, for the transportation and delivery of all classes of freight other than live stock, at the flat Chicago rates, without addition of switching or penalty charges. This constitutes a discrimination against plaintiff's live stock traffic to its

Chicago plant, similar to that found to be unlawful in *United States* v. *Baltimore and Ohio R. Co.*, 333 U. S. 169; 92 L. ed. 618.

31. This construction of sec. 1 (9) has been followed by the Commission in *Trojan Scrap Iron Corp.* v. *Boston & M. R.*, 270 I. C. C. 727; and in its recent decision in Docket No. 30288, *City of Milwaukee* v. *Chicago & N. W. Ry. Co.* (advance sheets), decided November 15, 1950.

Error in Failing to Find Violation of Sec. 3 (1) of Interstate Commerce Act

32. The Commission has approved and condoned a discrimination against the delivery of live stock to plaintiff's sidetrack which is forbidden by sec. 3(1) of the interstate commerce act: *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55; *United States* v. *Baltimore and Ohio R. Co.*, 333 U. S. 169. (a) Plaintiff's live stock traffic is subjected to a prohibitive penalty charge as compared with dead freight delivered to the same sidetrack and live stock delivered to the stock yard chutes, in violation of the provision that the railroad defendants shall not subject "any particular description of traffic" to such disadvantage or discrimination. (b) Swift is subjected to an unlawful discrimination because others paying precisely the same line-haul rates at Chicago and elsewhere, receive a corresponding preference in viola- [fol. 270] tion of the provision against so treating "any particular person".

33. The railroad defendants, having opened their terminals on the Junction for the delivery of live stock, may not in effect close those terminals by a prohibitive switching or penalty charge. *Louisville & N. R. Co.* v. *United States*, 238 U. S. 1; 59 L. Ed. 1177. *Interstate Stock Yards Co.* v. *Indianapolis U. Ry. Co.*, 99 Fed. 472, 483.

34. Inadequate or congested facilities on the Junction tracks afford no excuse for an otherwise unlawful discrimination against a commodity or shipper. *Mitchell* v. *United States*, 313 U. S. 80, 85 L. Ed. 1201. Sec. 1 (11) interstate commerce act.

35. The record, and the decision of the Commission, fail to show any distinction other than congestion and inadequacy of facilities on the Junction rails for the dis-

crimination between the delivery to plaintiff's sidetrack on the Junction and deliveries to the location at 2320 South Halsted Street and to competing meat packing plants in central and western trunk line territories. The record shows that the New York Central, lessee and operator of the Junction, delivers carloads of live stock, without addition of terminal or switching charges, to competing meat packing plants at Albany, N. Y.; Anderson, Ind.; Boston, Mass.; Cincinnati, O.; Cleveland, O.; Columbus, O.; Dayton, O.; Detroit, Mich.; Erie, Pa.; Evansville, Ind.; Fostoria, O.; Indianapolis, Ind.; Kingston, N. Y.; Terre Haute, Ind.; and Mishawaka, Ind. One or more of the other railroad defendants effect similar delivery of loaded live stock cars to sidetracks of meat packing companies at some thirty points in central and western trunk line territories. (Ex. 10, pp. 24-26; and Ex. 12.)

36. The Commission's finding (decision, p. 575) that there is "no showing of a similarity in any respect of the [fol. 271] services required" for delivery of live stock on plaintiff's sidetrack and the deliveries at the other points mentioned in the preceding paragraph, is not supported by substantial evidence and is contrary to the evidence. The commodity involved is the same, whether delivered to plaintiff's sidetrack or to sidetracks at the numerous other points above-mentioned. It is evident that a similar degree of care must be taken to avoid rough shocks and jolts to loaded live stock cars, wherever delivered. The federal 28-hour law, which places certain limits upon the time during which live stock may be transported without unloading for feed, water, and rest, applies equally to all interstate transportation of live stock. The distances over which loaded live stock cars are moved by the switching line to effect delivery on the plant sidetracks of the meat packing plants above-mentioned, on the lines of one or more of the line-haul defendants in central and western trunk line territories, do not differ substantially from the distance over which live stock would be switched by the Junction, to effect delivery to plaintiff's sidetrack, being in some instances more and in some instances less. (Ex. 53.) That live stock rates prescribed by the Commission were made upon a basis adequate to cover these conditions of the transportation of live stock

traffic was stated by the Commission in *Omaha Live Stock Exc.* v. *Chicago & N. W. Ry. Co.*, 178 I. C. C. 1, 14, as follows:

> "Those rates have been designed not only to afford uniformity and equality as between shippers and as between markets, but they have also been designed to cover, not only line-haul service, but also terminal service involving both receipt of shipments at points of origin and their delivery at destination."

With respect to deliveries in Chicago, the Commission has held (*Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 547):

> "The terminal services rendered in delivering live-[fol. 272] stock to the Union Stock Yards and to the plant of the Omaha Packing Company at Chicago, as shown by the present record, are not more onerous than terminal services contemplated under the scale of rates prescribed in *Livestock—Western District Rates, supra.*"

37. The fact that receiving and delivery tracks of the Junction are not burdened with loaded or empty live stock cars can not excuse discriminations under sec. 2 or sec. 3(1) or the imposition of prohibitive penalty charges. This burden is one which is necessarily assumed by railroad carriers in connection with the receipt, transportation, and delivery of all carload freight. Sec. 1(11) interstate commerce act. If the yards of the Junction are not so burdened under the present practice, it amounts merely to a discrimination against live stock as a commodity, because the Junction assumes that burden with respect to all dead freight delivered or received on its line; and the yards of the line-haul defendant railroads, including those of the New York Central (lessee of the Junction), are necessarily burdened with the loaded and empty live stock cars delivered on the Junction tracks to the stock yard pens.

38. The Commission erred factually and legally in finding with respect to the delivery of live stock to the unloading pens at 2320 South Halsted Street, on the Chicago, Burlington & Quincy Railroad, that "all of the switching is under the control of and performed by the Burlington"

(decision, p. 574). The record shows that the majority of the loaded live stock cars there delivered are transported to Chicago by railroads other than the Burlington; and that with respect to such cars, such other line-haul defendants switch the loaded live stock cars out of the line-haul trains in their respective outer break-up yards and thereafter switch such cars to the Western Avenue yard of the [fol. 273] Burlington, before the final switching service is performed by the Burlington. The Federal 28-hour law applies as well to deliveries of loaded live stock cars on the Burlington tracks as to all other deliveries of live stock, including those to the stock yard pens and to all other points to which such traffic is delivered by the railroad defendants in interstate commerce.

Validity of Certain Contracts

39. The decision of the Commission gives effect to an unlawful contract between the yard company and the New York Central. Embodied in the lease from the yard company to the New York Central of May 19, 1922, is a provision whereby the lessee agreed "to conduct, manage and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to the benefit, advantage and behoof of the business and affairs of the Yards." In connection with this case before the Commission, attention to this provision was called by general counsel for the yard company to general counsel for the New York Central with the opinion that failure to comply with this provision would constitute a breach of this covenant. (Ex. 57.) The New York Central acted upon this opinion.

40. Such a covenant by a common carrier by railroad subject to the interstate commerce act is on its face unlawful. The only permissible discrimination in favor of delivery of live stock to a consignee thereof at a public stock yard is that the live stock shall be unloaded in transit, when necessary, and be unloaded at the yard pens, without extra charge above the transportation rate. (Sec. 15 (5) interstate commerce act.)

41. The ownership of the Junction by the yard company accounts for the finding by the Commission that since in-

[fol. 274] auguration of services to the stock yard, the Junction has sought to prevent delivery of live stock to points other than the yard company, in order that the parent company might obtain its yardage and other charges upon direct shipments of live stock to meat packing companies in the stock yard area as well as upon live stock consigned to commission men for sale upon the public market. To give effect to said covenant in fact nullifies that portion of sec. 15 (5) of the interstate commerce act which provides:

> "Nothing in this paragraph shall be construed to affect * * * the duty of performing service as to shipments other than those to or from public stock yards."

42. The contract of January 15, 1892, between the Chicago Junction Railways and Union Stock Yard Company and certain individuals then operating major meat packing plants at Chicago, whereby the yard company agreed to pay large sums of money to insure the delivery, for fifteen years, of all live stock to the yard company pens, can not affect the rights and duties of the respective parties at the present time. The New York Central, present lessee and operator of the Junction, was not a party to said contract, nor were any of the other line-haul defendants in the present case. The amendments of the interstate commerce act which gave the Commission power to make effective rate orders and to control practices of common carriers by railroad were not enacted until 1906. The federal act regulating public stock yard companies was not enacted until 1921.

43. If said contract was legal when made, it doubtless became illegal *in toto* upon enactment of the *Elkins Act* in 1903, which first prohibited any departure or rebate from the published railroad rates. *United States* v. *Union Stock Yard & T. Co.*, 226 U. S. 286, 57 L. Ed. 226.

[fol. 275] 44. Plaintiff is not estopped to assert its rights under the interstate commerce act by reason of said contract. *Interstate Com. Com.* v. *Atchison, T. & S. F. R. Co.*, 234 U. S. 294; 58 L. Ed. 1319; *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740; 75 L. Ed. 672; *Merchants Ware-*

house Co. v. *United States*, 283 U. S. 501, 75 L. Ed. 1227; *United States* v. *Baltimore and Ohio R. Co.*, 333 U. S. 169, 92 L. Ed. 618.

Decision in Hygrade Case

45. The decision of the Commission in *Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553, is not controlling in the present case. Amongst several reasons for this conclusion is the fact that it was not until the decision of the Commission in *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, decided several years later, that the Commission held that conditions differed materially from those theretofore prevailing because of the prescription in the meantime of the live stock scales contained in *Livestock—Western District Rates*, 176 I. C. C. 1, and that such rates were adequate to include delivery to the yard company on the Junction, and to the pens at 2320 South Halsted Street, without the addition of a separate terminal charge.

Final Conclusion of Law

46. The court finds that the decision of the Commission is in certain respects arbitrary, capricious, and an abuse of discretion; in excess of statutory authority; short of statutory right; unsupported by substantial evidence; and in violation of substantive provisions of part I of the interstate commerce act, within the meaning of sec. 1009 (e) of the Administrative Procedure Act, 5 U. S. C. A. That is to say that by its decision the Commission has violated the provisions of secs. 1 (3) (a); 1 (4); 1 (5) (a); 1 (6); [fols. 276-278] 1 (9); 1 (10), (11); 2; 3 (1), and 15(5) of said interstate commerce act.

An order will be entered setting aside and vacating the decision and order of the Commission and remanding the case to the Commission for further proceedings not inconsistent with the decisions of this court.

[fol. 279] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY RAILROAD DEFENDANTS—April 16, 1951

1. By complaint, as amended, filed with the Interstate Commerce Commission on July 29, 1947, against the Atchison, Topeka & Santa Fe Railway Company and other common carriers by railroad, Swift & Company alleged that the rates, charges and practices in connection with the delivery of direct shipments of livestock, in carloads transported from points in states other than Illinois, for delivery to complainant's plant at Chicago, Illinois, were and are unreasonable, unduly prejudicial to livestock as a commodity, and unduly prejudicial to complainant and preferential of its competitors at points in Illinois, Iowa, [fol. 280] Nebraska, Missouri, Kansas, Minnesota, Wisconsin and Indiana.

2. The complaint was docketed by the Interstate Commerce Commission as No. 29809, *Swift & Company* v. *Atchison, Topeka & Santa Fe Railway Company, et al.*, the defendants being common carriers by railroad engaged in the transportation of livestock to Chicago.

3. Swift & Company is engaged in the packing house business and operates a packing plant for the processing of livestock at Chicago, Illinois, which plant is located adjacent to the Union Stock Yards in Chicago.

4. In the complaint heretofore referred to, the Commission was asked to prescribe reasonable rates, charges, rules, regulations, or practices including joint through rates between the line-haul defendants and the Chicago Junction Railway and the Chicago River & Indiana Railroad Company, under which the defendants would be required to afford delivery of complainant's direct carload shipments of livestock upon the industrial sidetrack serving complainant's plant in the stock yards area in Chicago, and under which said rates and charges would not exceed the line-haul rates on livestock to Chicago.

5. Answers to the complaint were filed by the railroad defendants; numerous parties representing the Union Stock

Yards and producers, buyers and sellers of livestock intervened in opposition to the complaint; the United States Department of Agriculture also intervened as an interested party under its administration of the Packers and Stock Yards Act, 1921, 42 Stat. L. 159. Full hearings were held before an Examiner of the Commission, briefs were filed, and the Examiner's proposed report was issued. Exceptions and replies to exceptions were filed, and the proceeding was orally argued before the entire Commission.

6. On July 6, 1949, the Commission issued its report, 274 [fol. 281] I. C. C. 557, annexed to and made a part of the complaint herein as Exhibit B, in which the Commission, among other things, found:

> "We find (1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for the transportation of livestock for delivery on the private sidetracks to be constructed by complainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference and (2) that establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest."

7. The Commission further found:

> "The issue presented is whether or not complainant is entitled to have direct shipments of livestock delivered by the Junction without a charge in addition to the line-haul rates on a private siding at a plant which it proposed to construct in the stock yard area in Chicago."

8. The Commission further found:

> "In the determination of the issues raised in this proceeding, it is necessary to consider the track layout of the Junction, and the present operations thereover in the handling of so-called dead freight, which term includes perishable and all other freight other than livestock; the method by which livestock has for

many years been handled by the line-haul carriers to the Union Stock Yards; the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock, as sought by complainant; and also, in order to avoid undue preference and prejudice, if it were required to make similar deliveries to complainant's competitors."

"All facts relating to the existing custom and practice of making deliveries of livestock and also facts [fol. 282] and circumstances leading up to that custom and practice, as well as the effect of the proposed practice on the interests of the carriers, the public, and other shippers, are relevant."

9. The Commission further found that the switching charge of the Junction for switching livestock from junctions with connecting lines to complainant's plant and other points on the Junction's rails, at the time of the hearing, was 4.8 cents per 100 pounds or $28.80 based on the minimum of 60,000 pounds. That carrier, however, has never, except in an emergency handled ordinary livestock in switching service. That traffic is at present, and for many years past, has been handled at Chicago entirely by the line-haul carriers.

10. In its report, the Commission stated that the Chicago switching district is approximately 40 miles in length and from 7 to 15 miles wide, being served by 35 railroads. The report also states that the two lines referred to as the Junction are exclusively switching lines and together operate 224.35 miles of track within the Chicago switching district, connecting with 27 railroads, that the majority of the 499 industries with private sidings located in the stock yard district are served solely by the Junction. The two switching lines referred to as the Junction also maintain 11 team tracks and 3 freight stations and together serve 653 industries with 823 sidetracks.

11. The Commission further found that the Ashland Avenue Yards of the Junction handled an average of 726,144 loaded and empty cars per annum during the years 1945, 1946, and 1947, that those yards are located in a densely developed industrial part of the City of Chicago, and that there is no land available for the expansion of those yards

or the building of additional facilities nearby for the interchange and classification of traffic.

12. The Commission further found that approximately [fol. 283] 63 per cent of the trains of the trunk line carriers going to the Union Stock Yards carry livestock exclusively, that these trains move over eastbound track 1103 directly to the unloading chutes of the Union Stock Yards, that the unloading consumes only a few minutes per car, and that the empties are then moved directly back to the line-haul carriers' home yards over westbound tracks 1102 or 1104. Carriers, such as the Rock Island, which approach the Union Stock Yards from the east, haul their livestock directly to those yards without passing through the Ashland Avenue yards.

13. The Commission further found that since the line-haul carriers must use the same eastbound track into the Union Stock Yards, any delay to a train on that track results in "piling up" trains of other lines seeking ingress to the Union Stock Yards. Frequently as many as four trains must wait to enter this track as a result of its being blocked at the east end. Delays are necessarily experienced also because of "set-outs" made by consolidated trains, consisting of livestock and dead freight and these delays would be multiplied under the delivery practice proposed by complainant. In a consolidated train the dead freight is on the head and behind the engine. The cars of livestock are cut off and left standing at the eastern end of the eastbound running track while the line-haul carriers' engine sets dead freight on one of the nine receiving tracks in the south yard. This operation blocks the running track until the engine returns and hauls livestock into the Union Stock Yards.

14. The Commission further found:

> "Under the Federal law, livestock may be confined in cars for not more than 28 hours without unloading for watering and feeding unless the shipper requests, in writing that the time be extended to 36 hours. In practically all cases, stock arriving at Chicago has [fol. 284] only a limited time within which it must be unloaded from the cars in order to avoid violation of the 28-hour law. The outer yards of the line-haul

carriers, from which runs are made to the Union Stock Yards, contain very limited feeding, watering, and rest facilities. Many stock runs are made with but one or two cars per train. Under the present practice of handling directly to the unloading chutes in the Union Stock Yards, it is unnecessary to unload the stock for water, feed, and rest at some intermediate location on the Junction. In fact, facilities for that purpose do not exist on that line."

15. The Commission further found that the measure of transportation services rendered shipments of live animals is substantially greater than that accorded dead freight. Livestock cannot be switched in the same manner as other freight. In the ordinary and usual course of classifying dead freight, by the Junction, the engine pushes a string of cars along a track leading to the classification tracks. Uncoupled cars are "kicked" or given impetus to roll freely through a switching lead onto the proper classification track. Manifestly, if livestock were so handled it would result in injury to the animals by being thrown against the ends or sides of cars or knocked down. Cars of livestock must necessarily come to rest without rough shocks or jolts.

16. The Commission further found:

"Under the present practice, followed since the inauguration of services to the Union Stock Yards in the interest of expeditious centralized delivery, the yards of the Junction are not burdened with livestock cars either loaded or empty. It clearly appears that any attempt by the Junction to make deliveries of livestock generally to packers or to transport an amount of livestock substantially greater than complainant's present needs, would result in serious disruption of operations and services and serious delays in the deliv- [fol. 285] ery of livestock. * * * There can be longer trains and greater movement of livestock by the line-haul carriers to the stockyards, but the conclusion is warranted that a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally

and that operations would be disrupted if much of the large movement of livestock to the stockyards area and the return movement of the empty cars, were performed by the Junction."

17. The Commission further found that the present method of delivering livestock in Chicago is reasonable and lawful and the only practical method of delivering livestock in the stock yards area.

18. The Commission further found that numerous difficulties would confront defendants if required to make delivery of livestock at complainant's plant, the basic difficulty being that such method of delivery is not adapted to defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays. This method of terminal operation, including the planning and [fol. 286] building of rail and stock terminal facilities, have resulted, in large part, from the action of the Chicago packers, including Swift.

19. The Commission further found that although "cars of livestock consigned to complainant could be handled in consolidated trains by grouping such cars at the head of the train with the cars of dead freight intended for setout in the south yard, nevertheless, because of difficulties peculiar to livestock traffic, such handling would, it appears, affect adversely the line-haul carriers' operations in carrying livestock to the stockyards."

20. The Commission, in its report, stated that the need for such difference in service as regards complainant's livestock and the effect thereof would extend to the service in the south yard and beyond, that taking into account periods of peak movements and maximum use, the south yards are used to capacity with no space for construction of additional tracks and that any additional burden would adversely affect all other interests served by the Junction.

21. The Commission also found that using the Junction's classification tracks for livestock would result in cars of livestock being blocked in between cars of dead freight and that such cars of livestock would have to be "dug out" for a special run to complainant's plant. The Commission's report further states:

> "Indeed, it appears that in some instances, immediately upon arrival of a consolidated train including cars of livestock for complainant, the Junction might have to make a special run to deliver the cars at the latter's plant. As above mentioned in practically all cases, livestock arriving at Chicago has only a limited time left before it must be unloaded to avoid violation of the law governing watering and feeding; the Junction has no facilities for watering or feeding anywhere on its lines and such facilities of the kind as are maintained by the line-haul carriers are very [fol. 287] limited. While these conditions—all necessitating promptly handling of the traffic—are suited to the practice, long followed, of making deliveries of all shipments of livestock at the stockyards, they are not, it is evident, at all suited to the plant delivery service sought by complainant, in the performance whereof the cars of livestock would have to be switched and otherwise intermingled with cars of dead freight which latter, it appears, may, in the case of perishable freight, require nearly a full day for movement through the yards to points of delivery, and in the case of other dead freight, nearly 32 hours."

22. The Commission further found that even if the factor of limited time within which to unload in order to observe the law were rendered unimportant or eliminated, the cars

of livestock for delivery at complainant's proposed plant would, if handled in regular course and not by special runs, have to be switched, classified, set out, and otherwise handled together with cars of dead freight. Because cars of livestock and any cars of dead freight handled along with them cannot be switched in the usual expeditious manner, there would result numerous interferences and delays. Trains of livestock moving over track 1103 to the stock yards would be delayed; there would be interferences and delays in the south yard and from that yard to and through the base yards. There would be the additional delay involved in controlling the cars in their movement over the descending grade to the proposed plant. The Commission's report states:

> "Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants' operations. Moreover, although it is shown that complainant's direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipments exceeded 18 cars. Also it [fol. 288] appears that the number of complainant's direct shipments of livestock in proportion to the number bought at the stockyards has been steadily increasing, and the testimony of complainant's witnesses affords ground for the belief that that condition will continue."

23. The Commission also found that in the event complainant's demands were granted, other packers would be entitled to the same delivery service at the same rates if they provided the necessary facilities, and that such other packers would be under great competitive compulsion to provide such facilities. The Commission's report states:

> "Nevertheless, it is our best judgment, and we, therefore, so find and conclude, that, if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like delivery

service in an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction's lines."

24. The Commission further found that interference with the movement of livestock to the stock yards is a serious concern not only of the defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is adequate for their needs. The Commission's report states:

"We may, however, disapprove the inauguration of a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally. The proposed complete exemption of livestock [fol. 289] from transportation by the Junction under any circumstances is not justified. There is no warrant, however, for a conclusion that the establishment of joint rates as desired by complainant is necessary or desirable in the public interest."

25. The Commission further found that in *Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553, complainant had alleged that the same switching charge for side-track delivery of livestock as that attacked here was unreasonable and otherwise unlawful, and that complainant sought delivery of its livestock upon its private tracks without any additional charge for switching. In that case, the Commission found that the published switching charge was not unreasonable or otherwise unlawful.

26. The Commission also found:

"The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimiliar from those connected with the delivery here sought. There, the unload-

ing chutes are on the rails of a line-haul carrier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington. The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimiliar from the private track delivery sought."

27. The Commission also found that the line-haul rates on livestock to Chicago apply only to deliveries served by the line-haul carriers and not to deliveries of livestock by the Junction. The Commission's report states:

"The line-haul rates on livestock to Chicago are [fol. 290] Commission-prescribed rates. In *Chicago Livestock Exch.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 545, 546, we said that 'the line-haul carriers operate over the tracks of the Chicago Junction to the Union Stock Yards and make delivery there thereby making these yards their own terminals.' We pointed out that in prescribing the rates on livestock to Chicago, among other markets, there was specifically taken into consideration as an element 'the rendition of terminal service in connection with the transportation of livestock,' and there was included what was considered 'sufficient to cover such terminal services under a normal operation as well as to cover the unloading and loading of livestock at public stockyards,' but we did not there consider what the services would be in connection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services."

28. With reference to its prior reports in *Baltimore Butchers Abattoir & Live Stock Co.* v. *Philadelphia B. & W. R. Co.*, 20 I. C. C. 124, *Swift & Co.* v. *Baltimore & Ohio R. Co.*, 266 I. C. C. 55, and *Neuhoff Packing Co.* v. *L. & N.*

R. Co., 268 I. C. C. 271, the Commission found that "Deliveries to private industrial tracks at those points [Baltimore, Maryland, Cleveland, Ohio, and Nashville, Tennessee] did not require substantial modification of terminal operations and interferences with established operations in a manner required at Chicago for such deliveries, and did not involve, as at Chicago, serious disruption of operations. There is no showing of a similarity in any respect of the services required and circumstances affecting services."

29. The Commission further found, with respect to the points alleged to be preferred in Swift's complaint before the Commission:

> "There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred."

[fol. 291] 30. The Commission further found, with respect to a contractual relationship asserted to exist between the Union Stock Yards and the Chicago Junction, that the lease of the Chicago Junction to the Chicago River & Indiana, a subsidiary of the New York Central, in 1922, completely divested the Union Stock Yards of operation and control of the terminal railroad. The Commission's report states:

> "The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the *Chicago Junction* case, *supra*. Those conditions were particularly intended to insure that the Chicago Junction and the Chicago River & Indiana should be operated as neutral terminal carriers, without special advantage favoring the New York Central but the conditions were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards."

31. The Commission further found that "the evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modifications of services that

would be required for the desired deliveries and the effect on terminal operations generally of performing such delivery service to the proposed plant."

32. The Commission further found:

> "The published switching charge is appropriate for any switching that may occur of cars of livestock to complainant's proposed plant. It does not appear that the maintenance of a switching charge for livestock will have any detrimental effect upon terminal operations."

33. On the same date as that on which its report was issued, the Commission issued an order dismissing the complaint.

[fols. 292-295] Conclusions of Law

1. The Commission's order was made after full hearing upon adequate findings supported by substantial evidence and in accordance with the applicable law.

2. The Commission had evidence before it sufficient to sustain its findings.

3. The findings made by the Commission are adequate to support its order dismissing the complaint.

4. The order of the Commission was within its statutory authority, was not arbitrary or capricious or based upon mistake of law or misapplication of proper statutory standards.

5. Plaintiff is not entitled to any of the relief prayed for in its complaint.

Respectfully submitted, Kenneth F. Burgess, Douglas F. Smith, Martin M. Lucente, Richard L. Selle, Attorneys for Railroad Defendants.

[fol. 296] In United States District Court

[Title omitted]

Transcript of Proceedings—Filed July 9, 1951

Had in the above-entitled cause before Honorable F. Ryan Duffy, Judge of the United States Court of Appeals for the Seventh Circuit, Honorable Philip L. Sullivan and Honorable Michael L. Igoe, Judges of the United States District Court for the Northern District of Illinois, sitting as a Statutory Three-Judge Court, at Chicago, Illinois, on May 15, 1951.

Mr. R. D. Rynder, Mr. William N. Strack, Mr. John P. Staley, appeared on behalf of the Plaintiff;

Mr. John F. Baecher, Special Assistant to the Attorney General, Mr. Otto Kerner, Jr., U. S. Attorney, By: Mr. Maurice C. Handelman, Asst. U. S. Attorney, appeared on behalf of the United States of America;

[fols. 297-299] Mr. Samuel R. Howell, Assistant Chief Counsel, appeared on behalf of the Interstate Commerce Commission;

Mr. Nuel D. Belnap, Mr. Adolph J. Radosta, Jr., appeared on behalf of the Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, Intervenors;

Mr. Bryce L. Hamilton, appeared on behalf of the Union Stock Yards and Transit Company, Intervenor;

Mr. Douglas F. Smith, appeared on behalf of The Atchison, Topeka and Santa Fe Railway Company, et al., Intervenors;

Mr. Lee J. Quasey, appeared on behalf of The National Live Stock Producers Association and Chicago Producers Association, Intervenors.

[fol. 300] Argument on Behalf of Plaintiff

By Mr. Rynder:

This is a suit to set aside the decision and order of the Interstate Commerce Commission, in its Docket 29809, Swift & Company v. Atchison.

In this box here is a complete record of the proceedings before the Commission, including the exhibits; and at some

convenient time I will be glad if they could be marked Exhibit A. That record is certified as correct by the Secretary of the Commission.

Judge Duffy: Well, you understand we are not here on a trial de novo in any way. We have to take the record as it comes up and consider it: So you don't have to offer it in evidence.

Mr. Rynder: I have understood in these Three-Judge cases it is always the practice to offer the complete record before the Commission.

Judge Duffy: If that is what you mean by that, I understand that.

Mr. Rynder: Not for trial de novo, but so the Court may refer to it if necessary.

[fols. 301-432] Judge Duffy: Very well.

Mr. Baecher: That is the manner in which it is made up. I would like to say, we have not examined these documents, but I assume it is all the record before the Commission, and we so stipulate, subject to check. If we find anything missing, we will call it to the Court's attention.

Judge Duffy: All right, proceed.

[fol. 433] In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—May 28, 1951

The court finds:

1. Swift and Company, the plaintiff herein, operates a large meat packing plant in Chicago, Illinois, located adjacent to the Union Stock Yards, and is served by the rails of the Chicago Junction Railway. The defendants are common carriers by railroad engaged in the transportation of livestock to Chicago. The Union Stock Yard and Transit Company of Chicago, The Chicago Livestock Exchange, the Chicago Traders Livestock Exchange, the National Livestock Producers Association, the Chicago Producers Commission Association, and the United States Department of Agriculture were permitted to intervene as intervening defendants.

2. The complaint as amended was filed with the Interstate Commerce Commission on July 29, 1947, and was docketed by said commission as No. 29809, Swift and Company v. Atchison, Topeka and Santa Fe Railway Company, et al.

3. The complaint alleged that the rates, charges and practices in connection with the delivery of direct shipments [fol. 434] of livestock, in carloads, transported from points in States other than Illinois, for delivery to plaintiff's plant in Chicago, Illinois, were and are unreasonable, unduly prejudicial to livestock as a commodity, and unduly prejudicial to plaintiff, and preferential to its competitors at points in Illinois, Iowa, Nebraska, Missouri, Kansas, Minnesota, Wisconsin, and Indiana.

4. In the complaint the commission was asked to prescribe reasonable rates, charges, rules, regulations, or practices including joint through rates between the line-haul defendants and the Chicago Junction Railway and the Chicago River & Indiana Railroad Company, under which the carrier-defendants would be required to afford delivery of plaintiff's direct carload shipments of livestock upon the industrial sidetrack serving plaintiff's plant in the stock yards area in Chicago, and under which said rates and charges would not exceed the line-haul rates on livestock to Chicago.

5. Answers to the complaint were filed by the carrier defendants; numerous parties representing the Union Stock Yards and producers, buyers and sellers of livestock intervened in opposition to the complaint; the United States Department of Agriculture also intervened as an interested party under its administration of the Packers and Stock Yards Act, 1921, 42 Stat. L. 159. Full hearings were held before an Examiner of the commission, briefs were filed, and the Examiner's proposed report was issued. Exceptions and replies to exceptions were filed, and the proceeding was orally argued before the entire commission. On July 6, 1949, the commission issued its report, 274 I. C. C. 557, a copy of which was annexed to and made a part of the complaint herein as Exhibit B.

6. All of the shipments involved in this case are "direct" carload shipments of livestock consigned to plaintiff for processing at its Chicago plant. "Direct" shipments of [fol. 435] livestock are those purchased by a meat packer in

producing areas and shipped to his plant for processing and distribution. The term "direct" is used in railroad and stock yard terminology to distinguish this class of livestock from livestock consigned by producers or others to commission men at a public livestock market for sale upon such market.

7. This method of sale by producers direct to meat packers has increased in recent years until, at the time of the hearing before the commission, approximately 64 percent of the hogs, 25 percent of the cattle, 40 percent of the calves, and 39 percent of the sheep and lambs marketed to meat packing plants having federal inspection are shown by reports to the Department of Agriculture to have been sold direct by producers to such meat packing plants.

8. The shipments of directs here involved to plaintiff's Chicago meat packing plant averaged 6,489 carloads of livestock per annum during the five years immediately preceding the hearing before the commission. These directs are now shipped to certain unloading pens owned by plaintiff, at 2320 South Halsted Street, Chicago, on a sidetrack connected with the rails of the Chicago, Burlington & Quincy Railroad Company. Deliveries of livestock to this sidetrack are made at the flat Chicago rates. From said location, such livestock are moved by plaintiff by motor vehicle through city streets a distance of two and one-half or three miles. Plaintiff had to expend about $50,000 per annum, as of the time of the hearing, for maintenance and operation of motor vehicles used exclusively to transport such livestock from the unloading pens at 2320 South Halsted Street to its plant in the stock yard area.

9. Among other things, the commission found:

> "We find (1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful [fol. 436] for the transportation of livestock for delivery on the private sidetracks to be constructed by complainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference and (2) that establishment of joint rates for

the transportation of this traffic is not necessary or desirable in the public interest."

10. The commission further found:

"The issue presented is whether or not complainant is entitled to have direct shipments of livestock delivered by the Junction without a charge in addition to the line-haul rates on a private siding at a plant which it proposed to construct in the stock yard area in Chicago."

11. The commission further found:

"In the determination of the issues raised in this proceeding, it is necessary to consider the track layout of the Junction, and the present operations thereover in the handling of so-called dead freight, which term includes perishable and all other freight other than livestock; the method by which livestock has for many years been handled by the line-haul carriers to the Union Stock Yards; the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock, as sought by complainant; and also, in order to avoid undue preference and prejudice, if it were required to make similar deliveries to complainant's competitors.

"All facts relating to the existing custom and practice of making deliveries of livestock and also facts and circumstances leading up to that custom and practice, as well as the effect of the proposed practice on the interests of the carriers, the public, and other shippers, are relevant."

12. The commission further found that the switching charge of the Junction for switching livestock from junctions with connecting lines to plaintiff's plant and other points on the Junction rails, at the time of the hearing, was 4.8 cents per 100 pounds or $28.80 based on the minimum of 60,000 pounds. That carrier, however, has never, except in in an emergency handled ordinary livestock in switching service. That traffic is at present, and for many years past, has been handled at Chicago entirely by the line-haul carriers.

13. In its report the commission stated that the Chicago switching district is approximately 40 miles in length and [fol. 437] from 7 to 15 miles wide, being served by 35 railroads. The report also states that the two lines referred to as the Junction are exclusively switching lines and together operate 224.35 miles of track within the Chicago switching district, connecting with 27 railroads, that the majority of the 499 industries with private sidings located in the stock yard district are served solely by the Junction. The two switching lines referred to as the Junction also maintain 11 team tracks and 3 freight stations and together serve 653 industries with 823 sidetracks.

14. The commission further found that the Ashland Avenue Yards of the Junction handled an average of 726,144 loaded and empty cars per annum during the years 1945, 1946, and 1947, that those yards are located in a densely developed industrial part of the City of Chicago, and that there is no land available for the expansion of those yards or the building of additional facilities nearby for the interchange and classification of traffic.

15. The commission further found that approximately 63 percent of the trains of the trunk line carriers going to the Union Stock Yards carry livestock exclusively, that these trains move over eastbound track 1103 directly to the unloading chutes of the Union Stock Yards, that the unloading consumes only a few minutes per car, and that the empties are then moved directly back to the line-haul carriers' home yards over westbound tracks 1102 or 1104. Carriers, such as the Rock Island, which approach the Union Stock Yards from the east, haul their livestock directly to those yards without passing through the Ashland Avenue Yards.

16. The Commission further found that since the line-haul carriers must use the same eastbound track into the Union Stock Yards, any delay to a train on that track results in "piling up" trains of other lines seeking ingress to the Union Stock Yards. Frequently as many as four trains must wait to enter this track as a result of its being blocked [fol. 438] at the east end. Delays are necessarily experienced also because of "set-outs" made by consolidated trains, consisting of livestock and dead freight and these

delays would be multiplied under the delivery practice proposed by plaintiff. In a consolidated train the dead freight is on the head and behind the engine. The cars of livestock are cut off and left standing at the eastern end of the eastbound running track while the line-haul carriers' engine sets dead freight on one of the nine receiving tracks in the south yard. This operation blocks the running track until the engine returns and hauls livestock into the Union Stock Yards.

17. The commission further found:

> "Under the Federal law, livestock may be confined in cars for not more than 28 hours without unloading for watering and feeding unless the shipper requests in writing that the time be extended to 36 hours. In practically all cases, stock arriving at Chicago has only a limited time within which it must be unloaded from the cars in order to avoid violation of the 28-hour law. The outer yards of the line-haul carriers, from which runs are made to the Union Stock Yards, contain very limited feeding, watering and rest facilities. Many stock runs are made with but one or two cars per train. Under the present practice of handling directly to the unloading chutes in the Union Stock Yards, it is unnecessary to unload the stock for water, feed, and rest at some intermediate location on the Junction. In fact, facilities for that purpose do not exist on that line."

18. The commission further found that the measure of transportation services rendered shipments of live animals is substantially greater than that accorded dead freight. Livestock cannot be switched in the same manner as other freight. In the ordinary and usual course of classifying dead freight, by the Junction, the engine pushes a string of cars along a track leading to the classification tracks. Uncoupled cars are "kicked" or given impetus to roll freely through a switching lead onto the proper classification [fol. 439] track. Manifestly, if livestock were so handled it would result in injury to the animals by being thrown against the ends or sides of cars or knocked down. Cars of livestock must necessarily come to rest without rough shocks or jolts.

19. The commission further found:

> "Under the present practice, followed since the inauguration of services to the Union Stock Yards in the interest of expeditious centralized delivery, the yards of the Junction are not burdened with livestock cars either loaded or empty. It clearly appears that any attempt by the Junction to make deliveries of livestock generally to packers or to transport an amount of livestock substantially greater than complainant's present needs, would result in serious disruption of operations and services and serious delays in the delivery of livestock. * * * There can be longer trains and greater movement of livestock by the line-haul carriers to the stockyards, but the conclusion is unwarranted that a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the the large movement of livestock to the stockyards area and the return movement of the empty cars, were performed by the Junction."

20. The commission further found that the present method of delivering livestock in Chicago is reasonable and lawful and the only practical method of delivering livestock in the stock yards area.

21. The commission further found that numerous difficulties would confront carrier-defendants if required to make delivery of livestock at plaintiff's plant, the basic difficulty being that such method of delivery is not adapted to carrier-defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for the performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stock yards district has been for the line-haul carriers using junction tracks, to carry all shipments of livestock to the stock yards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's [fol. 440] main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations

and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject carrier-defendant's operations to interference and delays. This method of terminal operation, including the planning and building of rail and stock terminal facilities, have resulted, in large part, from the action of the Chicago packers, including plaintiff.

22. The commission further found that although "cars of livestock consigned to plaintiff could be handled in consolidated trains by grouping such cars at the head of the train with the cars of dead freight intended for setout in the south yard, nevertheless, because of difficulties peculiar to livestock traffic, such handling would, it appears, affect adversely the line-haul carriers' operations in carrying livestock to the stockyards."

23. The commission, in its report, stated that the need for such difference in service as regards plaintiff's livestock and the effect thereof would extend to the service in the south yard and beyond, that taking into account periods of peak movements and maximum use, the south yards are used to capacity with no space for construction of additional tracks and that any additional burden would adversely affect all other interests served by the Junction.

24. The commission also found that using the Junction's classification tracks for livestock would result in cars of livestock being blocked in between cars of dead freight and that such cars of livestock would have to be "dug out" for a special run to plaintiff's plant. The commission's report further states:

> [fol. 441] "Indeed, it appears that in some instances, immediately upon arrival of a consolidated train including cars of livestock for complainant, the Junction might have to make a special run to deliver the cars at the latter's plant. As above mentioned in practically all cases, livestock arriving at Chicago has only a limited time left before it must be unloaded to avoid violation of the law governing watering and feeding; the Junction has no facilities for watering or feeding anywhere on its lines and such facilities of the kind as

> are maintained by the line-haul carriers are very limited. While these conditions—all necessitating promptly handling of the traffic—are suited to the practice, long followed, of making deliveries of all shipments of livestock at the stockyards, they are not, it is evident, at all suited to the plant delivery service sought by complainant, in the performance whereof the cars of livestock would have to be switched and otherwise intermingled with cars of dead freight which latter, it appears, may, in the case of perishable freight, require nearly a full day for movement through the yards to points of delivery, and in the case of other dead freight, nearly 32 hours."

25. The commission further found that even if the factor of limited time within which to unload in order to observe the law were rendered unimportant or eliminated, the cars of livestock for delivery at plaintiff's proposed plant would, if handled in regular course and not by special runs, have to be switched, classified, set out, and otherwise handled together with cars of dead freight. Because cars of livestock and any cars of dead freight handled along with them cannot be switched in the usual expeditious manner, there would result numerous interferences and delays. Trains of livestock moving over track 1103 to the stock yards would be delayed; there would be interferences and delays in the south yard and from that yard to and through the base yards. There would be the additional delay involved in controlling the cars in their movement over the descending grade to the proposed plant. The commission's report states:

> "Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden [fol. 443] defendants' operations. Moreover, although it is shown that complainant's direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipments exceeded 18 cars. Also it appears that the number of complainant's direct shipments of livestock in proportion to the num-

b. bought at the stockyards has been steadily increasing, and the testimony of comp-ainant's witnesses affords ground for the belief that that condition will continue."

26. The commission also found that in the event plaintiff's demands were granted, other packers would be entitled to the same delivery service at the same rates if they provided the necessary facilities, and that such other packers would be under great competitive compulsion to provide such facilities. The commission's report states:

"Nevertheless, it is our best judgment, and we, therefore, so find and conclude, that, if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like delivery service in an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction's lines."

27. The commission further found that interference with the movement of livestock to the stock yards is a serious concern not only of the carrier-defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is adequate for their needs. The commission's report states:

"We may, however, disapprove the inauguration of a continuing practice of delivering livestock directly to packer in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally. The proposed complete exemption of livestock from transportation by the Junction under any circumstances is not justified. There is no warrant, however, for a conclusion that the establishment of joint rates

as desired by complainant is necessary or desirable in the public interest."

28. The commission also found:

"The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those con- [fol. 443] nected with the delivery here sought. There, the unloading chutes are on the rails of a line-haul carrier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington. The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought."

29. The commission also found that the line-haul rates on livestock to Chicago apply only to deliveries served by the line-haul carriers and not to deliveries of livestock by the Junction. The commission's report states:

"The line-haul rates on livestock to Chicago are Commission-prescribed rates. In Chicago Livestock Exch. v. Atchison, T. & S. F. Ry. Co., 219 I. C. C. 531, 545, 546, we said that the 'line-haul carriers operate over the tracks of the Chicago Junction to the Union Stock Yards and make delivery there thereby making these yards their own terminals.' We pointed out that in prescribing the rates on livestock to Chicago, among other markets, there was specifically taken into consideration as an element 'the rendition of terminal service in connection with the transportation of livestock,' and there was included what was considered 'sufficient to cover such terminal services under a normal operation as well as to cover the unloading and loading of livestock at public stockyards,' but we did not there consider what the services would be in connection with deliveries of livestock by the Junction on

private industrial tracks. That carrier did not then and does not now perform such services."

30. With reference to its prior reports in Baltimore Butchers Abattoir & Live Stock Co. v. Philadelphia B. & W. R. Co., 20 I.C.C. 124, Swift & Co. v. Baltimore & Ohio R. Co., 266 I.C.C. 55, and Neuhoff Packing Co. v. L. & N. R. Co., 268 I.C.C. 271, the commission found that "Deliveries to private industrial tracks at those points (Baltimore, Maryland, Cleveland, Ohio, and Nashville, Tennessee) did not require substantial modification of terminal operations and interferences with established operations in a manner required at Chicago for such deliveries, and did not involve, as at Chicago, serious disruption of operations. There is no showing of a similarity in any respect of the [fol. 444] services required and circumstances affecting services."

31. The commission further found, with respect to the points alleged to be preferred in plaintiff's complaint before the commission:

> "There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred."

32. The commission further found, with respect to a contractual relationship asserted to exist between the Union Stock Yards and the Chicago Junction, that the lease of the Chicago Junction to the Chicago River & Indiana, a subsidiary of the New York Central, in 1922, completely divested the Union Stock Yards of operation and control of the terminal railroad. The commission's report states:

> "The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the Chicago Junction case, supra. Those conditions were particularly intended to insure that the Chicago Junction and the Chicago River & Indiana should be operated as neutral terminal carriers, without special advantage favoring the New York Central but the conditions were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards."

33. The commission further found that "the evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modifications of services that would be required for the desired deliveries and the effect on terminal operations generally of performing such delivery service to the proposed plant."

34. The commission further found:

> "The published switching charge is appropriate for any switching that may occur of cars of livestock to complainant's proposed plant. It does not appear that [fols. 445-446] the maintenance of a switching charge for livestock will have any detrimental effect upon terminal operations."

35. On the same date as that on which its report was issued, the commission issued an order dismissing the complaint. And, as

Conclusions of Law

1. The commission's order was made after full hearing upon adequate findings supported by substantial evidence and in accordance with the applicable law.

2. The commission had evidence before it sufficient to sustain its findings.

3. The findings made by the commission are adequate to support its order dismissing the complaint.

4. The order of the commission was within its statutory authority, was not arbitrary or capricious or based upon mistake of law or misapplication of proper statutory standards.

5. Plaintiff is not entitled to any of the relief prayed for in its complaint.

Dated at Chicago, Illinois, this 28th day of May, A.D. 1951.

F. Ryan Duffy, U. S. Circuit Judge; Philip L. Sullivan, U. S. District Judge; M. L. Igoe, U. S. District Judge.

[fols. 447-448] IN UNITED STATES DISTRICT COURT

Civil Action File No. 50-C-1017

SWIFT & COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

ORDER—June 21, 1951

The above-entitled cause having come on for hearing before this Court on May 15, 1951, and the Court having heard all of the parties hereto and having thereafter and on May 28, 1951 entered its findings of fact and conclusions of law,

Orders, adjudges and decrees that the complaint herein should be and the same is hereby dismissed.

Enter: F. Ryan Duffy, United States Circuit Judge,
Philip L. Sullivan, United States District Judge,
M. L. Igoe, United States District Judge.

Dated at Chicago, Illinois, this 21 day of June, 1951.

[fols. 449-450] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed July 26, 1951

Swift & Company, plaintiff in the above-entitled cause, feeling itself aggrieved by the final order and decree of the United States District Court for the Northern District of Illinois, Eastern Division, entered in said court on June 21, 1951, prays an appeal from said order and decree to the Supreme Court of the United States.

The particulars wherein said plaintiff considers the order and decree erroneous are set forth in the assignment of errors accompanying this petition, to which reference is hereby made.

Said plaintiff prays that a transcript of the record, proceedings, and papers on which said order and decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated July 26, 1951.

Wm. N. Strack, John P. Staley, Ross Dean Rynder, 4115 S. Packers Avenue, Chicago 9, Illinois, Attorney for Plaintiff.

Frederick Bernays Wiener, 1009-1015 Tower Building, Washington 5, D. C., Of Counsel.

[fols. 451-452] In United States District Court

[Title omitted]

Order Allowing Appeal—July 26, 1951

In the above-entitled cause, Swift & Company, plaintiff therein, having made and filed its petition praying for an appeal to the Supreme Court of the United States from the final order and decree of this court entered June 21, 1951, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided:

It is ordered and decreed, that the appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of Five Hundred Dollars ($500.00), with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

Dated July 26, 1951.

Igoe, United States District Judge.

[fols. 453-454] Citation in usual form omitted in printing.

[fol. 455] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—July 26, 1951

Now comes Swift & Company, plaintiff in the above-entitled cause, and in connection with its appeal herein, files the following assignment of errors upon which it will rely in its prosecution of said appeal to the Supreme Court of the United States from the final order and decree of the District Court dated June 21, 1951.

The District Court erred:

1. In denying the plaintiff relief and in dismissing its complaint.

2. In holding that the Commission's order was in accord with the applicable law.

3. In holding that the Commission's order was within its statutory authority.

4. In holding that the Commission's order was neither arbitrary nor capricious nor based upon mistake of law nor on misapplication of proper statutory standards.

5. In holding that the Commission might lawfully deny service at the line-haul rate to the plaintiff at its own sidetrack in respect of livestock only, on the ground of asserted interference with and disruption of terminal transportation operations, and still permit the identical service for a high additional switching fee.

6. In holding that the Commission might lawfully sanction a high additional fee for switching service to the plaintiff's sidetrack in respect of livestock only, which service it asserts would lead to interference with and disruption of [fol. 456] terminal transportation operations, where the Commission refrains from prohibiting such switching service altogether, where it cancels as "not just and reasonable" a proposal by a carrier to exempt livestock from transportation altogether, and where it permits the identical service by the same carrier without such additional switching fee in respect of livestock consigned to the defendant Union Stock Yards, a few city blocks distant from the plaintiff's sidetrack.

7. In holding that the Commission might lawfully enforce a covenant between a railroad and the Union Stock Yards,

the effect of which, in terms and as applied in this case, was to require the railroad to deny normal transportation service to the plaintiff at its sidetrack of livestock only, except at a high additional fee, in consequence of which the plaintiff would become obliged either to accept and pay for non-transportation service from the Union Stock Yards which it neither desired nor requested but without which it could not obtain the livestock which it owned, or else become obliged to incur substantial additional expense to obtain its livestock by truck.

8. In holding that the Commission properly treated the Chicago Junction Railway as an independent carrier when that carrier had been leased by The New York Central Railway, in the face of Section 1(3)(a) of the Interstate Commerce Act which defines a "railroad" as "all the road in use by any common carrier operating a railroad, whether operated under a contract, agreement, or lease."

9. In holding that the Commission could lawfully rule that inadequate motive power on the part of the Chicago Junction Railway would justify discrimination against the plaintiff in respect of livestock on the ground of asserted congestion in terminal operations, where the Junction's motive power had been decreased by 45 per cent in the twenty-five preceding years.

10. In holding that the Commission did not err in failing to require the Chicago Junction Railway and its lessor, The New York Central Railway Company, to supply adequate motive power to cope with asserted congestion in the former's yards, as required by Sections 1(10) and 1(11) of the Interstate Commerce Act.

11. In holding that the Commission could lawfully rule [fol. 457] that congestion in the Chicago terminal area justified a factual discrimination against the plaintiff at its own sidetrack in respect of livestock, where such discrimination would otherwise be prohibited by Sections 1(4), 1(5), 1(9), 2, 3(1), and 15(5) of the Interstate Commerce Act.

12. In holding that the Commission's ruling that there was no violation of Section 1(4) of the Interstate Commerce Act was correct as a matter of law.

13. In holding that the Commission's ruling that there was no violation of Section 1(5) of the Interstate Commerce Act was correct as a matter of law.

14. In holding that the Commission's ruling that there was no violation of Section 1(9) of the Interstate Commerce Act was correct as a matter of law.

15. In holding that the Commission's ruling that there was no violation of Section 2 of the Interstate Commerce Act was correct as a matter of law.

16. In holding that the Commission's ruling that there was no violation of Section 3(1) of the Interstate Commerce Act was correct as a matter of law.

17. In holding that the Commission's ruling that there was no violation of Section 15(5) of the Interstate Commerce Act was correct as a matter of law.

18. In holding that the Commission could lawfully rule that an extra switching charge for delivering livestock to the plaintiff at its own sidetrack could be justified on the ground of the increased congestion of terminal facilities which such deliveries would involve, where such additional switching charge is not demanded for any other commodities delivered to the plaintiff at the same sidetrack, nor for any commodities delivered to other sidetracks in the same terminal area, nor for livestock delivered to the Union Stock Yards, a few city blocks distant from the plaintiff's sidetrack.

19. In holding that the Commission could lawfully justify the imposition of an extra switching charge for delivering livestock at the plaintiff's sidetrack on the ground that, if [fol. 458] such deliveries were permitted at the line-haul rates for which other commodities are delivered at the same sidetrack, other shippers of livestock might thereafter make demand for similar service to their sidetracks.

20. In holding that the Commission could lawfully deny service to the plaintiff on the ground that other shippers might thereafter request the same service to such an extent that disruptive congestion might subsequently result.

21. In holding that the Commission did not err in acting on the assumption that the Chicago Junction Railway's settlement of a labor controversy with its employees could justify or tend to justify a discriminatory charge and practice in connection with the delivery of livestock to plaintiff's sidetrack.

22. In holding that the Commission did not err in ruling

that the trackage arrangements made by the line-haul railroad defendants with the Chicago Junction Railway justified a discriminatory charge and practice in connection with the delivery of livestock to plaintiff's sidetrack.

23. In holding that the Commission did not err in ruling that the service of placing loaded cars and of removing empty cars justified a discriminatory charge and practice in connection with the delivery of livestock to plaintiff's sidetrack.

24. In holding that the Commission did not err in ruling that the 28-hour law (Act of June 29, 1906, c. 3594, 34 Stat. 607; 45 U. S. C. 71-74) justified a discriminatory charge and practice in connection with the delivery of livestock to plaintiff's sidetrack.

25. In holding that the Commission did not err in ruling that, because in some instances "air" must be used in placing livestock cars, and because such cars may not be "kicked" by switch engines, a discriminatory charge and practice in connection with the delivery of livestock to plaintiff's sidetrack could be justified.

26. In holding that the Commission did not err in ruling that "expeditious centralized delivery" to the Union Stock Yards justified a discriminatory charge and practice in connection with the delivery of livestock to plaintiff's sidetrack.

[fol. 459] 27. In holding that the Commission did not err in assuming that the interest in "expeditious centralized delivery" to the Union Stock Yards outweighed the specific anti-discrimination provisions of the Interstate Commerce Act governing shipments to sidetracks, particularly Sections 1(4), 1(5), 1(9), 2, 3(1), and 15(5) thereof.

28. In holding that the Commission did not err in preferring delivery of livestock to the Union Stock Yards over delivery of livestock to plaintiff's sidetrack.

29. In holding that the Commission did not err in giving controlling weight to shipping practices at the Union Stock Yards which originated at a time when the plaintiff and other packers were financially interested in those Yards, and before the plaintiff and the other packers were required by proceedings under the antitrust laws to divest themselves of all stockyards holdings.

30. In holding that the Commission did not err in giving weight to a finding that there is no land available for the expansion of the Chicago Junction Railway's yards, in the face of the Commission's report justifying the leasing of the Junction to the New York Central in 1922 on the ground that thereby expansion at outlying points would permit the Junction to expand further its inner team-track facilities (71 I. C. C. 631, 632, 634-635).

31. In holding that the Commission did not err in ruling that the extra switching fee for livestock delivered to the plaintiff's sidetrack was not unreasonable, in the absence of any findings of fact relative to the reasonableness of such charge by comparison with other commodities delivered to the same sidetrack, or by comparison with livestock delivered to the Union Stock Yards, a few city blocks beyond said sidetrack.

32. In holding that the Commission's order was adequately supported by its findings.

33. In holding that the Commission's order was supported by substantial evidence.

34. In holding that, on the substantial evidence and the whole record, the Commission did not err in finding that facilities for feeding and watering livestock do not exist on [fol. 460] the lines of the Chicago Junction Railway.

35. In holding that, on the substantial evidence and the whole record, the Commission did not err in finding that disruptive congestion in terminal operations would follow the granting of the prayer of plaintiff's complaint before the Commission.

36. In holding that, on the substantial evidence and the whole record, the Commission did not err in failing to find that, since the livestock delivered by the defendant railroads to the Chicago stockyards area had decreased from 303,228 carloads in 1923 to 65,139 carloads in 1946, the 6,489 carloads of direct shipments of livestock received annually by the plaintiff could not possibly result in disruptive congestion in terminal operations in that area.

37. In holding that, on the substantial evidence and the whole record, the Commission did not err in failing to find that, since the livestock delivered by the defendant railroads to the Chicago stockyards area had decreased from 303,228

carloads in 1923 to 65,139 carloads in 1946, the 36,000 carloads of direct shipments of livestock received annually by all other packers in that area other than the plaintiff could not possibly result in disruptive congestion in terminal operations in that area.

38. In holding that, on the substantial evidence and the whole record, the Commission did not err in failing to find that the line-haul rates for livestock to Chicago were designed to cover the cost of normal terminal services, including unloading charges.

39. In holding that, on the substantial evidence and the whole record, the Commission did not err in failing to find that commodities other than livestock are transported at lower line-haul rates than those approved for livestock.

40. In holding that, on the substantial evidence and the whole record, the Commission did not err in failing to find that many commodities other than livestock require as great a degree of care in transportation and delivery as does livestock.

41. In holding that, on the undisputed evidence of record, viz., Exhibit 58, the Commission did not err in failing to [fols. 461-495] make findings as to the 45 per cent decrease in the motive power of the Chicago Junction Railway during the period that it had been leased by the New York Central.

42. In holding that, on the substantial evidence and the whole record, the Commission did not err in finding that the line-haul rates on livestock to Chicago apply only to deliveries served by the line-haul carriers.

43. In holding that, on the substantial evidence and the whole record, the Commission did not err in finding that the Chicago Junction Railway participates only in certain joint rates.

44. In holding that, on the substantial evidence and the whole record, the Commission did not err in finding that "It does not appear that there are any joint rates on livestock from points in western trunk-line or southwestern territories in which the Junction is shown as a participating carrier."

45. In entering its final order of June 21, 1951.

Wherefore, the plaintiff, Swift & Company, prays that the final order and decree of the District Court be reversed,

and for such other relief as the Court may deem fit and proper.

Dated: July 26, 1951.

Frederick Bernays Wiener, 1009-1015 Tower Building, Washington 5, D. C., Wm. N. Strack, John P. Staley, Ross Dean Rynder, 4115 South Packers Avenue, Chicago 9, Illinois, Attorneys for Swift & Company, Plaintiff-Appellant.

[fols. 496-498] Bond on appeal for $500.00 approved and filed July 26, 1951, omitted in printing.

[fols. 499-500] In United States District Court

[Title omitted]

Order as to Exhibits—July 26, 1951

In accordance with the provisions of the praecipe herein, and for good cause shown,

It Is Hereby Ordered, that the certified copy of Interstate Commerce Commission Docket No. 29809 received in evidence by the court at the hearing in this cause, may be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of record on the appeal herein.

Dated: July 26, 1951.

Igoe, United States District Judge.

[fols. 501-504] Statement Required by Paragraph 2 Rule 12 of the Rules of the Supreme Court of the United States—(Omitted in Printing)

[fol. 505] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed August 1, 1951

To the Clerk of the Above-named Court:

You will please prepare a transcript of the record in the above-entitled cause, to be transmitted to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint with Exhibits A-C, inclusive.
2. Answer of the United States of America.
3. Answer of the Interstate Commerce Commission.
4. Order granting The Atchison, Topeka and Santa Fe Railway Company, et al., leave to intervene.
5. Order granting The Union Stock Yard and Transit Company of Chicago leave to intervene.
6. Order granting The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange leave to intervene.
7. Order granting National Live Stock Producers Association and Chicago Producers Commission Association leave to intervene.
8. Answer of The Atchison, Topeka and Santa Fe Railway Company, et al.
9. Answer of The Union Stock Yard and Transit Company of Chicago.

[fol. 506] 10. Answer of The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange.

11. Answer of National Live Stock Producers Association and Chicago Producers Commission Association.
12. Order assembling three-judge court.
13. Transcript of Proceedings, May 15, 1951.
14. Exhibit containing the certified record of all proceedings before the Interstate Commerce Commission in Docket No. 29809, entitled *Swift & Co.* v. *Atchison, T. & S. F. Ry. Co., et al.*
15. Suggested Findings of Fact and Conclusions of Law submitted by plaintiff.
16. Suggested Findings of Fact and Conclusions of Law submitted by railroad defendants.

17. Findings of Fact and Conclusions of law.
18. Final order dismissing complaint.
19. Petition for Appeal.
20. Order Allowing Appeal.
21. Citation.
22. Assignment of Errors.
23. Statement as to Jurisdiction.
24. Statement directing attention to paragraph 3 of Rule 12 of the Rules of the Supreme Court.
25. Order as to exhibits.
26. This praecipe.

Dated July 26, 1951.

Wm. N. Strack, John P. Staley, Ross Dean Rynder, 4115 S. Packers Avenue, Chicago 9, Illinois, Attorneys for Plaintiff.

Frederick Bernays Wiener, 1009-1015 Tower Building, Washington 5, D. C., of Counsel.

[fols. 507-508] Acknowledgment of Service—(Omitted in Printing)

[fol. 509] In United States District Court

[Title omitted]

Designation of Additional Portions of Record of the Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange—Filed August 1, 1951

To the Clerk of the Above-named Court:

The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, intervening defendants, hereby designate the following additional portions of the record to be included in the transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme

Court of the United States on the appeal taken by plaintiff, Swift & Company:

1. Amendment to answer of The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, intervening defendants.
2. Order giving leave to file said amendment to said answer.
3. Notice of taking of deposition of Guy A. Gladson upon oral examination and acknowledgement of service thereof.
4. Notice of filing of deposition of Guy A. Gladson and proof of service thereof.
5. Deposition of Guy A. Gladson and certificate of Notary Public, June R. Linney, with regard to said deposition.
6. Transcript of proceedings had on February 27, 1951.

Robert N. Burchmore, John S. Burchmore, Nuel D. Belnap, 2106 Field Building, Chicago 3, Ill., Attorneys for The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, Intervening Defendants.

[fols. 510-547] Proof of Service—(Omitted in Printing)

[fol. 548] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 549] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 282

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed September 10, 1951

a. Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court the points contained in its Assignment of Errors heretofore filed.

b. Appellant designates the entire record herein for printing by the Clerk of this Court except that the following may be omitted:

I. *From Appellant's Praecipe for Transcript of Record:*

1. Omit all of the Transcript of Proceedings, May 15, 1951, except pages 1-2, inclusive, and from line 4 on page 5 through line 8 on page 6, both inclusive.

2. Omit the following items, as indicated, from the exhibit containing the certified record of all proceeding before the Interstate Commerce Commission in Docket No. 29809, entitled *Swift & Co.* v. *Atchison, T. & S. F. Ry. Co., et al.:*

A. From the portion certified by the Secretary of the Interstate Commerce Commission which is marked "Exh. A," print only

[fol. 550] Report Proposed by Examiner S. R. Diamondson; and omit all the remaining portions of said "Exh. A."

B. From the portion certified by the Secretary of the Interstate Commerce Commission which is marked "Exh. B," and which constitutes Exhibit 42 before the Examiner, print only

(1) Ex. 62; and
(2) Exs. 74-78, inclusive;

and omit the remaining portions of said "Exh. B."

C. From the portion certified by the Secretary of the Interstate Commerce Commission which is marked "Exh. C," and which constitutes the transcript of testimony before the Examiner, omit the following portions (all references to matter to be omitted are inclusive):

Page 4;
Page 13, line 11, through page 22, line 12;
Page 28, lines 13-15;
Page 34, lines 7-9;
Page 36, lines 13-14;
Page 48, lines 6-12;
Page 106, lines 3-5;
Page 168;
Page 343;
Page 344, line 3, through page 345, line 8;
Page 389, lines 3-17;

Page 486 and 486-A;
Page 487, line 9, through end of page 490;
Page 530, lines 19-23;
Page 545, last 6 lines on page;
Page 597, lines 3-5;
Page 609, line 9 through end of page;
Page 671;
Page 672, last 3 lines on page;
[fol. 551] Page 673, line 1, through page 677, line 10;
Page 703, lines 4-23;
Page 847;
Page 916;
Page 982, line 13, through page 1007, line 5;
Page 1007, line 13, through page 1009, line 2;
Page 1009, line 7, through page 1010, line 17;
Page 1062, lines 20-22;
Page 1075, last 4 lines on page;
Page 1076, line 1, through page 1078, line 17;
Page 1110, lines 3-8;
Page 1112;
Page 1205, last line, through page 1206, line 5;
Page 1206, line 9 through end of page.

D. From the portion certified by the Secretary of the Interstate Commerce Commission which is marked "Exh. D," and which consists of the remaining Exhibits before the Examiner, omit the following:

(1) Omit in their entirety, Exs. 5, 7, 13, 15, 19, 20, 21, 24, 25, 26, 27, 32, 34, 44, 48, 49, 53, 54, 60, and 61.

(2) Omit in part as follows:

(a) In Ex. 11, print only pages 2, 5, and 16-17-19, inclusive, less illustrations, and omit the balance of Ex. 11.

(b) In Ex. 55, print only pp. 1-23, and 139-157, both inclusive, less illustrations, and omit the balance of Ex. 55.

(3) Omit the Citation.

(4) Omit the Statement as to Jurisdiction.

II. *From Designation of Additional Portions of Record of The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange:*

Print only Amendment to answer of The Chicago Live [fol. 552] Stock Exchange and Chicago Traders Live Stock Exchange, intervening defendants; and omit the remaining items named in said designation.

III. All of the items herein designated as not to be printed may be considered a part of the record, although unprinted, for use in oral argument and briefs by all counsel the same as is printed.

Dated: September 10, 1951.

Frederick Bernays Wiener, 1009-1015 Tower Building, Washington 5, D. C.; Wm. N. Strack, John P. Staley, Ross Dean Rynder, 4115 S. Packers Avenue, Chicago 9, Illinois, Counsel for Swift & Company, Appellant.

[fols. 553-554] Certificate of Service (omitted in printing).

[fol. 555] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 282

[Title omitted]

DESIGNATION OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed September 20, 1951

Pursuant to Rule 13, paragraph 9, of the Revised Rules of the Supreme Court of the United States, the railroad appellees, The Union Stock Yard and Transit Company of Chicago, The Chicago Live Stock Exchange, Chicago Traders Live Stock Exchange, National Live Stock Pro-

ducers Association, and Chicago Producers Commission Association, interveners in the District Court and appellees herein, hereby designate for printing the following parts of the record in addition to those parts previously designated by appellant;

I. From appellant's Praecipe for Transcript of Record:

1. Include, as indicated, from the exhibit containing the certified record of all proceedings before the Interstate Commerce Commission in Docket No. 29809, entitled *Swift & Co. v. Atchison, T. & S. F. Ry. Co., et al:*

A. From the portion certified by the Secretary of the Interstate Commerce Commission which is marked [fol. 556] "Exh. B", and which constitutes Exhibit 42 before the Examiner, print all of the said "Exh. B" not previously designated by appellant.

B. From the portion certified by the Secretary of the Interstate Commerce Commission which is marked "Exh. C", and which constitutes the transcript of testimony before the Examiner, print the following portions:

Page 13, line 11, through page 22, line 12, inclusive;
Page 487, line 9, through end of page 490;
Page 672, last 3 lines on page;
Page 673, line 1, through page 677, line 10, inclusive;
Page 982, line 13, through page 1007, line 5, inclusive;
Page 1075, last 4 lines on page;
Page 1076, line 1, through page 1078, line 17.

C. From the portion certified by the Secretary of the Interstate Commerce Commission which is marked "Exh. D", and which consists of the remaining exhibits before the Examiner, print the following:

(1) Exhibits 13, 15, 19, 20, 21, 32, 34, 53 and 54 in their entirety;
(2) Page 16 of Exhibit 11.

In addition to the portions of the record hereinbefore designated, The Chicago Live Stock Exchange and

Chicago Traders Live Stock Exchange designate for printing the following parts of the record:

II. From Designation of Additional Portions of Record of The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, print the following:

A. Notice of the taking of the deposition of Guy A. Gladson upon oral examination and acknowledgment of service thereof.

[fol. 557] B. Notice of the filing of the deposition of Guy A. Gladson, and proof of service thereof.

C. Deposition of Guy A. Gladson and certificate of Notary Public June R. Linney with regard thereto.

D. Transcript of Proceedings, February 27, 1951 (print only the following portions):

(1) Pages 11 through 13, inclusive;

(2) Page 21, line 2, through page 22, line 17, inclusive;

(3) Page 43.

Dated: September 19, 1951.

Kenneth F. Burgess, Douglas F. Smith, Martin M. Lucente, 11 South LaSalle Street, Chicago, Illinois, Counsel for Railroad Appellees; Guy A. Gladson, Bryce L. Hamilton, 38 South Dearborn Street, Chicago, Illinois, Counsel for The Union Stock Yard and Transit Company of Chicago; Robert N. Burchmore, John S. Burchmore, Nuel D. Belnap, [fols. 558-559] 135 South LaSalle Street, Chicago, Illinois, Counsel for Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange; Lee J. Quasey, 139 North Clark Street, Chicago, Illinois, Counsel for National Live Stock Producers Association and Chicago Producers Commission Association.

Certificate of Service (omitted in printing)

[fol. 560] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 282

[Title omitted]

COUNTER-DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED —Filed September 20, 1951

In addition to the portions of the record designated by appellant to be printed in the above cause, appellees designate the following:

1. All of Exhibit No. 42 not previously designated by appellant.

2. The pages of the transcript hereinafter set forth which, among others, are specifically omitted from printing by paragraph I-C of appellant's designation:

Page 13, line 11, through page 22, line 12;
Page 672, last 3 lines;
Page 673, line 1, through page 677, line 10; and
Page 982, line 13, through page 1007, line 5.

3. The following exhibits which, among others, are specifically omitted from printing by paragraph I-D of appel-
[fols. 561-562] lant's designation:
Exhibits Nos. 13, 15, 32, 53 and 54.

Philip B. Perlman, Solicitor General, For United States of America; Daniel W. Knowlton, Chief Counsel, For Interstate Commerce Commission.

September 18, 1951.

[fol. 563] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 282

[Title omitted]

ORDER—October 15, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Minton took no part in the consideration or decision of this question.

LIBRARY
SUPREME COURT, U.S.

LIBRARY
SUPREME COURT, U.S.

Vol. II

TRANSCRIPT OF RECORD

(Pages 229 to 1039)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED AUGUST 27, 1951.

PROBABLE JURISDICTION NOTED OCTOBER 15, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

VOL. II

INDEX

	Original	Print
Proceedings before the Interstate Commerce Commission	1a	229
Report proposed by examiner	1a	229
Transcript of hearing commencing February 24, 1948	1	248
Appearances	1	248
Opening statement by Mr. Smith	14	255
Testimony of G. F. Tally	22	261
H. McCaw	219	389
C. B. Heinemann	269	423
James J. Kinsella	288	436
Eugene Fuller	413	518
James J. Kinsella (resumed)	413	518
J. L. Sorenson	439	536
Statement by Mr. Knudson	487	567
Testimony of John A. Zelinski	493	572
Matthew S. Parkhurst	538	602
John C. Starbuck	548	608
Joseph J. Stein	587	634

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 14, 1951.

—8925

Proceedings before the Interstate Commerce Commission—Continued
Transcript of hearing commencing February 24, 1948—Continued
Testimony of—Continued

	Original	Print
Walter Heide	610	648
E. G. Kiesele	648	674
R. D. Clousing	677	691
H. R. Park	703	708
Theodore Funk	796	769
E. C. McAdams	802	773
Leo R. Miller	822	786
David L. Swanson	848	802
A. C. Ashby	860	810
H. R. Welsh	881	824
David L. Swanson (recalled)	886	828
R. G. Raasch	887	828
Don C. Pollock	917	847
Ralph Seeman	926	853
W. H. Yungelas	941	864
J. A. Daggs	957	874
Ralph Jennings	962	878
Lloyd Lindsey	972	885
C. B. Heinemann (recalled)	1010	908
D. K. Van Ingen	1075	952
Rudolph N. Edman	1094	965
D. K. Van Ingen (resumed)	1113	976
William J. O'Connor	1122	982
Frank E. Knutzen	1154	1005
Garland Russell	1183	1024
A. L. Bruckner	1194	1031
G. F. Tally (recalled)	1196	1033

[fol. 1a] BEFORE INTERSTATE COMMERCE COMMISSION

No. 29809[1]

SWIFT & COMPANY

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

Submitted ..... Decided .....

1. Complainant found to be entitled to delivery of livestock, in carloads, on private sidetracks to be constructed at Chicago, Ill., provided those tracks are adequate to enable respondents to make such delivery at their ordinary operating convenience and without interruption or interference.

2. Switching charges presently applicable to the placement for such delivery found not shown to be unreasonable or otherwise unlawful.

3. Suspended schedules proposing specifically to exempt livestock from the traffic which respondents will transport and to cancel the application on livestock of all switching charges published by respondents, except to and from chutes and sidings at the Union Stock Yards in Chicago, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

Ross D. Rynder and *John P. Staley* for complainant and protestant.

Douglas F. Smith, Leo P. Day, Kenneth F. Burgess, Martin M. Lucente, Richard F. Babcock, R. G. Hawkinson, C. A. Pace, R. G. Raasch, Henry Christianson, F. V. White, H. L. Van Amburgh, J. E. Flansburg, E. W. Larsen, and *H. O. Malm,* for defendants and respondents.

Nuel D. Belnap, Ralph M. Shaw, Guy A. Gladson, Bryce L. Hamilton, Fred H. Hatch, M. W. Gillogly, Leo R. Miller,

[1] This report also embraces Investigation and Suspension Docket No. 5543, Livestock at Chicago—Chicago Junction Railway, which was heard cooperatively with Illinois Commerce Commission Docket No. 35809.

H. R. Park, Lee J. Quasey, J. F. Daniels, B. R. Prather, Paul E. Blanchard, and *James A. Knudson* for interveners.

REPORT PROPOSED BY EXAMINER S. R. DIAMONDSON—Filed September 27, 1948

By complaint filed July 29, 1947, as amended, complainant, a corporation, alleges in substance, that charges on direct shipments of livestock[2], in carloads, from various points in [fol. 1b] States other than Illinois, for delivery to complainant's plant at Chicago, Ill., are unreasonable, unduly prejudicial of livestock as a commodity, and unduly prejudicial to complainant and preferential of its competitors at points in Illinois, Iowa, Nebraska, Missori, Kansas, Minnesota, Wisconsin, and Indiana, in violation of sections 1 and 3 of the Interstate Commerce Act. The Commission is asked to prescribe reasonable "rates, charges, rules, regulations, or practices, including joint through rates between the line-haul defendants and the defendants, the Chicago Junction Railway[3] and the Chicago River and Indiana Railroad Company, under which defendants will afford delivery of said carload shipments of livestock upon the industrial sidetrack serving complainant's plant in the stock yard area in Chicago and under which said rates and charges shall not exceed those assessed by defendants in connection with deliveries of interstate shipments of livestock to the unloading pens of the Union Stock Yard and Transit Company of Chicago and to other points in Chicago at which defendants deliver such shipments of livestock

---

[2] Direct shipments of livestock are defined to mean livestock consigned directly to packers for slaughter, and not offered for sale in the public market.

[3] The Chicago Junction Railway is operated by the Chicago River and Indiana Railroad Company as lessee, in connection with the latter's own terminal switching line. For convenience, these two carriers will sometimes hereinafter be referred to as the Junction. Operation of the combined properies of the two terminal railroads by one operating entity is in conformity with *Chicago Junction Case,* 71 I.C.C. 631.

at the line haul rates to Chicago without charge above such line haul rates."

By schedules filed to become effective December 15, 1947, and later, the Junction proposes to specifically exempt livestock from the traffic which it will transport and to cancel the application on livestock of all switching charges published by it, except to and from chutes and sidings at the Union Stock Yards. The present tariff provides for switching charges on "all carload freight" to or from industries, sidings, team tracks, and districts as shown therein. However, as hereinafter explained, the Junction does not actually handle livestock to the Union Stock Yards or to any other point. Upon protests of complainant, and others, operation of the proposed schedules was suspended until July 14, 1948. The Junction has voluntarily postponed the effective date of the schedules pending decision herein. These two proceedings were heard on a consolidated record. The defendants in the formal complaint case and the respondents in the investigation and suspension case will be referred to collectively as defendants.

Numerous parties representing the Union Stock Yards, producers, buyers, and sellers of livestock intervened in opposition to the complaint. The U. S. Department of Agriculture also intervened as an interested party under its administration of the Packers and Stock Yards Act, 1921, 42 Stat. L. 159.

While the complaint brings in issue the reasonableness of the rates on livestock to complainant's plant at Chicago, the evidence of record clearly discloses that the real issue is whether or not complainant is entitled to have direct [fol. 1c] shipments of livestock delivered, without any charge in addition to the line-haul rates, on a private siding at a plant which it proposes to construct in the stock yard area in Chicago. The proposed site of the contemplated plant and the facilities and tracks to be constructed thereat will be more fully described hereinafter. At present, the line-haul rates generally include the delivery of livestock to the Union Stock Yards. Complainant operates a meat packing plant in Chicago which is served solely by the Junction. Complainant does not have facilities or tracks at that plant for receiving livestock and it is not here seek-

ing to obtain deliveries there. The line-haul rates into Chicago do not include delivery of livestock to that plant, nor do the line-haul carriers have trackage rights to operate over Junction rails to reach complainant's present or proposed plants. The present charge of the Junction for switching livestock from junctions with connecting lines to complainant's plant and other points on its line is 4.8 cents per 100 pounds or $28.80 based on a minimum weight of 60,000 pounds. That carrier, however, has never, except in an emergency, handled ordinary livestock in switching service. That traffic is presently, and for many years past has been, handled entirely by the line-haul carriers, as later more fully explained. A practice that has been followed over a long period of years may ordinarily create a presumption that it is advantageous to all of the parties who participate in it, but it does not estop a shipper or receiver of freight from demanding and obtaining compliance with the provisions of the Interstate Commerce Act.

To gain a clear concept of the issues raised in this proceeding, it is necessary to describe in some detail the track layout of the Junction, so far as here pertinent, and the present operation thereover in the handling of so-called dead freight, which term includes perishable and all other freight other than livestock; the method by which livestock has for many years been handled by the line-haul carriers to the Union Stock Yards; and the physical operation that would be necessary if the Junction were required to make private-track delivery of livestock, as sought by the complainant.

The Chicago switching district is approximately 40 miles in length and from 7 to 15 miles wide. It is served by 35 railroads. The Ashland Avenue yards of the Junction, into and through which an average of 726,144 loaded and empty cars per annum during 1945, 1946, and 1947, were funneled, are in a densely developed industrial part of the city of Chicago. There is no land available for the expansion of those yards or the building of additional facilities nearby for interchange and classification of traffic. The Chicago River & Indiana and the Junction are exclusively switching lines, and together operate 224.35 miles of track within the Chicago switching district and connect with 27 railroads, 22 of which are trunk lines and 5 switching lines.

The majority of the 499 industries with private sidings presently served solely by the Junction are in the stock yard district or vicinity. These two switching lines also maintain 11 team tracks and 3 freight stations and together serve 653 industries with 823 sidetracks.

In addition to a large number of tracks and yards used for interchanging less-carload freight, storing cars, and other purposes, with which we are not directly concerned, the Junction has 3 yards for the receipt and delivery of [fol. 1d] loaded and empty cars from and to connecting lines, known as the Ashland Avenue North Yard, Ashland Avenue South Yard, and the Loomis Street Yard. These yards will hereinafter be called the North Yard, South Yard, and Loomis Yard, respectively. The North and South Yards are contiguous but, for operating purposes, each serves a particular function. They are located approximately 1 mile west of the Union Stock Yards. All inbound dead freight, with exceptions not important here, such as less-carload merchandise, must be delivered on 9 receiving tracks, with a capacity of 420 cars, in the South Yard, and nowhere else, pursuant to a labor agreement between the Junction and its employees, entered into in January, 1946, to avert a threatened strike. Adjoining the 9 receiving tracks on the south are 24 classification tracks with a capacity of 680 cars. There are no tracks in this yard regularly assigned to any connecting line, all inbound freight being assigned by the Junction yardmaster to an available receiving track. More than 1,000 loaded cars per day are received in this yard. After delivery of cars on the receiving tracks by connecting lines' crews, and completion of the necessary inspection and carding by the Junction, the cars are switched at frequent intervals by Junction break-up crews to the adjoining classification tracks for grouping and movement to base yards serving the various operating districts. There, the cars are reclassified and switched to team tracks or to the private sidings of the consignees.

The North Yard has 24 tracks with a capacity of 709 cars. Cars switched from the base yards by the Junction are first placed on 3 of these tracks, 7 tracks are used for holding and classification purposes, and 14 tracks are ordinarily used for delivering cars to connecting lines. The movement

through this yard ranges from 600 to 800 cars per day outbound and consists generally of cars, loaded and empty, destined to western connecting lines.

Between the North and South Yards the Junction has 3 parallel main running tracks designated 1102, 1103, and 1104, respectively. An auxiliary track, known as 1105, parallels these tracks on the south, and is used by the Junction to reach the packinghouse district, later described. The line-haul carriers have trackage rights to operate eastbound over 1103 to the Union Stock Yards and westbound from those yards over 1102 and 1104. For those trackage rights the line-haul carriers pay to the Junction $1.50 per car loaded or empty handled by them to or from the Union Stock Yards.

The Loomis Yard is located south of the Union Stock Yards and contains 20 tracks with a capacity of 420 cars. Through this yard move loaded and empty cars, generally for eastern and southern connecting lines. The number of cars handled per day is not shown.

Outbound cars, loaded and empty, are switched from industry or team tracks to the base yards, where they are classified for further movement to the North or Loomis Yards. At the latter yards the cars are assembled for switching to designated tracks assigned to the connecting lines and subsequently picked up by transfer crews of those lines.

At present approximately 63 percent of the trains of the trunk lines going to the Union Stock Yards handle livestock exclusively. Solid trains of livestock entering the stock yard area from the west are handled by the line-haul carriers over eastbound track 1103 to the unloading chutes [fol. 1e] in the Union Stock Yards. No separation is required of livestock by species to make delivery at particular pens. While the cars are being unloaded, the engine cuts off, passes around the train, and couples on to the other end. The unloading operation consumes but a few minutes a carload. When the unloading has been completed the empty cars are hauled over westbound tracks 1102 or 1104 to the line-haul carrier's home yard. This procedure is followed by each of the line-haul carriers in turn. It will be observed that this method of handling livestock, which has existed for many years, does not burden the Junction's

receiving and delivery yards with either loaded or empty livestock cars. Manifestly, as the line-haul carriers must use the same eastbound track into the Union Stock Yards, any delay to a train on that track results in "piling up" trains of other lines seeking ingress to the Union Stock Yards. Frequently, as many as 4 trains must wait to enter this track as a result of its being blocked at the east end. Delays are necessarily experienced also because of "set outs" made by consolidated trains, consisting of livestock and dead freight. In a consolidated train the dead freight is on the head end behind the engine. The cars of livestock are cut off and left standing at the eastern end of the eastbound running track while the line-haul carrier's engine sets the dead freight on one of the 9 receiving tracks in the South Yard. This operation blocks the running track until the engine returns and hauls the livestock into the Union Stock Yards. Indicative of the average delay resulting from this operation is the following data in connection with the Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington: During the period from April 16 to May 10, 1947, that carrier handled 108 trains from its Clyde Yard to the Junction's eastbound running track. Of these, 53 were solid trains of livestock and moved directly to the Union Stock Yards; 19 were dead freight and were switched by the line-haul carrier to the 9 receiving tracks in the South Yard; and 36 were consolidated trains containing set outs for the receiving tracks and livestock for the Union Stock Yards. The average running time for the distance of 9.3 miles from Clyde Yard for trains direct to the Union Stock Yards was 1 hour and 2 minutes. The average running time to those yards of consolidated trains which set out dead freight was 1 hour and 39 minutes. The total number of cars of livestock delivered by that carrier to the Union Stock Yards in 1947 was 7,147, which were handled in 1,362 trips, for averages of 5.2 cars per trip and 3.7 trips per day.

During a test period from December 1 to 7, 1947, inclusive, there were 1,171 foreign crews moving on the Junction's rails or an average of 167 crews per day. The average time each crew was on the Junction's tracks was 3 hours and 12 minutes. A crew consists of 3 members in addition to the engineer and fireman. There are no restrictions by

the Junction limiting the time within which connecting lines may deliver freight on Junction tracks. They are privileged to and do operate over the Junction's rails at their convenience for the purposes stated above and may be on those tracks at all hours of the day or night.

Under the Federal law, livestock may be confined in cars for not more than 28 hours without unloading for watering and feeding unless the shipper requests in writing that the time be extended to 36 hours. In practically all cases, stock arriving at Chicago has only a limited time within [fol. 1f] which it must be unloaded from the cars in order to avoid violation of the twenty-eight-hour law. The outer yards of the line-haul carriers, from which runs are made to the Union Stock Yards, contain very limited feeding, watering, and rest facilities. Accordingly, many stock runs are made with but 1 or 2 cars per train. Under the present practice of handling directly to the unloading chutes in the Union Stock Yards, it is unnecessary to unload the stock for water, feed, and rest at some intermediate location on the Junction. In fact, facilities for that purpose do not exist on that line. That carrier contends that if it should attempt to switch livestock to private delivery tracks an additional 1 to 8 hours would be required before cars could be set for unloading. Accordingly, it is contended that the line-haul carriers would have to allow the Junction at least 8 hours free time after interchange within which to effect delivery to the industry and where there was not sufficient time to make delivery within the period prescribed by law, the line-haul carriers would be compelled to unload the stock on their rails or rearrange their train schedules. In this connection, it is shown that, while livestock arrives at all hours, the bulk of the traffic is consigned so as to make the early morning market. The market period extends to 2 P.M. each day but as a practical matter trading is over about 11 A.M. Late arrivals must often be carried over, resulting in some depreciation, as well as added costs for feeding and handling.

Complainant's principal witness testified that certain buildings and facilities of the present plant have become obsolete and inadequate and that a new packing plant is to be erected in the stock yard area, which will have sub-

stantial facilities for unloading livestock brought in by rail or truck and adequate holding pens. In addition to certain buildings for slaughtering and processing livestock, complainant proposes to construct two stub tracks with a total capacity of 22 car spots to serve the proposed plant.

The Junction presently connects at Ashland Avenue with private tracks serving complainant's present plant which is in the northern section of an area known as "Packingtown," located just west of the Union Stock Yards. That connection would be used in reaching complainant's proposed unloading facilities for direct shipments of livestock. The Junction also serves numerous other packing plants in the packinghouse district which is bounded on the west by Ashland Avenue, on the south by 47th Street, on the east by Racine Avenue, and on the north by 39th Street. This area is connected with the Union Stock Yards by a network of overhead runways, tunnels, and viaducts which are owned and maintained by the Union Stock Yards and used to drive livestock from those yards to the slaughtering floors of the packers, including complainant.

The site of the proposed plant is about ¾ of a mile west of the Union Stock Yards and just north of the present plant and was, at the time of hearing, occupied by another concern but complainant states that the present structures and tracks of that company are to be removed and replaced by new buildings, tracks, and facilities. In the light of conflicting testimony with respect to the progress, if any, that had been made in constructing the proposed plant, the examiner and representatives of complainant, defend- [fol. 1g] ants, and other interested parties made an inspection of the site on March 1, 1948. The inspection discloses no visible signs that construction had commenced and the record shows that no application had at that time been made for a building permit. However, complainant estimated that construction of the proposed plant would be completed during 1948.

So far as the allegation of undue prejudice of livestock as a commodity is concerned, it is clear that such traffic is not competitive with dead freight and that the measure of the transportation service rendered shipments of live animals is substantially greater than that accorded dead

freight. It is equally clear that livestock can not be switched in the same manner as other freight. In the ordinary and usual course of classifying dead freight by the Junction, the engine pushes a string of cars along a track leading to the classification tracks. Uncoupled cars are "kicked" or given impetus to roll freely through a switching lead onto the proper classification track. Manifestly, if livestock were so handled it would result in injury to the animals through being thrown against the ends or sides of the cars or knocked down. Cars of livestock must necessarily come to rest without rough shocks or jolts. The Junction contends that it has no classification tracks available for assignment to livestock or any space in its yards where such tracks could be constructed. It asserts that it would have to maintain a standby service so that a switching engine could immediately pick up a set out car or cars on the running track and make a special trip to the private side track of complainant. However, as hereinbefore shown, livestock can be and is handled in consolidated trains with other freight and there is no apparent reason why direct shipments consigned to complainant could not be placed on an interchange track for subsequent removal to complainant's plant. The Junction contends that if it has to make delivery of livestock to complainant, the cars would have to be grouped by the line-haul carriers in a convenient place in the train with other freight intended for set out in the South Yard and thereafter an engine and crew would segregate the livestock from the dead freight and make a special run to reach the private tracks of complainant. It asserts that as livestock arrives at all hours over many trunk-line carriers this would entail a difficult and expensive operation. This assertion is not borne out by the facts of record. Dead freight for delivery to complainant is set out by the Junction on track 19 in the South Yard, which track is assigned for the classification of loaded cars consigned to complainant. Subsequently, those cars are switched by Junction power to the Damen Avenue Yard, which adjoins the South Yard and is just west of complainant's present and proposed plants. The Damen Avenue Yard has 15 tracks with a capacity of 550 cars. After arrival in that yard complainant issues instructions to spot the cars for unloading at designated locations in its plant area. No reason appears why livestock could

not also be placed on an assigned track in that yard and the run made, at carrier's ordinary operating convenience, to complainant's plant without undue difficulty or delay. The switching operation that would be necessary to reach the proposed unloading chutes after leaving Damen Avenue Yard would be as follows: The engine would pull the cars over auxiliary track 1105 to the clearance point of the entrance switch to the facility east of Ashland Avenue. At that point the engine would uncouple and proceed around the train. While so engaged the cut of cars would have to be controlled by air, as there is a descending grade east from [fol. 1h] Ashland Avenue to the proposed plant. The engine would then recouple and shove the cars downgrade and around a curve to the unloading chutes. This operation would differ from the present method of switching dead freight or empty cars into this district only in that for the latter operation no air is used although the danger is always present of cars breaking off on the descending grade and rolling freely for a short distance before striking standing cars. Manifestly, that contingency would have to be avoided in handling cars of livestock. Cars made empty could be returned to the Loomis Yard when for eastern or southern connecting lines or to the North Yard when for western connections, which procedure is presently followed by the Junction in handling empty cars other than livestock cars.

Defendants point out that if they are compelled to make private track delivery as sought by complainant that other packers similarly situated on the Junction in the packing-house district would be entitled to like services, and to attempt to perform such services generally would result in substantial delay to shipments of livestock consigned to the Union Stock Yards, as well as to shipments of dead freight for the other industries in the switching district.

Except livestock purchased by complainant in the Union Stock Yards, all shipments consigned direct to complainant are delivered by the Burlington at the line-haul rate, at the location of the Omaha Packing Company, a wholly-owned subsidiary of complainant. Such delivery is in accordance with this Commission's findings in *Omaha Packing Co.* v. *C., M. & St. P. Ry. Co.*, 37 I. C. C. 378, decided in 1915. At that time the Omaha plant slaughtered and processed a substantial portion of the livestock received at that point. The

plant was completely destroyed by fire on August 4, 1932, and has never been rebuilt. However, complainant continued to receive and presently receives livestock at unloading pens where that plant was located, hereinafter referred to as the Omaha plant pens. Such livestock is then transported about 2.5 miles by complainant's trucks to the slaughtering floors of its present plant. The latter plant is in the stock yard area, about ¾ of a mile west of the Union Stock Yards. The estimated total average annual cost to complainant for trucking 6,383 cars of unspecified species of livestock received during 1947 by rail at the Omaha plant pens to the present plant was stated to have been $50,000, but no detailed data were submitted to show how that cost was computed. Apparently, however, that method of operation is less expensive than delivery to complainant through the Union Stock Yards which would involve yardage charges per head of 65 cents on cattle, 40 cents on calves weighing under 450 pounds, 21 cents on hogs, and 15 cents on sheep. The estimated number of head of each specie per single-deck car is shown as 25 cattle, 65 calves, 70 to 75 hogs, and 100 to 125 sheep.

During the test period hereinbefore referred to the time per car consumed between delivery to the Junction of 511 cars of perishable freight and 1,570 cars of other dead freight by connecting lines at the South Yard, and actual or constructive placement at industries' tracks on the Junction was 23 hours and 30 minutes for perishable freight and 31 hours and 48 minutes for other dead freight. The Junction operates 35 steam and 12 Diesel electric locomotives. Of the steam locomotives, 10 are 6-wheel switchers weighing 74 tons; 14 are 6-wheel shifters weighing 82 tons; and 11 are 8-wheel switchers weighing 110 tons. The 12 Diesels weigh 100 tons. Due to light rails, sharp curves, and certain side [fol. 1i] obstructions only the 6 and 8-wheeled engines and the Diesels can be safely used in industrial work. The heavier engines have a 15-foot wheel base which will not permit operation over sharp curves. The latter engines are used generally for hauling trains between the various yards. The present motive power of the Junction is being operated to capacity and that carrier estimates that 6 to 8 additional engines for each 8-hour tour of duty would be required to

handle approximately 36,000 direct shipments of livestock, or about 130 cars per day based on a 5-day week. But this estimate contemplates all of the direct shipments of livestock delivered in 1947 to the Union Stock Yards as well as the direct shipments received by complainant at its Omaha plant pens. The assumption that all direct shipments to complainant and to all the other packers in the Chicago district would have to be set out in the Ashland Avenue yards is not warranted on this record. Other packers were represented at the hearing but failed to indicate that they were in any way dissatisfied with the delivery presently afforded them through the Union Stock Yards or that they would demand private track delivery if such delivery was furnished complainant, or that they had or could provide facilities therefor. If only complainant's shipments are considered, the resulting average per day would approximate 18 cars based on the number of direct shipments received by it in 1947. The total average annual movement by rail to the Union Stock Yards for the past 5 years was 76,920 cars, of which an average of 30,976 cars, or approximately 40 percent, were direct shipments consigned to packers. During the corresponding period the average annual movement of livestock consigned direct to complainant's Omaha plant pens was 6,489 cars. The direct shipments averaged 44.9 percent of the total movement and that percentage has been increasing steadily. For example, based on the foregoing average to the Omaha plant pens and the actual number of direct shipments to the Union Stock Yards during January, 1948, the direct shipments constituted 63.7 percent of the total movement.

It is apparent from the record, and at least tacitly conceded by witnesses for certain of the line-haul carriers, that the blocking out in their outer yards of direct shipments consigned to the Omaha plant pens is a very minor operation which, except as to the Burlington, amounts to but 1 or 2 cars per day, or less, on an average for the individual lines. For example, in 1946 the Chicago & North Western Railway Company handled 14,198 carloads of livestock from that carrier's Proviso yard 18 miles to the Union Stock Yards, while it interchanged only 287 carloads with the Burlington for delivery at the Omaha plant pens. The respective figures for 1947 were 10,479 and 369 carloads.

The Chicago, Milwaukee, St. Paul & Pacific Railroad Company handled 12,884 carloads in 1946 and 9,425 carloads in 1947 from its Bensenville yard, about 27 miles to the Union Stock Yards and 415 and 326 carloads, respectively, consigned to the Omaha plant pens were interchanged with the Burlington at the latter's Western Avenue yard, 2 miles from the point of delivery. Similarly, in 1947, the Atchison, Topeka & Santa Fe Railway Company handled 5,281 carloads from its Corwith yard, 3 miles to the Union Stock Yards, while interchanging with the Burlington at the Western Avenue yard 209 carloads consigned to the Omaha plant pens. The Burlington delivered to the Omaha plant pens in 1946 a total of 4,204 carloads of which 2,228 carloads [fol. 1j] were received in its Western Avenue yard from connecting lines and 1,976 carloads were off-line shipments. Like data for 1947 were 6,383 carloads, of which 2,786 carloads were off-line shipments and 3,597 carloads were received from connecting lines in the Western Avenue yard. During 1946 and 1947 the number of carloads of livestock handled by the Burlington from its Clyde or Western Avenue yards to the Union Stock Yards was 12,111 and 7,147 carloads, respectively. All of the foregoing shipments to the Union Stock Yards were handled over the eastbound running track of the Junction, hereinbefore described, but none of the shipments consigned to the Omaha plant pens over the carriers named moved through the Ashland Avenue yards of the Junction.

The following operation over the Chicago, Rock Island & Pacific Railway Company, hereinafter called the Rock Island, is typical of the operation over other line-haul carriers entering the stock yard area from the east. Consolidated trains containing livestock and dead freight arrive at that carrier's Burr Oak yard, 14 miles from the Ashland Avenue yards. At Burr Oak yard the cars of livestock and dead freight are separated and cars of livestock consigned to the Union Stock Yards are hauled directly to the latter yards by a Rock Island switch engine without passing through the Ashland Avenue Yards. Empty stock cars are returned to the Burr Oak yard by the same engine. Livestock consigned to the Omaha plant pens, and dead freight for set out in the South Yard are handled by the Rock Island over the westbound running tracks of the Junction, herein-

before described, to the western end of the Ashland Avenue yards where the set outs are made on the receiving tracks in the South Yard and any cars of livestock that carrier may have for the Omaha plant pens are then hauled to the Western Avenue yard. In 1946 the Rock Island handled 5,896 cars of livestock to the Union Stock Yards and 213 cars for the Omaha plant pens were interchanged with the Burlington as described. Similar data for 1947 are not shown.

The flat Chicago rates apply only to deliveries at points on the rails of the line-haul carriers. The Commission has held that in the absence of unjust discrimination or undue prejudice a carrier can not be compelled to absorb the switching charges of a connecting line. Complainant contends that that question is not presented in this proceeding and cites as authority *Chicago Livestock Exch.* v. *Atchison, T. & S. F., Ry. Co.*, 219 I. C. C. 531. This contention is untenable. In the proceeding cited the question of absorption of switching charges of a connecting line was stated not to be in issue for the reason that "the line-haul carriers operate over the tracks of the Chicago Junction to the Union Stock Yards and make delivery there, thereby making these yards their own terminals." The distinction between that proceeding and the instant case is that the line-haul carriers had and have trackage rights to operate over Junction rails to and from the Union Stock Yards, as hereinbefore described, but did not and do not have such rights to operate over Junction tracks to any other point on that line in the stock yard area, thus making it necessary to use the switching carrier in order to make delivery at industrial sidings served by it. The Junction participates in certain joint rates out of which it collects for switching perishable and other dead freight a division of 3.15 cents per 100 pounds, minimum 60,000 pounds, which generally differs from and is lower than its local switching charge. In those instances in which the Junction does not participate in joint rates on [fol. 1k] dead freight, it collects its local switching charge. However, we are unable to find any tariff publishing joint rates on livestock from points in Western trunk line or southwestern territories in which the Junction is shown as a participating carrier.

The present basic rates on livestock to Chicago are

Commission-prescribed rates and complainant does not contend that those rates are unreasonable for application to the Union Stock Yards or to the Omaha plant pens. In the proceeding last cited the Commission pointed out that in prescribing the rates on livestock to Chicago, among other markets, in *Livestock-Western District Rates*, 176 I.C.C. 1, there was specifically taken into consideration as an element the rendition of terminal services in connection with the transportation of livestock, and there was included what was considered sufficient to cover such terminal services under a normal operation as well as to cover the unloading and loading of livestock at public stockyards. The Commission did not there consider whether the rates prescribed would be reasonable for application in connection with deliveries of livestock by the Junction to private industrial tracks as that carrier did not then and does not now perform such service. There is no evidence of record that would warrant the conclusion that it is unreasonable not to apply the rates prescribed for application on livestock to the Union Stock Yards, the terminal of the trunk lines, to points on the Junction.

Complainant's counsel objected to the receipt in evidence of an exhibit containing copies of agreements and other documents depicting certain events which gave rise to the present practice of delivering livestock to the Union Stock Yards and showing that complainant, or its predecessor, and other packers, were instrumental in developing the present terminal practices and facilities for the handling of livestock in the stock yard area of Chicago. The objection was overruled and the exhibit was received. Subsequent to the hearing, complainant filed a memorandum in support of a motion to exclude the exhibit from evidence as being irrelevant to the issue. In determining the question whether, under the particular circumstances and conditions presently existing for the delivery of livestock in the Chicago switching district, complainant is entitled to private track delivery at the proposed plant hereinbefore described, without any charge in addition to the line-haul rate, the Commission is justified in considering all facts relating to the existing custom and practice of making delivery of livestock to the Union Stock Yards, the events leading up to the present custom and practice,

and the effect of the proposed practice on the interests of the carriers, the public, and other shippers. The motion should be overruled.

As stated, the Junction does not deliver livestock to the Union Stock Yards or to any other point in the Chicago switching district. It can not be reasonably contended, therefore, that complainant has been subjected by that carrier to undue prejudice. Nor can it be reasonably argued that the line-haul carriers, who do make deliveries of livestock to the Union Stock Yards, under a trackage agreement with the Junction, are subjecting complainant to undue prejudice by failing to make like deliveries to complainant's plant, in view of the fact that such line-haul carriers do not reach complainant's plant with their own [fol. 11] rails nor do they have trackage rights over the Junction for that purpose.

The present tariff provides for switching charges on "all carload freight." That provision, without qualification, includes livestock. Accordingly, there is a holding out by the Junction to switch livestock to and from any of the industries, sidings, team tracks, and districts listed in its tariff. Complainant's plant is among the industries listed in the tariff. The sole remaining question, therefore, is whether the charge published for such switching is reasonable for the service performed.

In *Hygrade Food Products Corp. v. Atchison, T. & S. F. Ry. Co.*, 195 I.C.C. 553, complainant therein alleged, among other things, that switching charges demanded for the placement of carloads of livestock at complainant's plant directly north of the unloading pens of the Union Stock Yards in Chicago, were inapplicable and if applicable, were unreasonable, unduly prejudicial to complainant and unduly preferential of the Omaha Packing Company, in Chicago, a competitor of complainant.

In that proceeding, as here, complainant's plant is served only by the rails of the Junction, and it was there sought, as in the instant proceeding, to have certain private tracks used for the receipt of livestock without any charge for switching. The Commission found that the published switching charge there assailed for $12 per car, which is the identical switching charge here under attack, as in-

creased by subsequent general authorized increases, was applicable to the placement for delivery of carloads of livestock at complainant's plant, and had not been shown to be unreasonable or otherwise unlawful.

In that case the Commission said:

> "While deliveries are made at the plant of the Omaha Packing Company without the assessment of a switching charge such as applies to deliveries at complainant's plant, there is no indication that transportation services, conditions, and circumstances connected with deliveries at complainant's plant would be substantially similar to those connected with deliveries at the plant of the Omaha Packing Company, and no facts of record lead to the conclusion that charges applicable to such services as may be performed in making deliveries at complainant's plant are unreasonable or that the differences in these charges are not warranted."

What was there stated applies with equal force here. The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those connected with the delivery here sought. There, the unloading chutes are on the rails of a line-haul carrier, outside the stock yard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington. The transportation services, conditions, and circumstances connected with delivery by the line-haul carriers to the unloading chutes of the Union Stock Yards, as hereinbefore [fol. 1m] described, are also substantially dissimilar from the private track delivery here sought. The operating conditions confronting the Junction in handling traffic through a complicated and congested terminal area warrant the conclusion that a switching charge should be made for the service and that the published switching charge for placement of livestock for delivery at complainant's plant has not been shown to be unreasonable or otherwise unlawful for the performance of that service.

Complainant's contention that undue prejudice exists in that livestock is delivered on industry tracks of competitors at certain points named in the complaint has not been supported by proof that the service that would be rendered in making deliveries on industry tracks to be constructed at complainant's proposed plant are substantially similar to those at the alleged preferred points.

The Commission should find:

1. That complainant is entitled to delivery of livestock, in carloads, on private side tracks to be constructed at Chicago, provided those tracks are adequate to enable respondents to make such delivery at their ordinary operating convenience and without interruption or interference.

2. That switching charges presently applicable to the placement for such delivery have not been shown to be unreasonable or otherwise unlawful.

3. That the proposal to specifically exempt livestock from the traffic which respondents will transport and to cancel the application on livestock of all switching charges published by respondents, except to and from chutes and sidings at the Union Stock Yards in Chicago, has not been justified. An order should be entered requiring cancel-ation of the suspended schedules and discontinuing the proceeding.

[fol. 1] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 29809 Consolidated with Docket No. I. & S. 5543
Illinois Commerce Commission Docket No. 35809

SWIFT & COMPANY

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, et al.

INVESTIGATION AND SUSPENSION—LIVESTOCK AT CHICAGO—CHICAGO JUNCTION RY.

Transcript of Hearing

Room 714, United States
Custom House,
Chicago, Illinois,
Tuesday, February 24, 1948.

Met, pursuant to notice, at 9:30 o'clock A. M.

Before S. R. Diamondson, Examiner

Also present: Walter C. Kaylor, Examiner, Illinois Commerce Commission.

APPEARANCES:

R. D. Rynder, 344 North Harvard Boulevard, Los Angeles, California, and John P. Staley, 4115 South Packers Avenue, Chicago, Illinois, appearing for Swift & Company, complainant and protestant.

[fol. 2] Douglas F. Smith and Richard F. Babcock, 11 South LaSalle Street, Chicago, Illinois, appearing for A. T. & S. F. and other line haul carrier defendants.

Leo P. Day, 1225 LaSalle Street Station, Chicago, Illinois, appearing for Chicago River & Indiana Railroad Company, respondent and defendant in Docket 29809.

Guy A. Gladson and Bryce L. Hamilton, 1400 First National Bank Building, Chicago 3, Illinois, appearing for The Union Stock Yards and Transit Company.

Nuel D. Belnap, 2106 Field Building, Chicago, Illinois,

appearing for The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange.

H. R. Park, Room 726 Exchange Building, U. S. Yards, Chicago 9, Illinois, appearing for The Chicago Live Stock Exchange.

James A. Knudson, U. S. Department of Agriculture, Room 1303 S. Building, appearing for Secretary of Agriculture, Washington, D. C.

Lee J. Quasey, 139 North Clark Street, Chicago, Illinois, appearing for National Live Stock Producers Association and Chicago Producers Commission Association.

R. G. Hawkinson, 309 West Jackson Boulevard, Chicago, Illinois, appearing for Chicago Great Western Railway.

J. F. Daniels, 730 Live Stock Exchange Building, Kansas City, Missouri, appearing for Kansas City Live Stock [fols. 3-4] Yards Co.

B. R. Prather, 4100 South Ashland Avenue, Chicago, Illinois, appearing for Wilson & Co.

Paul E. Blanchard, c/o Armour & Company, U. S. Yards, Chicago, Illinois, appearing for Armour & Co., protestant.

C. A. Pace, Room 606—135 East 11th Place, Chicago 5, Illinois, appearing for Illinois Central Railroad.

R. G. Raasch, Room 236, 516 West Jackson Boulevard, appearing for defendant carriers.

Henry Christianson and F. V. White, 547 West Jackson Boulevard, Chicago, Illinois, appearing for Chicago, Burlington & Quincy R. R. Co.

H. L. Van Amburgh, 920 Livestock Exchange Building, Omaha 7, Nebraska, appearing for South Omaha Terminal Railway Co.

[fol. 5] PROCEEDINGS

Exam. Diamondson: The Interstate Commerce Commission has set for hearing at this time and place Docket No. 29809, Swift & Company vs. Atchison, Topeka & Santa Fe Railway Company, et al. In announcing your appearance please state whether you have been admitted to practice before the Commission or the official capacity in which you are appearing.

Who appears for the complainant?

Mr. Rynder: R. D. Rynder and John P. Staley, both admitted to practice before the Commission.

Exam. Diamondson: Any other appearances for complainant? (No response.) Who appears for the defendants?

Mr. Smith: Douglas F. Smith and Richard F. Babcock for the defendants, for the railroad defendants other than the Chicago Junction. Mr. Babcock has not been admitted to practice before the Commission but I understand he proposes to make application.

Mr. Day: Leo P. Day for the Chicago River & Indiana, for itself and its lessee the Chicago Junction Railway. I have been admitted to practice.

Mr. Smith: I think I should have said, if you please, that I do not represent the River Railroad that Mr. Day has just referred to.

Exam. Diamondson: Are there any other appearances for defendants?

[fol. 6] Mr. Raasch: R. G. Raasch, 516 West Jackson Boulevard, Chicago, Illinois, appearing for defendants other than the Chicago River & Indiana Railroad and the Chicago Junction Railroad. I have been admitted to practice.

Mr. Gladson: Guy A. Gladson and Bryce L. Hamilton for Union Stock Yards and Transit Company, intervener. We have both been admitted to practice.

Exam. Diamondson: You are appearing here and intervening on whose behalf?

Mr. Gladson: On behalf of the defendants.

Exam. Diamondson: Are there any other intervenors?

Mr. Belnap: I have an intervening petition to file. I would like to enter my appearance, Nuel D. Belnap, 2106 Field Building, Chicago, Illinois, with Henry R. Park, for the Chicago Live Stock Exchange, intervenor on behalf of the defendants; and I would also like to enter my appearance on behalf of the Chicago Traders Live Stock Exchange as an intervenor on behalf of the defendants, and I have the petitions here. They do not broaden the issues.

Exam. Diamondson: Have they been distributed?

Mr. Belnap: Yes.

Mr. Knudson: My name is James K. Knudson. I have entered an appearance under Rule 73 of the Commission's

Rules of Practice which I understand entitles us to enter an appearance in the combined I. & S. and complaint case and [fol. 7] we will have a statement of counsel to make at the time we put our witness on as to any position we might occupy in this proceeding.

Exam. Diamondson: Are there any other intervenors?

Mr. Quasey: Lee J. Quasey on behalf of the National Live Stock Producers Association and the Chicago Producers Commission Association. I have a petition of intervention, Mr. Examiner, and I have three copies here for the Commission and here are others for the parties.

I have a petition in the Illinois matter, but since the Examiner is not here, Mr. Examiner, I think probably we might withhold that subject to your suggestion in the matter.

Exam. Diamondson: That will be al- right. Did you say whether you are admitted to practice, Mr. Quasey?

Mr. Quasey: Yes, I am admitted to practice before the Commission.

Exam. Diamondson: And is your petition in support of the complaint?

Mr. Quasey: This is in support of the defendants, your Honor.

Exam. Diamondson: Are there any other appearances?

Mr. Van Amburgh: H. L. Van Amburgh for the South Omaha Terminal Railway Company, Omaha, Nebraska. I am admitted to practice before the Commission. I am appearing as our interests may arise.

Mr. Daniels: J. F. Daniels, for the Kansas City Stock [fol. 8] Yards Company, appearing here as our interests might be involved.

Exam. Diamondson: You are admitted to practice?

Mr. Daniels: I am admitted to practice, Mr. Examiner.

Exam. Diamondson: Are there any other appearances?

Mr. Blanchard: Mr. Examiner, I appear in the nature of a special appearance here; Mr. Paul F. Blanchard, representing Armour & Company. I am a Class A practitioner. We are interested primarily in the I. & S. case. As we view the issues in that case, it affects every shipper or receiver of freight of any class located on the Chicago Junction Railroad.

Up to this point we have found no interest in the formal complaint, but would it be in order at this time to move to separate the two dockets, hearing the I. & S. docket by itself and thereby avoid placing one interested only in the I. & S. case in the position of being a party to a case he is not interested in?

Exam. Diamondson: No. You can enter your appearance in the I. & S. case. The two cases are to be heard on one record.

Mr. Blanchard: They are to be heard on one record?

Exam. Diamondson: Yes.

Mr. Blanchard: Then I will enter an appearance in the I. & S. case but not in the formal case unless from the development of the facts and the evidence here it appears [fol. 9] that we have some interest in the formal case at a later time. At the present time we know of no such interest.

Exam. Diamondson: You are entering your appearance in the I. & S. case as a protestant?

Mr. Blanchard: Yes.

Exam. Diamondson: Are there any other appearances?

(No response.)

Exam. Diamondson: By complaint filed July 29, 1947, as amended, it is alleged that charges on so-called direct shipments of livestock, in carloads, forwarded from various states other than Illinois and switched to complainant's plant in Chicago, Illinois, are unreasonable, in violation of Section 1 of the Interstate Commerce Act, unduly prejudicial of livestock as a commodity and unduly prejudicial to complainant and preferential of its competitors at points in Illinois, Iowa, Nebraska, Missouri, Kansas, Minnesota, Wisconsin and Indiana, in violation of Section 3 of the Act. The Commission is asked to prescribe reasonable rates, charges, rules, regulations and practices for the future.

Does that substantially state the issues, Mr. Rynder?

Mr. Rynder: I think so, Mr. Examiner. There was an amendment to the complaint, I believe, which amended the relief sought to include the establishment of joint rates, with the allegation——

Exam. Diamondson: Well, the record will show.

[fol. 10] Mr. Rynder: The record ought to show that.

Exam. Diamondson: The Commission has also set for hearing at this time and place Investigation and Suspension Docket No. 5543, Livestock at Chicago—Chicago Junction Railway.

The Illinois Commerce Commission has assigned its Docket No. 35809 for joint hearing with this proceeding. At this time the Examiner who is to sit for that Commission has not yet appeared.

Mr. Kaylor: My name is Walter C. Kaylor, Examiner for the Illinois Commerce Commission.

Exam. Diamondson: Mr. Kaylor has just entered the hearing room.

Mr. Kaylor: This is a joint proceeding before the Interstate Commerce Commission and the Illinois Commerce Commission. The Illinois Commerce Commission case is 35809. All appearances that have been entered before the Interstate Commerce Commission will be considered as appearances before the Illinois Commerce Commission. Whatever ruling is made by the Interstate Commerce Commission Examiner will be made by the Illinois Commerce Commission unless otherwise indicated in the record. Your appearances are general in both cases and we are ready to proceed.

There is an intervening petition filed on behalf of the Union Stock Yard & Transit Company and unless it unduly broadens the issues will be allowed.

[fol. 11] Petition filed by the Chicago Traders Live Stock Exchange to intervene. Petition allowed unless it otherwise unduly broadens the issues.

The National Live Stock Producers Association and Chicago Producers Commission Association filed a petition to intervene and unless it otherwise broadens the issues it is granted.

The Chicago Live Stock Exchange filed a petition to intervene and unless it otherwise broadens the issues it is granted.

Exam. Diamondson: Who appears for the respondents in the suspension proceeding? I assume they will be the same as in the complaint and answer case. Is that correct?

Mr. Day: I cannot speak for all the carriers.

Exam. Diamondson: Let us have separate appearances in the suspension proceeding for the respondents.

Mr. Day: Leo P. Day for the Chicago River & Indiana for itself and its lessee, the Chicago Junction Railway.

Exam. Diamondson: Are there any other appearances for the respondents?

(No response.)

Exam. Diamondson: Who appears for the protestants in the suspension proceeding?

Mr. Rynder: R. D. Rynder and J. P. Staley for Swift & Company.

Mr. Blanchard: Paul E. Blanchard, the same address as before, for Armour & Company.

[fol. 12] Exam. Diamondson: Any other appearances?

(No response.)

Mr. Blanchard: Mr. Examiner, the parties that have entered appearances in the formal complaint, other than have just been named, will also be understood as appearing in the I. & S. case, will they not?

Exam. Diamondson: That is correct, but I wanted the specific appearances in the suspension proceeding.

Mr. Hamilton: Your Honor asks for appearances of protestants. Now, there are some of us who are not protestants but who are appearing in the I. & S. case in support of the position of the respondent.

Exam. Diamondson: Well, I think that their appearances and their position have been stated in connection with the complaint proceeding. Is that corerct?

Mr. Belnap: I believe that all those who appeared on behalf of the defendants in the complaint proceeding appear on behalf of the respondents in the I. & S. proceeding.

Mr. Hamilton: That is my understanding.

Exam. Diamondson: I think that is correct.

By schedules filed to become effective December 15, 1947 and later the Chicago Junction Railway proposes by tariff provisions that it will not transport livestock, except to or from chutes and sidings operated by the Union Stock Yard & Transit Company of Chicago at the Union Stock Yards, [fol. 13] and to cancel its switching charges on livestock.

Upon protests of Swift & Company, Armour & Company and Wilson & Company of Chicago, Illinois operation of the schedules was suspended until July 14, 1948.

I do not recollect whether anybody entered an appearance for Wilson & Company.

Mr. Prather: B. R. Prather for Wilson & Company, Chicago.

Exam. Diamondson: These proceedings will be heard on one record. Complainants may proceed.

Mr. Smith: Your Honor, before the complainants proceed, on behalf of the defendant railroads I would like to make a very short opening statement. I think it might be of some service to the Examiner and the other defendants and it will be quite short.

Exam. Diamondson: When you say "the defendants" you mean the line haul carriers?

Mr. Smith: Yes, I do, sir.

Exam. Diamondson: Proceed.

Mr. Blanchard: Mr. Smith, might I ask just a question on procedure before the opening statement?

Mr. Smith: Surely.

Mr. Blanchard: Do I understand, Mr. Examiner, that the formal complaint will precede the I. & S. case?

Exam. Diamondson: That is correct.

[fol. 14] Mr. Blanchard: That will let me depart then until the I. & S. case opens up. Thank you.

OPENING STATEMENT BY MR. SMITH

Mr. Smith: If the Examiner please, this complaint cannot be considered as presenting the request of a single packer for a special arrangement. Section 3 of the Act does not permit us, or the packer, the privilege of entering into special arrangements which are not available to all alike. In its previous case which went to the Supreme Court, in which Swift sought to accomplish substantially the same result in another way, the Commission stated, as quoted by the Supreme Court of the United States in its opinion in Swift v. United States, 316 U. S. 216, as follows:

"The Commission has found that 'the evidence fails to disclose how, as a practical matter, an annual volume of

30,000 cars of livestock could be discharged into and handled through the public streets of Chicago.' "

It will be seen that the Commission was referring there not merely to the traffic of Swift, although there as here Swift was the only complainant, but to the direct shipments of all of the packers. At another point in its opinion the Supreme Court said:

"* * * The Commission found that the direct shipments of livestock transported by rail to the packers at Chicago have exceeded 30,000 carloads annually for several years", etc.

[fol. 15] In another case, the so-called Hygrade case, the Commission considered the matter on the same record. The Examiner received there and the Commission considered the total number of direct shipments received at Chicago.

We shall, therefore, present our evidence in this case on the only basis open to us under the law, namely, that whatever provision were to be made with reference to the direct shipments of the complaint Swift would, of necessity, apply alike to all direct shipments to this market.

For many years the packers bought the livestock slaughtered by them at Chicago on the great competitive public market which exists at the stock yards. In late years, however, the packers have been buying more and more of their requirements on the farm by bargaining with the individual farmers. It is the livestock so purchased and shipped directly to themselves at Chicago, directly to the packers, that are called direct shipments. In the previous Swift case the Commission said:

"The shift from producers' consignments to direct shipments is rapidly increasing."

The reasons the packers have found it to their interest to increase the proportion of their purchases in the country and reduce the proportion of their purchases at the central competitive markets are best known to the packers themselves.

It is manifest that they seek in this case to improve [fol. 16] still further their economic position in respect to

"directs" and thus give additional impetus to the marked increase in those shipments, and the marked decrease in their purchases on the central market.

As we see it, the immediate threat of this complaint to the producers is (1) serious delay and increased cost in the handling of the producers' stock to the chutes of the stock yards; and (2) a lessening of competition in the purchase of livestock on the Chicago market.

In the light of the already constantly increasing proportion of directs, the ultimate threat to the producers posed by this complaint is a loss of the central market itself and with it, of course, a loss of the competitive price made at that market, which is now the guide for the producer in selling his stock to the packer on the farm.

To grant the packers' request would revolutionize the handling of livestock in the Chicago terminal. If the new system could be put into operation at all, and it is exceedingly doubtful, it would greatly slow up deliveries of this perishable commodity and greatly increase the expense of handling it.

The public stock yards at Chicago has been the livestock terminal of the line-haul carriers in Chicago for generations. The Commission and the Supreme Court have repeatedly so held. In its opinion in the previous Swift case, to which I have referred, the Supreme Court quoted from [fol. 17] its earlier opinion in Adams v. Mills and reiterated the statement made in that case, which is as follows:

"* * * That the yards are, in effect, terminals of the railroads is clear. They are in fact used as terminals; and necessarily so."

We will undertake to indicate to the Examiner why upon that record the Commission and the Supreme Court used those words "and necessarily so."

In the same opinion the court said:

"* * * The decision of the question was dependent upon the determination of certain facts, including the history of the Stock Yards and their relation to the line-haul carriers; the history of the unloading charge at these yards; and the action of the parties in relation thereto."—the packers.

I might say for your encouragement, your Honor, that I will be through with this in five minutes. It is quite short.

Throughout their history the line-haul carriers have delivered the livestock at their terminal, the Union Stock Yards, by the use of running rights over the tracks of the Terminal Railroad which serve the unloading chutes. The individual lines have never relinquished possession of this traffic until each respective road has set its own cars for unloading at the unloading chutes. No terminal company has ever touched that stock. The whole plant, the whole [fol. 18] physical lay-out, was constructed and has always been operated to effectuate and to facilitate that handling, and no other handling.

The line-haul carriers do not have, and have never had, trackage rights over the terminal line, which is the Chicago Junction, to the plants of the various packers located on and served by that terminal railroad. The trunk lines could probably not obtain and exercise such trackage rights except upon permission of the Commission, extended through a certificate of public convenience and necessity under Section 1 of the Act authorizing them to extend their lines to these points.

What is asked in effect, therefore, is that the road-haul carriers abandon the tried and proved operating practices which have been in effect for eighty years and to turn these thousands of cars of direct shipments over to the busiest and the most congested terminal railroad in Chicago which has never in its history, except in some emergency, delivered a car of ordinary livestock.

Let me show you, please, what this means. The evidence will show that for the last five years the total average annual movement to the stock yards by rail was 76,920 cars. Every one of these cars was delivered at the chutes of the stock yards by the crews of the line-haul carriers which brought those cars to Chicago. These crews wait for the unloading of the stock, pick up the empties and return [fol. 19] with them immediately to their respective roads. Of this total average annual movement of 76,920 cars, 30,976 cars were direct shipments consigned to the packers. In addition Swift, the complainant, had an average annual movement of direct shipments to its Omaha plant in the last

five years of 6,489 cars. The total movement of direct shipments to Chicago which is here involved is the aggregate of these two figures, or an average of 37,465 loaded cars per year and an equal number of empties. The directs have thus averaged 48.7 per cent of the total. For January of 1948 that proportion has gone up.

Assuming the same average for the Omaha plant which it had for the last five years and taking the actual directs to the yards for January, the directs constituted 63.7 per cent of the total.

I think that shows what is happening under the present arrangements at the Chicago yards. The proposal here involved in effect is that we turn over to the Chicago Junction for handling, on top of the traffic which now chokes its yard, something like 75,000 cars, loads and empties.

This great volume of livestock does not arrive in an even flow. In its opinion in the Swift case referring to this fact the Supreme Court said:

"The bulk of the movement of stock is received in the Yards during the first days of the week, and approximately three-fourths of the daily movement is unloaded between three and eight in the morning."

[fol. 20] And so in short periods of concentrated movement this Terminal Company would be asked to handle 75,000 cars, loaded and empty, never before touched by it and to do it in a yard already saturated to the bursting point, a yard which was not built to receive and terminate a single car of ordinary livestock and which, except in some emergency, has never done so.

The confusion and the delay created by such an arrangement would be incalculable. It would impose tremendous losses upon the railroads and also upon another class of innocent bystanders, namely, the producers, who would still like to ship some stock to the yards. Their stock would be caught in this chaotic melee and the producers would be badly hurt. Much of that traffic would have to receive an extra unloading for feed and rest at the shippers' expense.

There is another element in the picture. The only services the line-haul carriers may perform for these packers

are services which the packers pay for. The services performed on livestock must be paid for out of the revenue accruing from livestock. There is no other source from which it can come.

The Chicago Junction has a tariff charge applicable to the movement of a car of livestock from its interchange track at Ashland Avenue to any facility on its railroad of $28.80 per car. That tariff provision has never been used and the Junction seeks to cancel it. But unless its [fol. 21] cancellation is authorized it would be applicable to the movement of the cars here in question. The same switching charge,—it was, of course, less at that time,—was found to be reasonable and nondiscriminatory in the Hygrade case, in which that small packer sought unsuccessfully to force the delivery of the directs without the payment of that switching charge, just as Swift does not.

Now, we do not have all the revenue that we get from the packer, this $28.80 per car. We have to pay the Chicago Junction to satisfy this complaint. That item is not in the revenue. We do not collect any such amount from the packer.

The rates on livestock into this market were made by the Commission. They were made in the light of the traditional delivery of the stock to the chutes of the Stock Yards Company. The rates include only the normal terminal expense involved in that movement.

And in that connection I respectfully commend to the attention of the Examiner the report in the Chicago Live Stock Exchange case, 219 ICC, which I won't read, and the decision in the Hygrade case in which the Commission, as I have said, found that this charge, this switching charge, was applicable and was non-discriminatory and not unlawful.

Thank you very much, sir.

Mr. Rynder: Mr. Examiner, I do not ever follow the usual practice in these cases of preparing any opening [fol. 22] statement and do not intend to make any.

By my silence, of course, you will understand I am not assenting to any of the statements that have been made. I can only say this as showing, perhaps, the profound lack of any basis for this opening statement, that we are simply asking at Chicago the customary delivery of freight

at an industry, which as to livestock has been voluntarily granted by the railroads or enforced by this Commission as an ordinary right of a shipper at, I believe, every other packing house center in the United States and it has not turned out to be anything in the line of a world catastrophe or a national crisis.

Exam. Diamondson: All right, you may proceed with a witness, Mr. Rynder.

Mr. Rynder: I will call Mr. Tally.

G. F. TALLY was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name, residence and occupation.

A. G. F. Tally, Chicago, Illinois; Assistant General Traffic Manager for Swift & Company.

Q. How long have you held that position?

A. For three years.

Q. What was your position prior to that time?

[fol. 23] A. I was assistant to the traffic manager and had particular charge of handling matters of rates, rate adjustments, tariff interpretations, hearings before the Interstate Commerce Commission and state authorities, and matters generally of that kind for a period of approximately fifteen years. I have been connected with Swift & Company in its traffic department a total of twenty-seven years.

Q. In your present position of Assistant General Traffic Manager have you come particularly in contact with the facts concerning the physical operation of railroad transportation in and about the Union Stock Yards district of Chicago?

A. In my present position it is necessary that I be closely in touch with and familiarize myself with the physical operations from a transportation standpoint of our Chicago plant, in connection with the railroad serving that plant; namely, the Chicago Junction Railway. This has involved

familiarizing myself with the delivery of all classes of freight by railroad into the stock yards area as well as the shipment of all classes of freight from that area in which our plant is located to various destinations throughout the United States.

Q. Are you personally familiar with the railroad tariffs that apply to the delivery of livestock and dead freight in carloads to points in the stock yards area in Chicago, including the several packing plants, as well as delivery to the other points within the Chicago switching district? [fol. 24] A. Yes, I have been familiar with those tariffs for many years.

Q. At what point in Chicago has Swift & Company been receiving railroad shipments of livestock for its Chicago plant, except those purchased from commission men on the property of the Union Stock Yards and Transit Company?

A. Swift & Company has a location at 2320 South Halsted Street known as the Omaha Packing Company, which is a subsidiary wholly owned by Swift & Company. It is served by the C. B. & Q. Railroad. All livestock for the Swift & Company Chicago plant is now consigned to that location, at which point there are facilities for receiving livestock in a substantial quantity. Twenty-seven cars of livestock can be placed for unloading at one time at the present facilities of the Omaha Packing Company. All livestock destined to the Omaha location, whether arriving via the C. B. & Q. or via some other line haul carrier, is delivered there at the flat Chicago rate from all of the same origin territories from which the flat Chicago rate was prescribed to the Union Stock Yards and Transit Company in Chicago Livestock Exchange vs. Atchison, Topeka and Santa Fe Railway Company, 219 ICC 531, decided December 7, 1936.

Exam. Diamondson: Who makes the delivery if a shipment comes in on other than the C. B. & Q.?

The Witness: The C. B. & Q. will perform the switching [fol. 25] service to the Omaha Packing location.

By Mr. Rynder:

Q. Are these shipments to the Omaha location what are known as direct shipments, as distinguished from livestock shipped to a commission man at the Stock Yards for sale and there purchased by a packer or other person?

A. All of the traffic destined to the Omaha location consists of what are known as direct shipments.

Q. Will you please define what you mean by a direct shipment?

A. By direct shipments I mean shipments as to which Swift & Company, Omaha Packing Company, or any of the subsidiaries or affiliated companies of Swift & Company is shown as consignor or consignee in the bill of lading, shipping receipt, waybill, or other transportation documents issued by the defendant railroads at the several points of origin.

Such shipments consist of livestock which has been purchased by Swift & Company at points other than Chicago for shipment to its Chicago plants or livestock which is consigned by the shipper thereof to Swift & Company, Omaha Packing Company, or some other subsidiary of Swift & Company to be delivered at the Omaha Packing Company location.

For example: Swift & Company or Omaha Packing Company may purchase a carload of cattle, hogs or sheep on some other public market such as Kansas City, Omaha, St. Paul or Denver, or make a similar purchase in the country where those companies maintain a number of buying stations. If the shipment is intended for Swift & Company [fol. 26] or Omaha Packing Company at Chicago, it is billed from point of origin to Omaha Packing Company, C. B. & Q. delivery, Chicago, Illinois.

The term "direct shipment" has undoubtedly grown up to distinguish this class of shipments from shipments by livestock producers and others consigned to commission men at the Union Stock Yards, Chicago, or at other public markets, where they are placed on sale by the commission men and there purchased generally by a local packer or by an order buyer for a packer at another point. This class of shipments is now well recognized and understood.

With respect to such direct shipments neither the Union

Stock Yards and Transit Company of Chicago nor the commission men operating upon its yards have any interest as purchaser, consignor, consignee or owner. Such shipments are very common in the industry and are, dependent upon the destination point, delivered either to public stock yards or to the private unloading facility of the consignee if he maintains such facilities. No stock yards service as that term is generally understood is required or desired. By this I mean that the shipments to the Omaha Packing Company location in Chicago are unloaded by the consignee, the Omaha Packing Company, whereas shipments consigned to the Union Stock Yards and Transit Company are unloaded by the Stock Yards Company upon a basis of charges paid for by the line-haul railroad company.

[fol. 27] In connection with these direct shipments to the Omaha Packing Company no other stock yards service such as receiving, feeding, watering, holding, delivery, weighing, and so forth, is requested or desired by the consignee. All such services are performed by the employes of the Omaha Packing Company at that company's expense upon its own premises.

Q. Are certain stockyards charges incurred by the shipper or consignee if such direct shipments are forwarded to Chicago for delivery through the facilities of the Union Stock Yards and Transit Company?

A. Yes, certain such charges are incurred and these are commonly known as yardage charges. In order to obtain possession of the livestock from the Union Stock Yards and Transit Company the consignee of a direct shipment forwarded to that company's facilities must pay the Union Stock Yards and Transit Company yardage charges which are:

Cattle—65 cents per head;
Calves weighing under 450 pounds—40 cents per head;
Hogs—21 cents per head;
Sheep or goats—15 cents per head

as shown in Tariff 14, Supplemental No. 26, effective August 11, 1947, of the Union Stock Yards and Transit Company of Chicago, Illinois, on file with the Secretary of Agriculture.

Q. Mr. Tally, you have stated there the tariff charges per head. Taking what you might think to be a representative [fol. 28] carloading, could you state what they would amount to per car for any species of livestock?

A. Well, on cattle they would load 20 to 25 head to the car. On the basis of 65 cents per head this would run from $13 to $16.25 a car.

On calves they would run from 70 to 120. On the basis of 40 cents per head there is provided a maximum charge of $28 on single deck cars and $56 on double deck cars.

Hogs run about 125 to the car and at 21 cents would be equal to $26.25 per double deck car.

200 sheep or goats at 15 cents per head would run about $30 per double deck car.

By Mr. Rynder:

Q. You gave the street address of the Omaha Packing Company, didn't you, Mr. Tally?

A. Yes; 2320 South Halsted Street.

Q. Do you know the approximate distance, Mr. Tally?

A. Approximately two and a half miles from the stock yards area. 23rd and Halsted to 41st and Halsted is eighteen blocks. Halsted Street is the eastern boundary of the stock yards area. Now, the additional distance over the eighteen blocks would be the western direction and distance from Halsted Street into the stock yards area and I might say that that would represent about half a mile, making a [fol. 29] total of two and a half miles. The distances I have just enumerated are the street distances over which trucks can operate.

Q. Now, Mr. Tally, can you state approximately how long direct shipments as described by you have been received at the facilities of the Omaha Packing Company in Chicago?

A. I am certain that such deliveries were being obtained prior to my employment by Swift & Company. The decision of the Commission in Omaha Packing Company v. the C. M. & St. P. Ry. Co., 37 I. C. C. 378, decided December 20, 1915, indicates that such shipments were being received at that time and prior thereto at the facilities of the Omaha Packing Company. I know that such shipments have been received at that point continuously since my employment by Swift &

Company more than twenty-seven years ago. Formerly the Omaha Packing Company slaughtered and processed a substantial portion of the livestock received at that location. The plant of the Omaha Packing Company was destroyed by fire on August 4, 1932 and it was not rebuilt. Thereafter it became necessary to transport to the Swift plants in the Union Stock Yards area all of the direct shipments of livestock received at the Omaha Packing Company location.

Q. After such direct shipments have been received and unloaded by the Omaha Packing Company in its facilities at 2320 South Halsted Street, how is such livestock trans-
[fol. 30] ported to the desired points on the Swift plants in the Union Stock Yards area?

A. Swift & Company acquired a fleet of so-called livestock trucks consisting of about thirteen in number. These trucks operate almost continuously between the Omaha Packing Company location at 2320 South Halsted Street and the Swift & Company plant facilities in the stock yards area. These trucks are owned by Swift & Company and are operated by its own employes. All expenses in connection therewith are absorbed by Swift & Company.

Q. Can you state the number of carloads of livestock received by railroad during any recent representative period at the facilities of the Omaha Packing Company?

A. The Omaha Packing Company received during the calendar year December 31, 1947, the calendar year ending December 31, 1947, in excess of 6500 cars of livestock by rail.

Q. Can you state the approximate cost to Swift & Company of trucking these rail receipts of livestock from the Omaha Packing Company location to the Swift plants in the Union Stock Yards area?

A. The cost may vary somewhat from month to month, depending upon the volume of receipts. However, I am advised by the manager of our Chicago plant that the estimated total average annual cost to Swift & Company of trucking these shipments from the Omaha Packing Company
[fol. 31] location is approximately $50,000.

Mr. Smith: Do you happen to have the per head figure there, the 6,000 into the $50,000?

By Mr. Rynder:

Q. Mr. Tally, did you receive a later estimate from him on that? You mentioned $50,000.

A. Yes, but that did not represent the rail receipts.

Q. I see. Is a change now taking place which will make it desirable to Swift & Company to have the rail livestock now received at the facilities of the Omaha Packing Company delivered instead to unloading facilities adjoining the new Swift plant in the Union Stock Yards area?

A. Yes.

Q. Will you please explain this situation?

A. Due to obsolescence of certain buildings and inadequacy of certain facilities it has become necessary for Swift to construct a new packing plant in the stock yards area. The construction of that plant has already commenced. In connection therewith it is proposed to provide substantial facilities for the unloading from railroad cars of railroad receipts of livestock and substantial pen area in which such livestock and other livestock may be held pending slaughter and processing.

Q. Have you obtained from your Construction Department a plan of the proposed new building, and so forth?

A. I have obtained from our Construction Department [fol. 32] a photostatic copy which I have available, which shows the ground plan of the new plant and adjoining facilities, such as track areas and unloading and holding pens.

Mr. Rynder: Mr. Examiner, at this point we would like to have marked for identification as exhibit 1 the map which has already been distributed and has that marking on it.

Exam. Diamondson: The exhibit will be identified as exhibit No. 1.

(Exhibit No. 1, Witness Tally, marked for identification.)

By Mr. Rynder:

Q. Mr. Tally, referring to exhibit 1 will you please explain as fully as may be necessary for this purpose the information intended to be conveyed by the plan?

A. I call your attention to the wording "Open Holding Pens" at the upper right hand corner and particularly to

the marking below which provides for an eight car spotting track from which cars of livestock can be unloaded into the identified open holding pens. Directly below that is identified the new livestock building and below that is shown the wording "Fourteen car spot". This indicates that fourteen cars of livestock may be set at this particular location for unloading livestock into the identified new livestock building. This makes a total of twenty-two cars that may be spotted and unloaded at the new plant at one time.

Q. In your judgment is the capacity of twenty-two cars [fol. 33] for unloading at one time sufficient to provide for the direct shipments of livestock now being received by Swift & Company at the Omaha Packing Company location?

A. In my judgment, based upon my knowledge of receipts at the Omaha Packing Company location in recent years, I believe the proposed track capacity of twenty-two cars is adequate.

Exam. Diamondson: Would that be adequate under a peak movement?

The Witness: We believe so, yes, sir.

By Mr. Rynder:

Q. Mr. Tally, referring again to exhibit 1, from what direction and over what tracks, as shown on that exhibit, would livestock reach your unloading facilities?

A. Livestock would be received from the west and over the tracks marked respectively with the legends "Fourteen car spot" and "eight car spot", as shown in the lower right hand corner of the sketch.

Q. Do these tracks shown on the exhibit connect directly with the tracks of the Chicago Junction Railway?

A. Yes.

Q. Have you another map or sketch which shows in more detail the track area of the Chicago Junction Railway within what is generally known as the Union Stock Yards district?

A. Yes, I have.

Mr. Rynder: Mr. Examiner, as I understand it we obtained this map from the railway company and gave a copy [fol. 34] of it in advance to counsel for the line-haul car-

riers and I believe it was the understanding that it could be admitted as an exhibit without further proof by an engineer or otherwise.

Mr. Smith: That is right.

Mr. Rynder: Therefore, I request that the map just referred to be marked for identification exhibit No. 2.

Mr. Rynder: In response to your question, Mr. Examiner, the construction, I am informed, has been started. Owing to present-day conditions in many lines, steel, building, and so forth, it is probably impossible to state now the date within which it will be completed. I understand that contracts have been let for the various pieces of work.

I might say this, that I would think it would be completed before this case could possibly be decided by the Commission.

Exam. Diamondson: Could you just give an estimated time?

Mr. Rynder: And that that fact could be reported to the Commission without the necessity for an additional hearing, I take it. It will be completed within this year 1948.

Exam. Diamondson: I think you can state an estimate of the time within which it will be completed.

Mr. Rynder: Mr. Mayfield states and informs me that there is an expectation it will be completed within this year [fol. 35] 1948.

Mr. Smith: Your Honor, I would like to indicate at this point that we will want to get a good deal of information about this proposed new project, much more than has been said about it so far. Mr. Rynder has undertaken to make a factual statement in response to the Examiner's question, which I do not object to at all, of course, but we do want more information about it than has been elicited on the record at this point and I think it is just fair to say that at this time.

Exam. Diamondson: You may proceed, Mr. Rynder.

Mr. Rynder: We can probably find the men who can furnish information if the exact nature of it is indicated to us. The reason I say that is that a project of this kind involves the joint work of a good many men. There are engineers who have to do with the construction of it, others who have to do with the machinery inside of it, others who

have to do with the planning of the building, and so forth. The complete and detailed technical information as to all phases of it is seldom within the possession of a single man.

Exam. Diamondson: I appreciate that, Mr. Rynder, and my only thought was to get a reasonable estimate as to the time it would be completed.

Mr. Smith: On that point, Mr. Examiner, before we leave it, this witness has said, as I understand it, that these new buildings are being constructed because,—and I may be [fol. 36] wrong about this,—but as I understood him he said it was because the old buildings had become obsolete, where it was necessary to construct a new plant and that is particularly the thing I want to find out about.

Exam. Diamondson: You can develop proof on that, I imagine, on cross examination.

Mr. Smith: I had supposed so. I assumed Mr. Tally had the facts about that.

Exam. Diamondson: Proceed, Mr. Rynder.

Mr. Rynder: I can only say we will have to know the type of facts that are desired in order to get a man down here who has that particular information.

Exam. Diamondson: Back on the record. Proceed, Mr. Rynder. The exhibit will be identified as exhibit No. 2.

(Exhibit No. 2, Witness Tally, marked for identification.)

By Mr. Rynder.

Q. Referring to exhibit 2, will you please point out the approximate location of the unloading tracks adjacent to the new Swift plant as described in your preceding exhibit?

A. I direct your attention to the upper left hand corner of exhibit 2 and particularly to the location identified as Hine Brothers Company. Immediately below and south of that location is a series of tracks which are the Chicago [fol. 37] Junction Railway tracks leading to the Chicago stock yards area and other plants. Immediately below and south of that location is a series of tracks and below that series of tracks is a heavy white line crossing Ashland Avenue just north of a street marked "Private Street No. 1". Below that white line is shown where the Chicago Junction Railway leaves its own rails at Ashland Avenue

and enters onto the property and tracks of Swift & Company. The location of the plant previously described in exhibit 1 is identified on this exhibit 2 as "Swift" in black letters.

Mr. Smith: Your Honor, I want to make a suggestion about these maps. I wonder if we couldn't put these maps on an easel and then when the witness makes a reference to some point actually physically point it out. I realize that won't be on the record but it seems to me it will permit the Examiners and counsel to follow more intelligently what is being said. I cannot pick up these points as the witness goes along.

Exam. Diamondson: In pointing it out on the map you should give us the separate printed description so that the record will be clear as to what you are talking about.

The Witness: That is what my testimony is supposed to be.

Mr. Rynder: We have no objection to having a copy put up on the easel, none at all.

The Witness: The various small lines leading into this [fol. 38] location are tracks which now serve this particular location but which will be changed to conform to the requirements of the new facility.

By Mr. Rynder:

Q. Mr. Tally, while you have this exhibit before you will you please explain briefly the other major track layouts shown thereon?

A. The tracks shown at the top of exhibit 2 running to the east and separating into three delivery points serve the unloading chutes and pens of the Union Stock Yards and Transit Company at which livestock consigned to Union Stock Yards and Transit locations are delivered by the line-haul carriers.

I call attention to the fact that this is from one-half to three-quarters of a mile further east than the location of the Swift & Company new plan facility. The Chicago Junction Railway serves a large number of industries in the stock yards area.

Beginning at the left hand, upper corner of exhibit 2, it will be noted the Chicago Junction Railway tracks continue

in an easterly direction around the plant of Swift & Company, then turn to the south and serve various units of Swift & Company, Armour and Company, Miller & Hart and Darling & Company; also the yards of the Chicago Junction Railway at 47th and Loomis Streets, at which point trains are made up and classified for pick-up by the eastern railroads for outbound transportation.

[fol. 39] Referring again to the upper, left hand corner of exhibit 2, it will be noted that other tracks of the Chicago Junction Railway circle the plant of Libby, McNeill and Libby on the north, after which they turn south and serve other industries located in the stock yards area, including Armour & Company, Darling & Company, Roberts & Oake, and the Illinois Food Products, as well as another location of Swift & Company identified as the Hammond Company.

Exam. Diamondson: Those are the tracks of the Chicago Junction Railway that run down north and south down the center of that map, exhibit No. 2?

The Witness: That is correct, yes, sir, serving other industries in the stock yards area,—Swift, Armour, Darling, Miller & Hart, Roberts & Oake and other industries located on the Chicago Junction Railway.

Exam. Diamondson: Can you define from that exhibit the Union Stock Yard area?

The Witness: The Union Stock Yards area on this map is Ashland Avenue on the west, Halsted Street on the east, 47th Street on the south and 39th Street on the north. Now, that is what is generally known as the packing house stock yards area. There are some packing houses that are located outside of that district but that is what is generally known as the area identified as the Union Stock Yards area of the Union Stock Yards of Chicago and the packing [fol. 40] houses located within that district.

Mr. Day: Mr. Tally, you were asked if those were the tracks of the Chicago Junction. Of course they are, but the Chicago Junction has other sets of tracks running in that same packing-town district, in the same destination direction.

Exam. Diamondson: I understand.

Mr. Day: Those, for instance, over beyond Halsted Street are C.J. tracks.

The Witness: These are Chicago Junction tracks.

Mr. Day: And those west of the tracks that Mr. Tally described are Chicago Junction tracks running to the south.

The Witness: In other words, these are Chicago Junction tracks here.

Exam. Diamondson: Don't say "here". Try to say running north and south on the map.

The Witness: Running north and south on exhibit No. 2.

Mr. Rynder: I believe you had about reached the point where you were going to refer to some tracks at the extreme right of that exhibit, Mr. Tally.

A. At the extreme right of exhibit 2 is a series of tracks of the Chicago Junction Railway which serves certain industries such as the Mather Stock Company, over at this point on exhibit 2.

Exam. Diamondson: Describe it a little closer.

The Witness: Located about three-quarters of the way [fol. 41] down on exhibit No. 2 on the right hand side, [illegible]st south of 45th Street, near the U. S. Y. & T. hog[illegible] ba[illegible]s identified on exhibit No. 2.

Pulverized Manure Company, other locations of Armour & Company and also the tracks used by eastern lines in bringing their equipment to the 47th Street Yards of the Chicago Junction Railway to pick up outbound trains that are classified by the Chicago Junction Railway at the so-called Loomis Street Yards located at 47th Street and Loomis Street, which is about two-thirds down from the top of the map.

The Chicago Junction Railway also serves industries south of 47th Street, as is shown in the extreme lower, right hand corner of this map, such as the S. J. DeVries Company, Goodman Manufacturing Company and the Globe Wallpaper Company, which are located as far south as 49th and Halsted Streets.

As will be explained in detail later, the Chicago rates apply to all of the industries referred to, and also those not referred to, but indicated on the map, on freight other than livestock, under tariff provisions which will also be explained later on in my testimony.

Mr. Rynder: Mr. Examiner, we would like to have marked for identification this small map of the Chicago Junction

Railway which has already been distributed and indicated as exhibit 3.

Exam. Diamondson: The exhibit will be so marked.

[fol. 42] (Exhibit No. 3, Witness Tally, marked for identification.)

By Mr. Rynder:

Q. Mr. Tally, have you obtained from the Chicago Junction Railway what purports to be a small map of the entire rail lines of the Chicago Junction Railway?

A. Yes, I have.

Q. And that is the map that has been marked for identification exhibit 3?

A. Yes, sir.

Q. Will you please point out on that map the stock yards area to which you have been referring in connection with the previous exhibit?

A. The stock yards area is bounded by Pershing Road on the north, Ashland Avenue on the west, 47th Street on the south and Halsted Street on the east. The heavy black lines within that area are the lines of the Chicago Junction which have been shown more in detail on my previous exhibit 2.

Q. The preceding exhibit 2 has shown at the northern part thereof the lines of the Chicago Junction Railway as far west as Ashland Avenue. What facility of the Chicago Junction Railway lies immediately west of Ashland Avenue?

A. The facilities of the Chicago Junction Railway just west of Ashland Avenue, where there are on the exhibit several small black lines adjacent to the heavy black lines, is known as the Damen Avenue or Ashland Avenue yards of that railroad. That is the yard where line haul railroads [fol. 43] deliver freight to the Chicago Junction Railway for distribution and delivery to industries located on the Chicago Junction Railway.

Q. Have you been personally familiar with the operations carried on in the Damen or Ashland Avenue yards over a period of years and have you frequently watched its operations?

A. I am familiar with those operations. I have visited these yards on many occasions and have a personal knowledge of the operations carried on there.

Q. Based upon your own observation and experience, will you please explain the operation which takes place at the Ashland Avenue yards of the Chicago Junction with respect to the delivery of dead freight and also the delivery of live stock consigned to the stock yards area of the Chicago Junction Railway and reaching Chicago via a line haul defendant, particularly from the west?

A. All line haul carriers, at least from the west, bring to the Ashland Avenue yards of the Chicago Junction Railway with their own engines and crews all freight destined to points on the Chicago Junction Railway.

In the case of dead freight the engine and caboose are unhooked from the train and returned to the home of that equipment and personnel, following which the Chicago Junction Railway classifies the cars on the various tracks designated by them for efficient distribution of cars to the various industries. After such classification the motive [fol. 44] power of the Chicago Junction Railway places the dead freight cars at the appropriate unloading points upon its lines in the stock yards area.

In the case of mixed trains of dead freight and livestock the line haul carriers separate the livestock from the dead freight at the Ashland Avenue yards, leaving the dead freight for classification as I have just described.

In connection with livestock cars that are included in these mixed trains, the line haul engine after splitting the train between dead freight and livestock either hooks the engine on or the caboose, whichever is required, to the front end back of the livestock cars and proceed to the unloading chutes of the Union Stock Yards and Transit Company, about a mile to a mile and one-half east of the Ashland Avenue yards. This is the area shown by the three heavy, black lines on the middle of which appears the initials "Chicago Junction Railway" between Ashland Avenue and Halsted Street just north of Exchange Avenue.

Exam. Diamondson: And running east and west on the map, exhibit 3?

The Witness: Yes, sir.

By Mr. Rynder:

Q. Will you please identify on this map of the Chicago Junction Railway the appropriate location of Swift & Company's new livestock unloading facilities?

A. Just east of Ashland Avenue on the Chicago Junction [fol. 45] Railway tracks identified by the heavy, black line, there is a light black line leading off to the east and also one to the south which diverges in an easterly direction and is located just north of the words "Packing Town". There are three sections shown on the map; one containing the word "Packing" and one north thereof which the line diverging from Ashland Avenue crosses to the south and one just north thereof in which there is a light black line in an easterly direction. This is the location of the new livestock unloading facilities of Swift & Company and is only a block and one-half to two blocks from Ashland Avenue and not more than a half a mile from the Ashland Avenue yards. It will be one of the closest industry delivery points in the stock yards area to the Ashland Avenue yards. This identification is designated in red "X" shown on the map.

Exam. Diamondson: The two tracks that you have described in connection with the proposed new plant, would you be able to give us the approximate distances over those tracks? What are the lengths of those tracks?

The Witness: Well, the approximate distance would be anywhere from 800 to 1200 feet from the point where the C. J. connects with the tracks of Swift & Company.

Exam. Diamondson: Who is to construct those tracks, Swift & Company or the C. J. Company?

The Witness: Swift & Company or a contractor in its [fol. 46] employ.

Examiner Diamondson: Now, Mr. Tally, you have two tracks shown here. I would like the record to show, if you can furnish the information, what the approximate distances would be from that point of connection there of these proposed new tracks. Do you see what I mean? Now, you described this track and you described this one as "proposed new tracks". What would be the distance from the point of connection?

The Witness: Well, I said in my direct testimony that the distance from Ashland Avenue to the location of the new facility is not more than a block and a half east of Ashland Avenue.

Mr. Rynder: And a city block is about 800 feet, is that right?

The Witness: Yes, sir.

Mr. Day: In that connection, Mr. Tally, isn't your map, exhibit No. 1, drawn to a scale, one inch to twenty feet? Wouldn't that show exactly?

The Witness: It might show exactly what it is. My statement was that the distance from where the Chicago Junction connects with the plant—the distance from where the Chicago Junction connects with the tracks of Swift & Company's new plant location is not in excess of one and a half blocks.

Mr. Smith: To the north end of the new plant or the west end of the new plant or the unloading tracks?

The Witness: To the unloading tracks, which would be [fol. 47] east of that location.

Mr. Day: You are taking the west end of the new facility, aren't you, and measuring that to Ashland Avenue?

The Witness: No, I am taking the connection where the Chicago Junction tracks connect with Swift & Company tracks, which is about Ashland Avenue.

Mr. Day: Yes.

The Witness: And measuring the distance from there to the new plant location, which is not over a block and a half east.

Mr. Day: That is to the nearest point of the new location?

The Witness: A block to a block and a half. The fourteen car spot could be a block and the eight car spot may be a block and a half.

Exam. Diamondson: In other words, from 800 feet to approximately 1200 feet?

The Witness: That is correct, yes, sir.

By Mr. Rynder:

Q. Mr. Tally, did you have a photographer in the employ of Swift & Company make certain photographs to show

the present track lay-out at approximately the point where the Chicago Junction tracks cross Ashland Avenue in the western area of the stock yards?

A. Yes, sir.

Mr. Rynder: I might say, Mr. Examiner, those photographs have been distributed and are marked consecutively 4 to 8, inclusive. I would like to have them identified as [fol. 48] exhibits by those numbers.

Exam. Diamondson: That may be done.

(Exhibits Nos. 4 to 8, inclusive, Witness Tally, marked for identification.)

By Mr. Rynder:

Q. Mr. Tally, I will ask you first to state briefly what is shown or indicated by the photograph marked exhibit No. 4.

A. Exhibit No. 4, with the street and automobiles in the foreground, looks westward across Ashland Avenue. The street in the foreground is 41st Street and the street crossing that street at right angles at the left or western extremity of the picture faced by a building bearing the sign of "Wilson and Company" is Ashland Avenue, which runs north and south.

The tracks of the Chicago Junction Railway cross Ashland Avenue on a viaduct which is indicated in the photograph. The much higher wooden structure which is also a viaduct and which appears in the background of the picture is a viaduct erected for the purpose of driving livestock from the pens of the Union Stock Yards and Transit [fol. 49] Company to the packing plant of Wilson and Company, which is immediately west of Ashland Avenue. The railroad tracks shown in this picture east of the viaduct crossing Ashland Avenue are upon the private property of Swift & Company.

Our new unloading facility will be located approximately at the point where the tracks running in an easterly direction leave the photograph, that is to say, near the area where sewer pipe is shown in the photograph at the extreme right thereof.

Q. Please explain the view shown on this photograph, exhibit No. 5.

A. To understand what is shown on this photograph, exhibit No. 5, it must be understood that you are facing west. Both of the tracks which appear large in the foreground are tracks of the Chicago Junction which immediately after leaving this picture cross the Ashland Avenue viaduct into the stock yards area. The track running out of the picture at the lower right hand corner is the track that continues eastward to the unloading pens of the Union Stock Yards and Transit Company and other facilities. The track running out of the picture at the lower left hand corner is the track that runs to the Swift & Company plant after crossing the Ashland Avenue viaduct. The series of tracks appearing approximately in the middle of this picture and on which are seen a number of freight cars and the locomotive are a part of the Ashland Avenue yards [fol. 50] of the Chicago Junction Railway.

Q. What is shown on the photograph marked exhibit 6?

A. In this photograph, exhibit No. 6, you are still facing west. The word "Ham", approximately in the middle at the left side of the photograph is on a wall which forms at that point the west side of Ashland Avenue. The railroad tracks appearing in the foreground have just crossed the Ashland Avenue viaduct and diverge to reach the Swift plant, including the new plant location of Swift & Company. In the far middle background underneath the wide opening of the viaduct which carries it across Ashland Avenue there can again be seen cars and locomotives which are in the Ashland Avenue yards of the Chicago Junction Railway.

Q. What is shown on the photograph identified as exhibit 7?

A. In this photograph, exhibit No. 7, you are looking east from a point a short distance west of the Ashland Avenue viaduct. The tracks which continue to the east in this picture and north or to the left of the wooden viaduct are tracks of the Chicago Junction Railway Company which continue onward to serve the unloading pens of the Union Stock Yards and Transit Company as well as other industries in this area. The track which diverges to the right from the track entering the picture at the lower right

hand corner turns to the south and east after leaving the picture and serves the Swift plant, and is the track which [fol. 51] will serve the new livestock unloading facilities.

Q. Please explain what is shown on the photograph marked for identification exhibit 8?

A. This photograph, exhibit No. 8, continues with a closer approach to the Swift plant than is shown in the preceding exhibit. The preceding exhibit showed about in the middle a small switch shanty with a man sitting in front of it. That same switch shanty appears in the upper left half of exhibit 8. You are still facing east and the tracks which diverge from the upper right hand track are those entering the Swift plant area and which will serve the livestock unloading facilities of the new plant in that area. The livestock unloading facility for the new plant will be in the approximate location of the refrigerator cars which appear in the upper left hand portion of the picture immediately to the right of the switch shanty.

Q. Approximately what is the distance from the point of divergence of the track from the main line of the Chicago Junction to the new livestock unloading facilities?

A. A block and one-half to two blocks.

Q. And your city blocks that you are thinking of are approximately 800 feet long, is that right?

A. Yes, sir.

Q. Mr. Tally, did you obtain from certain of the railroad sources what purports to be an official map of the Chicago [fol. 52] Terminal District issued by the Chicago Switching Committee, and so forth, dated in 1942?

A. Yes, sir.

Mr. Rynder: We ask that that be marked exhibit 9, Mr. Examiner.

Exam. Diamondson: It will be so identified.

(Exhibit No. 9, Witness Tally, marked for identification.)

By Mr. Rynder:

Q. Mr. Tally, will you please explain briefly what is shown by the map that has been marked exhibit No. 9, which purports to be a map of the Chicago Terminal District?

A. The heavy blue line leaving the shore of Lake Michi-

gan at approximately the point shown as Buffington Yards and continuing in a southerly, westerly and generally northerly direction until it reaches the lake shore again at approximately the location shown as 7400 North at the top center of the map exhibit No. 9 indicates the confines of what is commonly known as the Chicago Switching District within which, subject to certain restrictions and limitations, all carload freight transported to Chicago by the line haul carriers is handled at any industrial location within the area at the flat line haul rate to Chicago without the addition of other switching or terminal charges. The same thing, that is, delivery at the flat Chicago rate, applies to all deliveries upon the team tracks of the line haul carriers within this area.

[fol. 53] Q. Have you any information as to the extent of this so-called Chicago Switching District?

A. I have no exact information except my own observation. However, in the case entitled Switching Rates in Chicago District, 177 ICC 669, decided July 31, 1931, the Commission states that this district is approximately forty miles in length, from seven to fifteen miles wide and densely populated; that it is larger than any other switching district in the country, comprising over 600 square miles and served by thirty-five railroads; that there are more than 5,000 miles of track within its boundaries serving over 4,000 private industries. I would assume that those facts would be substantially true at the present time unless there have been slight changes in the boundaries of the district or perhaps an increase in the number of industries since the time of the Commission's decision. The Chicago Switching District is described in some detail in R. G. Baasch, Agent, Illinois Freight Association Tariff Bureau ICC 584, Section 5, note 2, page 9.

Q. Have you indicated on exhibit 9 the location of the stock yards area and the Chicago Junction tracks?

A. I have. The Ashland Avenue yards of the Chicago Junction Railway is enclosed in a red circle. The location of the Swift & Company unloading facilities, described in previous exhibit identified as exhibit 1, is identified with a green arrow pointing to that location. The location of [fol. 54] the Union Stock Yards and Transit Company

unloading pens on the Chicago Junction Railway is enclosed with a blue circle.

Also shown on this map is the location of the Omaha Packing Company at 2320 South Halsted Street, enclosed in a yellow circle. At this point and also at the Union Stock Yards and Transit location circled in blue is where livestock is delivered by the line haul carrier at the flat Chicago, Illinois rate with certain exceptions. In addition, livestock is delivered on team tracks of certain western railroads at the flat Chicago, Illinois rate. These points are identified on the map with a red arrow.

I think it is pertinent to call attention to the distances involved in the Chicago Terminal area over which dead freight is delivered to industries at the Chicago, Illinois flat rates. Without using the extreme example and referring to one of which I have actual knowledge, attention is directed to the Burr Oak Yard of the Chicago, Rock Island and Pacific Railway Company which is just north and east of the blue line in the lower left hand side of the map.

This is the break-up yard for line haul trains of the Chicago, Rock Island and Pacific Railway and located at approximately 127th Street south and is outside of the city limits of Chicago, Illinois. Under existing tariffs delivery will be made to industries located in the most northerly area of the Chicago Terminal District, a distance [fol. 55] of approximately twenty-five miles.

It will be noted that for deliveries to the Swift & Company livestock unloading plant the distance from the break-up yard for line haul traffic of the Chicago, Rock Island and Pacific Railway is less than half that distance. This same example could be used from the break-up yards of the Milwaukee Railroad for line haul traffic at either Bensonville Yard or Galewood Yard.

Bensonville yard on exhibit No. 9 is shown in the upper left hand corner of the exhibit and Galewood yard is just southeast of that, following the line of the Chicago, Milwaukee & St. Paul Railway. And also of the Chicago and North Western break-up yard at Proviso, over at the left, about two-thirds up on exhibit No. 9, just north of what is identified as St. Charles Road, from which deliveries

will be made to industries in East Chicago, Indiana or Hammond, Indiana, shown at the extreme lower right hand side of exhibit No. 9, a distance approximately thirty to thirty-five miles as compared with the distance to the stock yards area of from fifteen to twenty miles.

I have mentioned two of the principal line haul break-up yards of the carriers reaching Chicago. Others are indicated on the map and may be noted as follows:

Chicago, Burlington and Quincy Railroad Company—Hawthorne Yards and Western Avenue Yards.

Gulf, Mobile and Ohio Railroad Company (Formerly [fol. 56] Alton Railroad) identified on the map as Glenn Yard.

Wabash Railroad Company as Landers Yard and also 47th Street.

The Break-up yard for line haul traffic on the Chicago Great Western Railway Company is Chicago Transfer, Illinois.

Q. I believe you have stated in your previous testimony that the line haul carriers by their own motive power transport all livestock, dead freight and empty cars destined to the stock yards area, to the Ashland Avenue yards of the Chicago Junction Railway, there leaving the dead freight or empties to be switched to their locations by the Chicago Junction and proceeding under their own power to transport livestock to the unloading pens of the Union Stock Yards and Transit Company.

What I want to ask you is this: From each outer break-up yard of any western line haul carrier would the distance be exactly the same in connection with livestock destined to the unloading pens of the Union Stock Yards and Transit Company or to the new unloading facilities of Swift & Company for the haul from the outer break-up yard to the Ashland Avenue yard of the Chicago Junction immediately west of Ashland Avenue at approximately 41st Street?

A. Yes, up to that point the distance traversed would be exactly the same whether the livestock was destined to the unloading pens of the Union Stock Yards and Transit Company or to the unloading facilities of Swift & Company.

Q. Beyond that point which placement would have [fol. 57] traversed the greater distance?

A. The distance from the Ashland Avenue yards of the Chicago Junction Railway to the new livestock unloading pens of Swift & Company would approximate one-half to three-quarters of a mile, while the distance from the Ashland Avenue yards of the Chicago Junction Railway to the unloading facilities of the Union Stock Yards and Transit Company would be from a mile to a mile and one-half.

Q. Will you please compare the distance over which livestock would be switched from the Ashland Avenue yards of the Chicago Junction to the new unloading facilities of Swift & Company with the distances over which dead freight is switched from the same yards by the Chicago Junction to industries located within the stock yards area.

A. Livestock destined to the new unloading facilities of Swift & Company would not travel from the Ashland Avenue Yards of the Chicago Junction Railway a greater distance than three-quarters of a mile. Dead freight which is delivered to the Chicago Junction Railway by the line haul carriers at the Ashland Avenue yards is delivered by the Chicago Junction Railway to industries on its line up to three miles distant. This situation can be visualized by referring back to exhibit 3. Ashland Avenue yards, at which point the Chicago Junction Railway yards is located, is one mile and one-half, as the crow flies, to Halsted Street. [fol. 58] The Goodman Manufacturing Company, served by the Chicago Junction Railway, is located at 48th and Halsted Streets. The distance from the tracks of the Chicago Junction Railway across their northern boundary to Halsted Street is a mile and one-half, at which point they turn south to reach the Goodman Manufacturing Company location which is a little over a mile, making in all a distance of two and one-half miles to reach the location of Goodman Manufacturing Company.

A glance at the map indentified as exhibit 2 will show that practically every delivery of dead freight within the Union Stock Yards area would involve a greater switching service than the delivery of livestock to the new livestock unloading facilities of Swift & Company.

It will be noted by observation that even deliveries of dead freight to the Swift plant in the northerly portion of this area would be greater than those to the livestock unloading facilities. It will also be noted that all deliveries to Armour plant and to the plant identified on the map as Morris & Company (now a part of Armour and Company) would be substantially greater than to the Swift unloading facilities.

Mr. Smith: Mr. Tally, when you use those comparative words "greater", and so forth, you are measuring that in terms of feet or miles of track, as I understand it.

The Witness: Yes, sir.

Of course, it follows that the distance becomes relatively [fol. 59] greater as the railroad proceeds southward from 41st Street to the industries located toward the southern boundary of the stock yards area at 47th Street.

I may also refer in this connection to exhibit 3, which is the map of the Chicago Junction Railway. It will be noted that the Chicago Junction Railway tracks go to a point just east of Drexel Boulevard near the lake front. To effect delivery of dead freight to industries located in that area requires switching of cars from the Ashland Avenue yards of the Chicago Junction Railway, a distance of approximately four miles. In addition, the Chicago Junction Railway serves industries as far north as 15th Street just west of Western Avenue. The distance from 41st Street to 15th Street is twenty-six blocks north and south, which is a little over three miles. This again should be compared with the short distance of one-half to three-quarters of a mile necessary to effect delivery of livestock at the new unloading pens of Swift & Company.

Exam. Diamondson: When you say "the new unloading pens of Swift & Company" you mean the proposed pens, do you not?

The Witness: That is correct, yes sir.

By Mr. Rynder:

Q. Has any general basic been provided for the application of line haul rates to points within the Chicago Terminal area as indicated on exhibit 9?

A. Yes.

Q. Will you please state in what railroad tariffs these [fol. 60] bases of rates are published?

A. R. G. Raasch, Agent, Illinois Freight Association Tariff Bureau, in his tariff on file with the Interstate Commerce Commission under ICC 584, which is the tariff providing for rates from or to points within the Chicago Switching District on outbound and inbound freight traffic.

Q. What is the fact as to whether, taking into account certain minimum revenue limitations, the line haul carriers provide for delivery of line haul freight within the Chicago Terminal area?

A. The general situation is that the carriers provide for delivery of any dead freight to any industrial location within the Chicago Terminal area, regardless of the railway upon which it may be located, at the flat line haul rate to Chicago, subject to minimum revenue requirements. With respect to livestock the railroads provide for delivery at the unloading pens of the Union Stock Yards and Transit Company on the rails of the Chicago Junction Railway at the flat Chicago rate without additional charges (with certain exceptions that need not be mentioned at this point), this situation having been brought about by the decision of the Commission in Chicago Livestock Exchange vs. Atchison, Topeka and Santa Fe Railway Company, 219 ICC 531, decided December 7, 1936.

With only the same limitations and exceptions the railroads provide for delivery of livestock at the flat line haul [fol. 61] freight rates to Chicago at the unloading facilities of the Omaha Packing Company located on the Burlington Railroad. This is also in accordance with the requirements of the Commission in the same decision in the Chicago Livestock Exchange case. The line haul carriers also generally provide for delivery of carload shipments of livestock upon their own team tracks within the Chicago Terminal area.

Q. Mr. Tally, suppose you desired to determine the exact amount of the total charges you would pay for the transportation of a carload of a specific commodity from a specific interstate point of origin on the lines of one of the western railroads to a specific industrial location within the Chicago Terminal area, will you please explain step by

step the exact process you would follow to determine that and the result you would obtain?

A. I would first determine the tariff naming the rate on the commodity involved from the origin of the shipment to Chicago, Illinois and review the rules and requirements published within that tariff. That tariff makes cross reference to the Chicago Terminal Switching Tariff and also the tariff published by Agent Raasch, ICC 626, which is a directory of industries located in the Chicago Switching District.

As an example: We will take Miller and Hart, an industry located in Chicago, Illinois and which is identified in Agent Raasch's tariff ICC 626, page 82, as an industry [fol. 62] located at 45th Street and Packers Avenue in the middle district on the tracks of the Chicago Junction Railway.

Now, let us assume that this car of dead freight is consigned to Miller and Hart, routed from Omaha, Nebraska, the origin point of the shipment, over the Chicago and North Western Railway. We then refer to Agent Raasch's tariff ICC 584, which is referred to in the line haul tariff of the Chicago and North Western Railway, to which tariff the Chicago and North Western Railway is a party, and turn to the alphabetical list of stations identified within that tariff and find that Chicago, Illinois, on the Chicago Junction Railway, is assigned index Nos. 560 to 590, which are shown on pages 62 and 63.

It provides that between industries in the middle district on the Chicago Junction Railway and the Chicago and North Western Railway we are to apply rate basis 6 which is explained in Section 10, commencing on page 114.

Rate basis 6 is located on page 118 and opposite the Chicago and North Western Railway under freight tariff (except livestock) it refers to rate basis No. 1 for application of rates. Rate basis No. 1 is shown on page 114, Section 10 and provides that on carload traffic to or from points outside the Chicago Switching District and the industries previously identified where the rate from or to Chicago, Illinois is 4½ cents per hundred weight or higher, and the charges to Chicago are $27.00 or over, Chicago rates apply. Where the charges to or from Chicago are

[fol. 63] less than $27.00, then apply a charge of $27.00 per car. Further, where the rate to or from Chicago is less than 4½ cents a hundred weight, then the minimum rate to be assessed is 4½ cents a hundredweight and such charge covers line haul and delivery.

Q. Mr. Tally after this journey through the tariff what conclusion do you reach as to the total cost of transporting a carload of meat from Omaha, Nebraska via the Chicago and North Western Railway destined to the plant of Miller and Hart on the Chicago Junction Railway in the Stock Yard District provided the revenue on that car is $27.00 or greater?

A. The charges that will be paid on this car will be those resulting from a multiplication of the weight loaded in the car by the rate per 100 pounds on the meat from Omaha, Nebraska to Chicago, Illinois without any addition of charges for switching.

Q. Would you follow the same method to determine the charges in connection with any other industrial delivery in the Chicago Terminal area in connection with dead freight?

A. Yes, sir.

Q. With certain other minor exceptions would the result be the same?

A. Yes, sir.

Q. What procedure would be followed to determine the total charges on a carload of livestock consigned from [fol. 64] Omaha, Nebraska via the Chicago and North Western Railway to the unloading pens of the Union Stock Yards and Transit Company on the Chicago Junction, or to the facilities of the Omaha Packing Company on the Chicago Burlington and Quincy?

A. The same procedure would be followed in the example you just mentioned.

Q. Suppose you desire to ascertain the total charges upon a similar car of livestock consigned to an unloading facility at the plant of Swift & Company on the Chicago Junction in the Union Stock Yards area?

A. The same procedure would be followed, but on referring to rate basis No. 1 to which I referred in connection with the index number 560 to 590, I would find that the

basis for the Chicago, Illinois rate applies with the exception of livestock. Therefore, the charges on livestock to the Swift & Company plant under the existing tariffs would be the Chicago rate to the Ashland Avenue yards plus the local switching charge of the Chicago Junction Railway from the Ashland Avenue yards to the Swift & Company location, which is 4 cents a hundredweight, minimum 60,000 pounds, or a total of $24.00, plus the 20 per cent authorized by the Commission in Ex Parte 166 of $4.80, making a total of $28.80, in addition to the line haul rate to Chicago, Illinois.

Mr. Smith: Mr. Tally, I don't believe you added the recent increases in respect to the rates on dead freight, did you?

[fol. 65] The Witness: I don't believe I know what you mean, Mr. Smith.

Mr. Smith: Well, there have been some recent increases that would affect the figures you gave on dead freight, as well as on livestock.

The Witness: That is correct. The $27.00, minimum 4½ cents, would be subject to the increases authorized by the Commission.

Mr. Smith: You did not include those?

The Witness: No, sir, I did not.

This is in contrast to the flat Chicago rate now applicable for the delivery of livestock at the unloading pens of the Union Stock Yards and Transit Company located on the rails of the Chicago Junction Railway.

Exam. Diamondson: We will adjourn now until two o'clock.

(Whereupon, at 12:30 o'clock P.M., a recess was taken, to reconvene at 2:00 o'clock P.M.)

[fol. 66] Afternoon Session

2:00 o'clock P.M.

Exam. Diamondson: The hearing will be resumed at two o'clock. Proceed, Mr. Rynder.

G. F. TALLY resumed the stand and testified further as follows:

Direct examination (Continued).

By Mr. Rynder:

Q. Mr. Tally, are you familiar with the distinction between what are commonly known as joint rates and local rates?

A. I think so.

Q. Please explain your understanding of the differences.

A. I have for years been familiar with the rules and regulations that govern the construction and filing of freight rates publications issued by the Interstate Commerce Commission.

As I understand those terms, a joint rate is one published by or on behalf of two or more carriers in which event one carrier gives a concurrence to another carrier or both carriers may give concurrences and authorizations to a joint agent for publication of a single factor rate applicable over two or more lines. Such rates are published in the tariffs as single factor rates from a point of origin on one line to a destination on another, and normally the tariff does not show the divisions or portions of the total through rate which accrues to each of the participating carriers. As contrasted with this, my understanding of a local rate is [fol. 67] that it is a rate published by a single carrier or its agent between two points on a single line of railroad and that no other carrier concurs in or participates in that rate.

Q. Let me assume that you have a rate providing for the transportation of meat in carloads from a point of origin on the Chicago and North Western Railway, such as Omaha, Nebraska, to a destination on another line of railroad in Chicago such as a packing plant in the stock yards area located on and served by the Chicago Junction Railway

Company. Are separate, local charges published by the two railroads, that is to say, one charge for the line haul transportation from Omaha to a point on the Chicago and North Western tracks in Chicago and another charge for transportation from the Chicago and North Western connection with the Chicago Junction to the unloading point on the line of the Chicago Junction?

A. No.

Q. In connection with such a movement is any switching charge published by the Chicago Junction for its service in Chicago which is applied to the assumed carload of meat and absorbed by the line haul carrier which in this case is the North Western?

A. No.

Q. Are the rates from practically all points of origin by line haul carriers to Chicago for delivery off the lines of the [fol. 68] line haul carrier published in the same manner which you have described in connection with the carload of meat from Omaha to Chicago?

A. Generally that is true.

Q. Does a single one factor rate cover the entire movement of a carload of dead freight as assumed from Omaha to Chicago over the line of the North Western Railway and thence to an industry located only on the line of the Chicago Junction or some other Chicago line other than the North Western?

A. That entire movement is covered by a single factor rate named in the tariff of the originating line haul carrier applicable to Chicago, Illinois.

Q. Will you please show from the tariffs themselves just how this publication is accomplished?

A. The rate on fresh meats from Omaha, Nebraska to Chicago, Illinois via the route of the North Western Railway is published in Agent L. E. Kipp's Tariff ICC A 3607. This tariff publishes rates between Chicago, Illinois and Omaha, Nebraska and further provides that to other points in Illinois shall be as indicated under Column 1 of Western Trunk Line territorial directory published by Agent Kipp under his ICC A 3176. By referring to such territorial directory we turn to Chicago, Illinois on the Chicago and North Western Railway, shown on page 114, which carrjes

a circle 40 reference, the explanation for which is shown on page 31 of that tariff and reads as follows:

[fol. 69] "Shipments to and from stations refer thus circle 40 which are included in the Chicago Switching District when routed via Chicago-District points as defined in Agent R. G. Raasch's tariff ICC 584, will be subject to rates, terminal charges, rules and regulations shown therein."

The Chicago and North Western Railway is shown on page 39 of Agent Raasch's Tariff ICC 584 as an issuing and participating carrier under concurrence Form FX 1 #183. As I stated earlier in my testimony, Agent Raasch's tariff ICC 626 publishes a list of industries in the Chicago Switching District and identifies their locations and the railroad by which they are served. Then referring to the tariff issued by Agent Raasch, ICC 584, previously explained, we find that to such an industry location the Chicago, Illinois rates apply subject to the exceptions provided in the tariff and which have been included in my earlier testimony. This has the effect of making the single factor rate from Omaha to Chicago over the North Western only apply, also, where transportation from Omaha over both the Chicago and North Western and Chicago Junction Railways is necessary to reach an industry located only on the latter line.

Q. Are the local switching charges of the Chicago Junction or other railroads performing switching services in the Chicago Terminal area published in Agent R. G. Raasch's Tariff ICC 584?

A. No, they are not so published but are published in [fol. 70] Agent R. G. Raasch's Tariff ICC 537 and the Chicago Junction switching charges are published in the Chicago Junction Tariff ICC 74.

Q. Is any provision made in the tariff naming the line haul rate which you stated was Agent Kipp's Tariff ICC A 3607 or in Agent Raasch's Tariff ICC 584 for the absorption by the line-haul carrier of any local switching charge of the Chicago Junction Railway or of any other railway which performs switching services within the Chicago Terminal area?

A. No.

Q. To the best of your knowledge and belief are such

local switching charges assessed by the Chicago switching line and absorbed by the line haul carrier?

A. I have never seen any tariff and do not know of any by which the line haul carriers to Chicago provide for absorption of the switching charges of another Chicago line, the use of which might be necessary to reach the specified industrial destination. So far as I know from my years of experience the sole basis for determining the rate applicable to a specified industrial delivery in the Chicago terminal area is that contained in Agent Raasch's Tariff ICC 584 which merely provides (with the exceptions there noted) for application of the line haul rate to the off line industry, without making any provision therein for absorption of a switching charge or division of the total through rate.

Mr. Smith: May I ask a question there, Mr. Rynder? Are [fol. 71] you contending here, as was contended in the Hygrade case, that this switching charge is inapplicable?

Mr. Rynder: No.

Mr. Smith: You are not making that contention?

Mr. Rynder: No. We are simply attempting to show that this entire Chicago territory is covered by a joint rate arrangement rather than by an absorption of switching charges.

By Mr. Rynder:

Q. Have you been informed by competent traffic men as to how this matter is handled in the Chicago area?

A. I have been advised that the delivering, switching carrier receives a division of the local or joint through rate to Chicago published by or on behalf of the line haul carrier, and that such divisions are named in dollars per car and also in cents per 100 pounds with certain minimums as amounts which will be paid to an intermediate or terminal switching line for delivery in the Chicago terminal area; that such amounts are not the same as the local switching charges of such switching lines; and that these divisions of the joint through rates authorized for terminal switching service in the Chicago terminal area are published in Chicago Switching Committee Division Sheet No. 12-K which is not filed with the Interstate Commerce Commission because

of the fact that carriers are not required to file their divisions or make them known to the public.

Q. Up to this time you have been referring to the method [fol. 72] for obtaining through rates for a specified delivery of dead freight.

Mr. Rynder: And I might say, if it is of any interest to counsel, that I am using "dead freight" here in a sense other than livestock.

Mr. Smith: That is, it includes this perishable fresh meat, and so forth, that you have delivered now?

Mr. Rynder: That is right.

By Mr. Rynder:

Q. Will you please indicate just how you obtain a rate on livestock in carloads from the same origin to the same industrial delivery or some other industrial delivery in the Chicago area?

A. I first determine the tariff which publishes the rate on livestock from Omaha, Nebraska to Chicago, Illinois, which is Chicago and North Western Railway Company tariff ICC 11104. On page 7 of that tariff, item 15, it is provided that to determine the rates on livestock to points in Chicago, Illinois, see Agent R. G. Raasch's Tariff ICC 584.

We then follow the same procedure in determining the location to which livestock will be delivered in Chicago by following through in Agent Raasch's Tariff ICC 584, as has been explained twice in my testimony. Delivery of livestock in Chicago at the line haul rate is limited by Agent Raasch's tariff ICC 584 to the Union Stock Yards and Transit Company, located on the Chicago Junction Railway, the Omaha Packing Company, located on the Chicago, [fol. 73] Burlington & Quincy Railroad and to team tracks of the line haul carriers transporting the livestock from Omaha, Nebraska to Chicago, Illinois.

Q. By reference to the decision of the Commission in the Chicago Livestock Exchange v. Atchison, Topeka and Santa Fe Railway Company, 219 ICC 531, decided in 1936, I observe the following statement is made at the bottom of page 539:

"Also, there is no terminal charge on so-called dead freight moved by defendants from and to the Union Stock

Yards. On traffic other than livestock delivery at points in Chicago off their lines, the defendants absorb switching charges ranging from $9.00 to $12.00 per car. When necessary to use an intermediate line between the road-haul line and the line making delivery, the charges of such intermediate lines, ranging from $3.60 to $10.50, are also absorbed."

If this statement in the decision insofar as it refers to absorption of switching charges was correct at the time it was made, what have you to say as to its correctness at the present time?

A. At the present time there is no absorption of switching charges in Chicago, Illinois to effect delivery of carload freight to industries in that area for the reason that all rates to Chicago, Illinois are extended in their entirety to industrial locations within the Chicago switching area as is provided in Agent R. G. Raasch's Tariff ICC 584, and the [fol. 74] compensation as between the line haul carrier and the different handling carrier is a matter of division between those lines and not a matter of absorption between line haul carrier of the switching charges of the delivering carrier.

Mr. Rynder: Mr. Examiner, I would like to request that the document I have just distributed, which consists of twenty-seven pages, be marked for identification as exhibit No. 10.

Exam. Diamondson: That will be done.

(Exhibit No. 10, Witness Tally, marked for identification.)

By Mr. Rynder:

Q. Mr. Tally, have you prepared as an exhibit a copy of a letter written by Mr. W. A. Mayfield, General Traffic Manager of Swift & Company, to certain railroad officials, dated July 8, 1947?

A. Yes, sir. It is shown on page 3 of my exhibit No. 10.

Q. And is that a true and correct copy of the letter in your files?

A. It is, yes, sir.

Q. Have you also prepared copies of the letters in your files which were received in reply to Mr. Mayfield's letter of July 8, 1947?

A. Yes, sir, shown on pages 4, 5, 6, 7 and 8 of my exhibit No. 10.

Q. Those are true and correct copies of the replies?

A. They are, yes, sir.

[fol. 75] Q. Are the originals of the replies available if it is desired to examine them?

A. Yes, sir. They are in my possession.

Q. Do you care to say anything about the meeting which is referred to? You were present at the meeting that is referred to?

A. Yes, sir, I was present at the meeting. At Mr. Mayfield's request a meeting was called for the purpose of our presenting to them our proposal to have established the direct delivery of livestock at the Swift & Company new proposed location in Chicago, Illinois. We appeared in Mr. Capron's office, Vice-President of the Burlington Railroad, at which were present Mr. R. G. Hawkinson of the Great Western Railroad, Mr. S. G. Grace of the Chicago, Milwaukee, St. Paul & Pacific, appearing for Mr. Finegan, Mr. J. W. Hill, Vice-President of the Rock Island Railroad, Mr. F. G. Fitz-Patrick, Vice-President of the C. & N. W. Railway.

We outlined our proposal to them for their consideration, furnishing them full details by blueprint of the locations and we there entered into a very informal discussion of the subject and they advised us they would give the matter consideration and further advise us at a later date. Upon return to our office Mr. Mayfield addressed a letter to those gentlemen, as is shown on page 3 of exhibit 10 and on pages 4 to 8, inclusive, are the replies that he received [fol. 76] to that letter, which is self-explanatory.

Q. Mr. Tally, have you had prepared a statement showing the revenue per car for all carloads of livestock received by the Omaha Packing Company for some recent period?

A. I have. Pages 9 to 12 of exhibit No. 10 cover all shipments of livestock received from various origin points at the Omaha Packing Company location for the period March 26, 1947 to May 2, 1947. The cars shown on exhibit 10 were delivered direct to the Omaha Packing Company by the Chicago, Burlington & Quincy Railroad or through

the medium of the Chicago, Burlington & Quincy Railroad, by all line haul carriers defendants in this case. The freight charges, exclusive of the Government tax, will run as high as $321.00 per car and in one case as low as $35.67 per car. This is higher than the minimum requirements of $27.00 per car of the railroads which provide for industry delivery at the flat Chicago rate, as indicated in R. G. Raasch's Tariff ICC 584.

Q. And that $27.00, or as it may have been increased by the recent—what is it, 166?

A. No. For comparative purposes that twenty-seven dollar figure should be increased by the increases authorized in Ex Parte 162 because the revenues shown on the cars enumerated on pages 9 to 12 were during a period prior to the application of the increase authorized in Ex Parte 166.

Q. So the revenues per car and the twenty-seven dollar [fol. 77] figure go together?

A. That is right, except that the twenty-seven dollar figure could be increased 20 per cent as a result of Ex Parte 162.

Q. But that would also be true of the revenues on the freight cars?

A. No, the freight cars have got the 162 in them.

Q. Oh, they have it in them?

A. Yes, sir.

Q. I see. And that twenty-seven dollar figure as increased includes a delivery of any kind of freight other than livestock on the Chicago Junction, does it not?

A. Yes, sir.

Mr. Kaylor: The reason that increase is on the freight charges is because you paid that amount of money, isn't it?

The Witness: That is right, yes, sir.

By Mr. Rynder:

Q. For comparison with the carload revenues actually accruing on livestock shipped to the Omaha Packing Company have you had prepared a statement based upon commodity tariffs of the various defendants, showing the commodity rates from various points of origin to Chicago, the minimum weight and the revenue per minimum carload on a number of articles from various points?

A. I have had such a statement prepared, pages 13 to 16.

Q. Those are not shipments consigned to Swift?

A. Not on pages 13 to 16. Those are statements of com-
[fol. 78] modity rates and minimum weights on various commodities into Chicago.

Q. Under which the delivery will be made at the Chicago rate?

A. That is right, yes, sir.

Q. And that is why you have used the minimum revenue, is it not?

A. Yes, sir.

Mr. Smith: I do not believe I am clear as to that. Did you then use minimum revenue on livestock, too?

The Witness: No, we took actual revenue on livestock because we had that information.

Mr. Smith: Oh, I see. You are comparing minimum carload earnings with actual, is that it?

The Witness: Yes, sir.

Mr. Kaylor: He just stated that is what he paid on the actual revenue.

Mr. Smith: And he has just stated, as I understand it, what the shippers of the dead freight paid.

Mr. Rynder: Oh, no, we don't know what they paid because we don't know the loadings. We simply know that those rates and minima produce revenue under which the Chicago deliveries will be made at the Chicago rate.

Exam. Diamondson: Are the rates that you show there inclusive of the Ex Parte 162 increases?

The Witness: Yes, sir.

Mr. Kaylor: That applies, of course, to the minimums
[fol. 79] under the Ex Parte 162, does it not?

The Witness: Yes, sir.

By Mr. Rynder:

Q. Have you anything to say concerning the information shown on that exhibit as to the other commodities?

A. The information shown on pages 13 to 16 is that the carriers hold themselves out to transport the various commodities shown on this exhibit from the various origin points to Chicago, Illinois at the minimum car revenues indicated and at such car revenues will provide direct de-

livery to all industry locations within the Chicago switching area and this regardless of whether the switching service in Chicago requires more than one terminal line to effect delivery.

It will be noted minimum car revenues on these shipments are in many cases substantially less than the car revenues on the livestock shipments enumerated on pages 9 to 12 of exhibit 10. Reviewing the exhibit in its entirety in no case is the minimum car revenue in excess of the car revenues on livestock shown on pages 9 to 12. In other words, its purpose is to show that if the carriers can afford to effect delivery at all industrial locations in Chicago on these commodities, which create the minimum car revenues indicated, they can likewise afford to effect delivery of livestock shipments, which create car revenues which are actual and which are shown on pages 9 to 12, inclusive.

Q. Can you state the general level or basis for livestock [fol. 80] rates from the Western origin points involved in this case to Chicago?

A. The rates applicable from Western territory to Chicago were originally prescribed by the Commission in Livestock—Western District Rates, 176 ICC 1, decided June 8, 1931. The rates therein prescribed are the basis for the present rates. The rates prescribed by the Commission have, of course, been increased by the general rate increases permitted since that date, which include a 5 per cent increase in Ex Parte 123, decided March 8, 1938; a further increase of 15 per cent in Ex Parte 162, decided December 5, 1946, and a further increase of 10 per cent of the total charges recently authorized in Ex Parte 166, decided October 6, 1947, plus 10 per cent also in Ex Parte 166.

The scale prescribed by the Commission is found in the carriers' tariffs and was used to determine rates between points where specific point to point rates were published in conformity with the scale. To show the amount of the increase, however, it may be noted that in the original decision the Commission prescribed a livestock rate of 40 cents a hundredweight on cattle; calves, double deck; hogs, double deck; and sheep and goats, double deck, from Kansas City, St. Joseph and Omaha to Chicago. This rate had become 48 cents prior to the recent 20 per cent emergency increase and would become 58 cents under that increase.

This is an increase of 38 per cent since the rate was origi-
[fol. 81] nally prescribed.

Exam. Diamondson: Is this complaint attacking the level of the rates themselves?

The Witness: No, sir.

Mr. Rynder: It is merely trying to show what the present level is and where they came from.

Exam. Diamondson: They are prescribed rates, are they not?

Mr. Rynder: They were originally prescribed, plus the authorized increases.

Exam. Diamondson: And they are not under attack in this proceeding?

Mr. Rynder: No, sir, except that you may have heard in the opening statement that they are entirely too low.

Q. In its decision in the Chicago Livestock Exchange v. the Atchison, Topeka and Santa Fe Railway Company, 219 ICC 531, decided in 1936, the Commission made the following statement, page 542:

"Defendants point out that, in order to meet truck competition, they have reduced rates on livestock from various points to Chicago below the level of those found reasonable in Livestock-Western District Rates, supra."

Are you advised as to whether these so-called truck-compelled rates are still in effect, or have been cancelled since the date of that decision?

A. Yes, these truck-compelled rates were in effect from
[fol. 82] February 20, 1932 to June 30, 1938, at which time they were cancelled and the normal livestock rates prescribed by the Commission have been applied since that date and are in effect as of today plus whatever changes have resulted from increases authorized by the Interstate Commerce Commission.

Q. I observe also that on page 542 of the same decision the Commission stated, referring to Livestock—Western District Rates, that the through rates prescribed in that proceeding "were designed to cover the cost of normal terminal services, including unloading charges". Are such unloading charges now absorbed by the line haul carriers with

respect to shipments delivered to the unloading pens of the Union Stock Yards and Transit Company at Chicago?

A. They are. The unloading charge assessed by the Stock Yards Company and paid by the railway line haul carriers is $2.08 double deck and $1.73 single deck car, as shown in Union Stock Yards and Transit tariff ICC 16, effective January 23, 1948.

Q. Would the line haul carriers or any other carrier incur any unloading charge in connection with livestock destined to the new unloading facility of Swift & Company?

A. No, the carriers have never absorbed unloading charges or costs on livestock delivered to private sidings or industries either at Chicago or elsewhere. The unloading service and all costs in connection therewith have been borne by the consignee at the unloading facilities of the Omaha [fol. 83] Packing Company and would necessarily be borne by the consignee at the new unloading facilities of Swift & Company. This means that the carriers would save an outlay of $2.08 per double deck and $1.73 per single deck car as compared with deliveries at the unloading pens of the Union Stock Yards and Transit Company.

Q. Does the Western livestock scale to which you have been referring apply generally from all points of origin in Western territory to all destinations in the Western Trunk Line territory?

A. Yes, sir, with the exception of some state rates.

Q. Have you prepared an exhibit for the purpose of showing what the railroad tariffs provide with respect to delivery of carload shipments of livestock to industrial locations, as contrasted with public livestock markets, at various points throughout Western Trunk Line territory, including points at which there are public livestock markets, as well as points at which there are no such markets?

A. I have prepared such a statement and it is shown——

Mr. Smith: Mr. Rynder, may I inquire there? We and Mr. Staley have stipulated in respect to facts concerning quite a number of points and we had the understanding, of course, that either side could offer anything in addition to the facts agreed on. Now, may I inquire? Are these the facts here that we agreed on or are they facts in addition thereto? What is the status of that?

[fol. 84] Mr. Rynder: I don't think they are either, Mr. Smith. I think there is a distinction. Mr. Tally had made up this exhibit to show what the tariffs provide as to these various points. We could not tell merely because the tariff provided a certain thing whether delivery was actually made, so we requested you to determine and stipulate with us, if you could, as to points at which deliveries were actually effected. Now, I assume that those deliveries would be effected in accordance with these tariffs.

Mr. Smith: This deals with the tariff aspect of it?

Mr. Rynder: Tariff aspect only.

Mr. Smith: I see.

Mr. Rynder: And not with the question whether or not anybody receives freight there.

Exam. Diamondson: Is this submitted in connection with your Section 3 allegation, Mr. Rynder?

Mr. Rynder: Yes, sir.

Exam. Diamondson: Are you going to show that the conditions and circumstances at these compared points are similar to what they are at Chicago?

Mr. Rynder: You mean as to the physical location of each place?

Exam. Diamondson: Yes. I mean are you going to go beyond the mere showing as to what the tariffs say about delivery at these various points?

[fol. 85] Mr. Rynder: I don't think you can show that the services at any two points are exactly similar.

Exam. Diamondson: Well, under an allegation under Section 3 there has got to be some showing of similarity of circumstances and conditions.

Mr. Rynder: I think the Commission has about settled that for us. It said in the Livestock Exchange case here that that scale was made to cover the origin and terminal costs at all points and as to the deliveries at Chicago that the matter must be considered as an average matter and that there wasn't such a great difference between deliveries at Chicago and at these other Western Trunk Line points as to warrant any difference in terminal treatment.

Exam. Diamondson: So you are taking from the tariffs these various points here and show that deliveries will be made as indicated on this exhibit.

Mr. Rynder: We are showing on this exhibit merely what the tariff provides.

Exam. Diamondson: And that is in connection with your Section 3 allegation?

Mr. Rynder: Yes, sir, and,—well, I think also in connection with Section 1 and I understand the information that Mr. Smith has prepared,—I don't know whether it is in shape to put in just at this moment—will show points in this territory where the deliveries actually are made.

Mr. Smith: That has been typed up. Now, I do not [fol. 86] happen to have a supply here. Mr. Babcock is not here. Maybe Mr. Staley has them.

Mr. Rynder: I am not particularly concerned, Mr. Smith, what is here today. We understand what is shown.

Mr. Smith: It will be here. Perhaps you have a supply.

Mr. Staley: No, we have only one copy.

Mr. Rynder: We have only one copy, in which certain changes were to be made.

Exam. Diamondson: Well, that information will be furnished before the close of the hearing?

Mr. Rynder: Yes.

Mr. Smith: Yes.

The Witness: I have prepared such a statement and it is shown on pages 17 to 19 of exhibit No. 10.

Mr. Smith: Mr. Rynder, just to make the record clear, you have read several times from the Chicago Livestock case. Would you be good enough to refer to the language itself that you were relying on in the statements you made just a moment ago?

Mr. Rynder: Here is one statement. I will not go through the entire decision. At page 538:

"Although these facts do not establish that the terminal operations at the points mentioned are identical with those in Chicago it is clear that the character of the services rendered and the charges at the compared points do not vary greatly."

[fol. 87] And the points they are referring to are named earlier in the decision.

Exam. Diamondson: In other words, there was substantially similar circumstances and conditions present?

Mr. Rynder: Yes, sir. Now, at another point they state, referring to these rates:

"That they have also been designed to cover not only line haul services but also terminal service involving both receipt of shipments at points of origin and their delivery at destination."

At another point the Commission said, page 542, referring to these rates:

"The through rates prescribed in the latter proceeding" —in the Western case—"were designed to cover the cost of normal terminal service, including unloading charges."

Exam. Diamondson: I think that will be sufficient, Mr. Rynder, because we will take notice of our own decision there. It is not necessary to quote any further.

Mr. Rynder: And on the question of whether it was necessary to prove specific damage they made a finding upon that point at page 546:

"So far as Section 3 is concerned, while the evidence indicates that it would be difficult for complainants to prove, and that they have not proved that pecuniary damage has resulted from the existing absorption practices, neverthe- [fol. 88] less it is clear that inequality in practices in connection with an equality of rates may well cause injury for the future and that complainants are fairly entitled to be protected against this contingency."

Exam. Diamondson: You are not asking for damages in this case, Mr. Rynder?

Mr. Rynder: How?

Exam. Diamondson: You are not asking for damages in this case?

Mr. Rynder: No, sir.

Mr. Smith: At that time, as now, at Chicago and elsewhere the great volume of livestock was delivered at the public stock yards, was it not?

Mr. Rynder: Where?

Mr. Smith: In Chicago and at the other points named.

Mr. Rynder: Well, I have Swift's traffic to Chicago. Let us use the Omaha plant.

Exam. Diamondson: Let us develop that through the witness, Mr. Rynder. We cannot use that as evidence, you know. I suggest that that information be developed through the witness.

Mr. Rynder: Well, then, Mr. Smith should ask the witness.

One thing more, Mr. Examiner, since the point was raised and I was asked to read these things, at page 546 the Commission again said:

"The service rendered in delivering livestock to the [fol. 89] Union Stock Yards"—now, mark this next one—"and to the plant of intervenor Omaha Packing Company at Chicago, as shown by the present record are not more onerous than terminal services contemplated under the scale of rates prescribed in Livestock—Western District Rates, supra."

By Mr. Rynder:

Q. Mr. Tally, at the time of the decision which I have been reading from, were all of the deliveries of direct shipments of livestock to Swift & Company in Chicago, with negligible and perhaps an erroneous figure, delivered to the facilities of the Omaha Packing plant on the Burlington Railroad?

A. Yes, sir. In my original statement and testimony I stated that direct shipments of livestock were received at the Omaha Packing Company location on the Burlington Railroad during the twenty-seven years of my service with Swift & Company and, as I recall, that decision was in 1936.

Q. Mr. Tally, were you going to make some statement about pages 17 to 19, inclusive?

A. Pages 17 to 19 show various points in Western Trunk Line territory where delivery is made direct to the industrial location. For example: At South Omaha, Nebraska, which is shown as the first station on this exhibit, Wilson and Company and Swift & Company are located upon and are served by the Union Pacific Railroad. At South Omaha, Nebraska, there is a public stock yards which is served by the South Omaha Terminal Railway. In the last column [fol. 90] is shown the railroads that serve South Omaha, Nebraska and also the lines that provide for delivery of live-

stock to both the Wilson and Company and Swift & Company plants located on the Union Pacific Railroad.

Q. Is such delivery at Omaha and at all other points you will mention at the livestock line haul rate to Omaha or to the other points without the addition of a switching charge?

A. It is.

Q. Have you anything further to say with respect to pages 17 to 19 of your exhibit No. 10?

A. The tariffs provide for similar deliveries at Kansas City, Kansas—Missouri, to Armour & Company, Cudahy Packing Company, Swift & Company, Wilson & Company, whose plants are located respectively on the Frisco, Chicago, Rock Island and Pacific Railroad, Union Pacific Railroad and Kansas City Southern Railroads. At East St. Louis, Illinois direct deliveries provided for to the Hunter Packing Company, located on the Pennsylvania Railroad. At each of the three points just referred to there is a public stock yards at which deliveries are also made. The rest of the exhibits shows various points in Western Trunk Line territory where direct delivery is provided for to the industries indicated. However, there are no public stock yards located at any of the other points.

Q. Does one or more of the line haul defendants in the present case who reach Chicago also serve each of the desti- [fol. 91] nations shown in Western Trunk Line territory, shown on pages 17 to 19, inclusive, of exhibit 10?

A. Yes. For example: At Kansas City, Kansas the following lines serve tha point and provide for industrial delivery at the line haul rates and also serve Chicago, Illinois:

Chicago, Burlington & Quincy Railroad Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
The Chicago, Rock Island and Pacific Railway Company
Chicago Great Western Railway Company
Atchison, Topeka and Santa Fe Railway Company
Gulf, Mobile and Ohio Railroad Company
Wabash Railroad Company.

At East St. Louis, Illinois industrial delivery is provided to the Hunter Packing Company by the:

Chicago, Burlington & Quincy Railroad Company
Gulf, Mobile and Ohio Railroad Company

Illinois Central Railroad Company
Wabash Railway Company
Chicago, Rock Island and Pacific Railway Company.

All of these lines serve Chicago.

At Newport, Minnesota industrial delivery of livestock is provided to the Cudahy Packing Company by the following lines:

Minneapolis, St. Paul & Sault Ste. Marie Railroad Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago, Rock Island and Pacific Railway Company
[fol. 92] Chicago Great Western Railway Company.

All of these lines serve Chicago, Illinois. Similar information is shown at all of the other points indicated on this exhibit and it will be found that at each point one or more of the lines providing for such industrial delivery at the line haul rate also serves Chicago and is a defendant in this proceeding.

Q. Have you prepared another exhibit for the purpose of showing generally the extent to which livestock is delivered to private industries throughout the United States?

A. I have, as shown on pages 20 to 24, inclusive.

Q. That information is based upon the railroad tariffs in effect?

A. Yes, sir.

Q. Are a number of those points points at which you have information as to the actual deliveries by reason of the fact that Swift & Company has plants there?

A. Yes, sir.

Q. Would you mind taking the time to run through it and point out those points?

A. Atlanta, Georgia; East Cambridge, Massachusetts and Somerville, Massachusetts. The companies shown thereon are subsidiaries of Swift & Company. Dallas, Texas; Evansville, Indiana; Fort Worth, Texas; Lake Charles, Louisiana; Los Angeles, California; Montgomery, Alabama; Moultrie, Georgia; Nashville, Tennessee; Ocala, [fol. 93] Florida; North Portland, Oregon; South San Francisco, California. That is all.

By Mr. Smith:

Q. Are there public stock yards at all those points, Mr. Tally?

A. Only where there is a circle reference 1 shown thereon there is a public stock yards. If it is not shown thereon, there is no public stock yards.

Q. Where else could you get it except where you had that?

A. We get delivery of it at our plant where there is a public stock yards and where there isn't a public stock yards.

Q. Now, are these like the Omaha plant here in Chicago? Is that what this means?

A. Some of the points are located in towns where there is a public stock yards and others are located where there is no stock yards.

Q. No. I say the showing that you have made here is where you have at other points the same situation that you have here at Chicago at the Omaha plant?

A. Yes. They make delivery at our plant, yes, sir.

Mr. Smith: I see. All right.

By Mr. Rynder:

Q. I observe at page 23 your exhibit shows Nashville, Tennessee as one of the points where livestock is delivered to the industry track of Swift & Company. Is that delivery one that has been brought about recently?

A. Yes, it is. I am personally familiar with the situation [fol. 94] at Nashville, Tennessee. The two line haul carriers serving that point are the Nashville, Chattanooga & St. Louis Railway and the Louisville and Nashville Railroad Company.

For many years their tariffs had provided that deliveries of carload shipments of livestock would be made only to the Nashville Union Stock Yards, a public livestock market in Nashville. We felt the necessity for having such livestock delivery to our packing plant in that city and I personally conducted negotiations with the traffic officials of the Nashville, Chattanooga & St. Louis Railway and the Louisville and Nashville Railroad Companies seeking to have the railroad tariff amended to provide for deliveries to our plant. I was advised in conferences with these offi-

cials that they felt they could not comply with our request because they were parties to a contract with the Nashville Union Stock Yards Company which provided in substance that deliveries of carload shipments of livestock would not be made to any other point in Nashville.

Having failed to obtain a voluntary adjustment in this matter, we filed our complaint with the Interstate Commerce Commission in Docket No. ICC 29467, Neuhoff Packing v. Louisville and Nashville Railroad Company. The Neuhoff Packing Company is a wholly owned subsidiary of Swift & Company. There was a hearing, argument, and so forth and the decision of the Commission was announced March 24, 1947, 268 ICC 271. The order of the Commission in case was complied with by the carriers on the effective date [fol. 95] thereof and since that time livestock is being delivered direct to the unloading facilities at our Nashville plant.

Mr. Smith: Inasmuch as Swift handled that case, Mr. Examiner, I am wondering if they would be willing to agree that any party may make any reference to the transcript of that case to which Mr. Tally has referred in some detail, as might be desired in this record and that anything there referred to could be considered as a part of this record. That was an uncontested case and I would like to show that.

Exam. Diamondson: You mean on brief, Mr. Smith?

Mr. Smith: Yes.

Exam. Diamondson: You certainly can refer to that case on brief because the Commission will take judicial notice of its own cases.

Mr. Smith: No, I meant a little bit more than that, sir. I meant I would like to have an understanding with Swift, if they are willing to do so, that either party——

Mr. Rynder: I think we should——

Mr. Smith: Do you mind hearing the request?

Exam. Diamondson: Finish it, Mr. Smith.

Mr. Smith: That either party——

Mr. Rynder: That makes the record very uncertain and difficult and especially if you go into it later you don't know what is in it and what is not in it.

[fol. 96] Mr. Smith: Let us get the suggestion on the record and then you can decline it.

Mr. Rynder: I thought it was on the record.

Exam. Diamondson: He is trying to finish it now. Go ahead, Mr. Smith.

Mr. Smith: I would like to suggest a stipulation in the light of the rather detailed reference they have made to this case, that we have an understanding in the interest of a full disclosure that either party may put into this record as a part of this record any part of the record and transcript in that case that he may desire to have designated in this proceeding.

Exam. Diamondson: Are you willing to stipulate that, Mr. Rynder? Off the record.

(Discussion outside the record.)

Exam. Diamondson: Back on the record.

Mr. Rynder: Mr. Smith can put physically into this record any part of the transcript in that case and then we will know what is in that record.

Examiner Diamondson: All right. Now we will proceed.

Mr. Rynder: Well, there is one thing more. Counsel made a remark about that, about it being an uncontested case. As a matter of fact I tried the case. The witness for the railroad appeared at the hearing accompanied by two able and learned counsel. The case was not uncontested [fol. 97] and the defense was the existence of this contract.

Mr. Hamilton: May I ask in that connection, Mr. Rynder, is this not a fact,—and this will not appear in the transcript,—but is it not a fact that the defendant railroads in the Nashville case did not even file a brief?

Mr. Rynder: I think that is correct that they did not file a brief.

Exam. Diamondson: Well, the Commission's records will show. I don't think it is necessary to ask Mr. Rynder the question.

By Mr. Rynder:

Q. Mr. Tally, what have you shown on pages 25 and 26 of your exhibit 10?

A. Page 25 of my exhibit No. 10 is a statement showing routes and joint rates on livestock from various points in Western Trunk Line territory to various destinations in Western Trunk Line territory where the tariffs provide for

direct delivery of livestock to the plant location under joint rates, which rates are presumably taken from the scale of the Commission in Docket 17000 previously referred to.

Q. Take just one illustration of what we are trying to show. Could you take a shipment starting out on one line and being delivered on the other?

A. Oh, let us take the first one, from Low Moor, Iowa to Kansas City, Missouri. The Chicago and North Western Railway jointly with the Chicago Great Western Railway [fol. 98] publish a rate to Kansas City, Missouri of 36 cents per hundred pounds via their route Marshalltown, Iowa, and direct delivery is provided for to either the plant of Swift & Company, Armour & Company, Cudahy Packing Company or Wilson & Company on the lines of railroads other than the Chicago Great Western Railroad.

Q. And the rest of the exhibit merely illustrates a similar situation as to tariff?

A. That is correct, yes, sir.

By Exam. Diamondson:

Q. What is the symbol there under "Rates per hundred pounds" on page 25 of exhibit 10?

A. That says at the bottom it is subject to Ex Parte 162 and 166 increases.

Q. What is the rate?

A. Well, the rate is 36 cents.

Q. Oh, the rate is 36 cents?

A. Yes, sir. All those rates are subject to those increases.

Q. Do they include them you mean?

A. No, they are subject to those increases. They must be increased by those amounts.

Q. They do not include those increases?

A. No, sir.

Mr. Kaylor: What does the 36 cent rate go to in the illustration you have?

The Witness: Well, using a certain percentage increase [fol. 99] it would go to 50 cents. That would be by applying the 15 per cent increase over the 36 cent rate would make it 41½. Now, the Ex Parte 166 does not increase the rate. It increases the car charge, but to get the rate you can theoretically increase the rate by 20 per cent, the two

10 per cent allowed in Ex Parte 166, and you come out 49½ cents or the equivalent of 50 cents, but that is not the way the tariffs provide for the publication of the rates. You take the car charges under the 41½ cents and increase the car charge by 20 per cent.

By Mr. Rynder:

Q. What do you show on page 27 of exhibit 10, Mr. Tally?

A. Page 26 is first, Mr. Rynder.

Q. Page 26.

A. On page 26 is a statement of the rates on livestock from various points in Iowa to destination points in Iowa where there are packing houses and where direct delivery of livestock is made. It shows also the rates applicable and the various routes that such rates are applicable and also the shortest distance via any one of the routes.

Using Sioux City, Iowa to Ottumwa, Iowa as an example, the rate is 27 cents on cattle and 33 cents on hogs. If you used the rate prescribed by the Commission in Docket 17,000 for the lowest distance via any one of the routes, which is 309 miles via the route of the C. & N. W. Railway, Des Moines, Iowa, thence C. R. I. & P. Railway, the inter- [fol. 100] state rate would be 35 cents on cattle and on hogs in double deck cars and 40 cents on hogs in single deck cars, as compared with 27 cents on cattle and 33 cents on either single or double deck cars of hogs within the State of Iowa.

The rest of the exhibit purports to show the same result, that the carriers are now providing direct delivery under their tariffs to all of these destination points at rates substantially less than the interstate scale prescribed by the Commission in Docket 17,000 previously referred to.

Q. What have you shown on page 27, Mr. Tally?

A. Page 27 is a statement that shows the switching lines serving the various points shown which publish rates on livestock between points on that switching line. This is for the purpose of a comparison with the proposal of the Chicago Junction Railroad to cancel its switching charges on livestock to all points on its line.

Q. Mr. Tally, is each of the points shown under the heading "Location" a packing house point where there is a public livestock market?

A. Yes, sir.

Q. And is each of those points served by a switching line which makes delivery to the public livestock market?

A. That is correct, yes, sir.

Q. And those switching lines are shown in the second column?

A. Yes, sir.

[fol. 101] Q. Is that right?

A. Yes, sir.

Exam. Diamondson: Without any charge in addition to the line haul rate?

Mr. Rynder: No.

The Witness: No, they merely publish a switching charge on livestock, whereas in the I. & S. proceeding here which was protested by Swift & Company and others the Chicago Junction endeavored to cancel their switching charges on livestock. This is merely to show that other switching lines do continue to maintain switching charges on livestock on their railroad.

Mr. Kaylor: To their own points.

The Witness: No. It is a local switching move.

Exam. Diamondson: I just misunderstood.

By Mr. Rynder:

Q. Mr. Tally, I may have made my question too broad in asking you if at each one of the points there was a place where there was a public livestock market. It has been suggested to me that there is not a public livestock market at Des Moines, Iowa, Is that correct?

A. No, there is one at Des Moines, Iowa.

Q. Oh, there is one?

A. Yes, sir.

Exam. Diamondson: Is there one at South Omaha?

The Witness: Yes, sir.

[fol. 102] By Mr. Rynder:

Q. Mr. Tally, did you make any effort to determine the length of time during which the Chicago Junction Railway has maintained switching charges on livestock?

A. Yes, I did and I went back about twenty-five years and found that they have maintained rates on livestock at least

that length of time and longer. I did not go further back than that far.

Mr. Knudson: Mr. Rynder, in your use of the word "Public stock yard" do you give any value to whether it is posted under the Federal Packers and Stock Yards Act or not?

Mr. Rynder: Well, Mr. Knudson, when I use that term I in my own mind was thinking only of those that are public stock yards under that Act.

Mr. Knudson: We don't have one listed for Des Moines.

Mr. Rynder: Well, I don't know myself.

The Witness: Well, I may have been in error as to Des Moines. I was under the impression that there was one there but they don't have one listed there.

Mr. Knudson: While we are at it, we failed to check you on Atlanta, Georgia also. There was a yard there but I understand that it has been de-posted and is no longer a public yard.

Mr. Rynder: Atlanta, Georgia is not on page 27.

Mr. Knudson: It is on page 20.

Mr. Rynder: Page 20 is not a list of public stock yards.

[fol. 103] Mr. Knudson: I thought the witness identified those figures opposite "1" in parentheses, identified those places as a public yards.

Mr. Smith: The exhibit does it, too.

The Witness: I am not saying that. I don't have my work sheets with me on that, but the name of the stock yards was shown on these work sheets and I will have to refer back to those to find out what the name of that was.

Mr. Rynder: What is your information? It has been de-posted?

Mr. Knudson: The one in Atlanta.

Mr. Rynder: It has been de-posted?

Mr. Knudson: Yes, sir.

Exam. Diamondson: Will you explain for the record, Mr. Tally, why you haven't shown South Omaha here on page 27?

The Witness: Because South Omaha does not provide switching charges on its line to any point but to the stock yards location.

Exam. Diamondson: These are the only locations, then,

which you could find to which there were separate switching charges provided?

The Witness: Where there was terminal lines serving the points, yes, sir. Of course, all line haul carriers publish them at all points. I was merely taking terminal lines similar to the Chicago Junction Railroad.

[fol. 104] By Mr. Rynder:

Q. Mr. Tally, are there very many other points in the United States with a public stock yards and a separate switching line?

A. I think that is all of them except the South Omaha situation.

Q. At many points the service is performed by a line haul carrier, is it not?

A. That is correct, yes, sir.

Exam. Diamondson: Is that all you have on direct for this witness?

Mr. Rynder: No, I am not quite finished.

By Mr. Rynder:

Q. Mr. Tally, if the prayer of your complaint were granted and if your shipments of livestock now sent to the Omaha Packing Company location were delivered at an unloading point on your plant in the Union Stock Yards and if the rate arrangement were similar to that upon all dead freight to Chicago, including the Chicago Junction, would the present gross revenues of the Chicago Junction be substantially increased?

A. In my opinion they would be substantially increased, yes, sir.

Q. In what way?

A. They would be transferred from the Omaha Packing Company location to the stock yards locations of Swift & Company, for which the Chicago Junction Railroad would [fol. 105] be compensated by a division or whatever arrangement they made with the line haul carriers, which they do not now get.

Mr. Rynder: I think that is all of the direct testimony of Mr. Tally.

Mr. Kaylor: I would like to ask counsel, Mr. Rynder, a question here. These exhibits that have been identified from 1 to 10, inclusive, have carried Illinois Commerce Commission Docket 35809. Now, you don't have a formal complaint attacking the switching charges, do you?

Mr. Rynder: No, we do not.

Mr. Kaylor: You do have a formal complaint before the Interstate Commerce Commission?

Mr. Rynder: Yes, sir.

Mr. Kaylor: And is it your point that we consider under this same docket 35809 the same evidence you put in here with respect to the state rate?

Mr. Rynder: Why, my understanding is that the only thing before the Illinois Commerce Commission at this time is the suspension case.

Mr. Kaylor: That is my understanding.

Mr. Rynder: That is mine. Does that answer the question?

Mr. Kaylor: Yes. You are not asking then for any affirmative relief by any complaint or under the suspension proceeding, except that we are here in that joint proceeding to hear both an Interstate Commerce Commission case [fol. 106] on a complaint matter and an I. & S. case.

Mr. Rynder: That is right.

* * * * * * *

Cross-examination.

By Mr. Smith:

Q. Mr. Tally, you have got an exhibit in here which purports to show for a certain period the stock delivered to the Omaha plant by species, have you not?

A. Yes, sir.

Q. Why did you select that particular period? Is there any special reason?

A. No, there wasn't any special reason. We filed our complaint about that time and we just took that period because it was close to that.

Q. How long a period is it?

A. March 26th to May 2nd. That happens to be a full period in our setup.

Q. What does that mean?

A. It is either four weeks or five weeks. They have different periods during the year to make them come out even at fifty-two at the end of the year.

Q. That is interesting. What do you use that for?

A. That is merely a closing period for either a four week or a five week period, whichever they designate, as a five [fol. 107] week period and so on.

Q. And this is just a sort of an accounting period for Swift & Company, is it?

A. That is right, yes, sir.

Q. And is this a representative period?

A. I believe it is, yes, sir.

Q. What percentage of the shipments were hogs?

A. Well, I can't tell you that any better than you can, Mr. Smith, without going through the exhibit and drawing them off of here. They are listed.

Q. And apart from that exhibit you are more familiar with Swift's business, I think, than I am. What part of their directs at the Omaha plant are hogs?

A. Hogs will predominate.

Q. You think they are more than 51 per cent but I am asking you what percentage?

A. I don't know.

Q. It may be 51 or it may be 99, so far as you know?

A. I know it won't be 99.

Q. You know it won't be 51, too, don't you?

A. It might be more than 51, it might be 65, but I don't know what the figure is.

Q. All right. Will you turn back in that statement that you read, to your reference to this new plant that Swift proposes to build? Will you read that for us, the state-[fol. 108] ment that you made as to the reasons for this construction?

A. Due to obsolescence of certain buildings and inadequacy of certain facilities it has become necessary for Swift to construct a new packing plant in the stock yards area."

Q. That is all I want, thank you. That refers to the obsolescence of certain buildings and inadequacy of certain facilities. What are the buildings that have become obsolete?

A. They are units within our Chicago plant for hog killing, cattle and sheep killing.

Q. That have become obsolete?

A. Not obsolete yet but they are growing fastly and we are preparing for it.

Q. But those are the ones you had reference to when you used the word "obsolete"?

A. Yes, sir.

Q. And exactly what buildings are those?

A. Oh, I can't describe the buildings. The north house is one of them they referred to.

Q. And what is the north house?

A. Well, that is just a building just northwest of the general office.

Q. And what is that building used for?

A. Slaughtering livestock.

Q. What kind of livestock?

A. Well, they might maybe slaughter all kinds of live-
[fol. 109] stock in there but I can't tell you that.

Q. You just don't know what kind they slaughter?

A. I know they slaughter livestock in there. It may be cattle and it may be hogs and it may be sheep, but I think it is more cattle than anything else.

Q. But you think they do slaughter sheep and hogs there also?

A. I am not positive they do, no.

Q. Are you positive that that is one of the buildings the obsolescence of which has caused this new construction, or the approaching obsolescence of which has?

A. No, I am not positive that is it.

Q. Name the buildings that you are positive, that you were referring to when you spoke about these obsolescent buildings to be replaced?

A. I don't know them by name, Mr. Smith.

Q. Who told you that?

A. The manager of the Chicago plant.

Q. Did he compose that part of your statement?

A. No, sir.

Q. But he just told you that they had to replace some obsolete buildings and some inadequate facilities, is that it?

A. He had to replace some buildings that were fastly deteriorating to the point where they could not be repaired

for the given use to which they were being put.

Q. What other buildings did he refer to besides the north [fol. 110] building being in that category?

A. I don't recall the identity of them. Just the question of changing facilities of the Chicago plant and improving them because these buildings are very old.

Q. And you cannot identify those other buildings at this time?

A. No, sir.

Q. Now, what about the facilities that have become inadequate, that are being replaced. Can you identify those for us?

A. Well, that was included. The term "facility" was included in that description.

Q. Now, you cannot identify these buildings or exactly what use was made of them, that have become or are becoming obsolete, but it was your understanding from this gentlemen you talked to that it was some inadequacy and obsolescence that was forcing Swift into this new construction, is that a fair statement of it?

A. Yes, sir.

Q. And that construction, I take it, then, does not in any degree depend upon whether or not this complaint of Swift's is granted?

A. No, sir.

Q. It is entirely separate and apart; I mean the complaint or what you seek in the complaint is entirely separate and apart from the considerations which have forced you, according to your informant, to build this new building?

[fol. 111] A. That is correct.

Q. And how many new buildings are you undertaking?

A. I don't know the number. It consists of a new unit to take care of the slaughtering of livestock in the Chicago plant. How many that would take I don't know.

Q. How many buildings you mean, or how many cattle, what do you mean?

A. Buildings; just what you were asking me about.

Q. Now, you show here two proposed buildings, Mr. Tally, on exhibit 1, a new livestock building and a new killing building. Is that correct?

A. That is what is shown on that exhibit, yes, sir.

Q. It is your exhibit, isn't it?

A. Yes, sir.

Q. And what is this new livestock building to be used for?

A. For the holding of livestock preparatory to being slaughtered.

Q. You mean the storage of livestock until it can be slaughtered?

A. Yes, sir.

Q. And the new killing building, that is the new killing plant to take the place of these obsolete and inadequate facilities, is that correct?

A. Yes, sir.

Q. When did you get the authority from the government, [fol. 112] the meat packing or meat inspecting agencies of the government, if you have, approving this killing plant?

A. I don't know the date.

Q. Do you know that such an authority was obtained?

A. I understand it was, yes, sir.

Q. Have you any idea how long ago it was obtained?

A. No, I haven't.

Q. It might have been six months or it might have been two or three years so far as you know?

A. I have no knowledge of it.

Q. Where are the buildings in which you now do the killing in relation to these on exhibit 1?

A. They would be east and southeast of that location.

Q. Are they shown on exhibit 1?

A. No, sir.

Q. Because the map just doesn't happen to be large enough to take in those buildings, is that it?

A. That is just a plan of the new proposed building and its location.

Q. I don't think you understood me. I say that the present buildings cannot be shown on a map of this scale and of this size because of their distance from these new buildings, is that correct?

A. I don't understand that we would have to put them on that particular exhibit because all that is is a plan of [fol. 113] the new proposed building.

Q. No, it isn't at all, Mr. Tally. Now, if you would just answer the question, I say that this map is of such size

that it simply was not convenient or possible to show on it your present killing building,

A. It isn't big enough to show the entire Swift plant in Chicago.

Q. Well, now, what exhibit that you have offered would best show the location of the present killing building in relation to this proposed new building?

A. I have offered no such exhibit.

Q. And no exhibit that you have offered here would show that?

A. No, sir.

Q. How many killing buildings do you have at present?

A. I don't know that.

Q. You don't know that?

A. No, sir.

Q. Would you say as to whether it would be one or two or six or eight?

A. Why, I have in mind about three.

Q. About three?

A. That I know of.

Q. You do know where three are?

A. Yes, sir.

Q. And what are killed in those buildings?

[fol. 114] A. Hogs, cattle and sheep.

Q. All species in each building or one in each?

A. No. There is one building, I think, is identified as number 7 house; they kill hogs in there. They have got another building that they kill cattle and sheep in. In fact, there are two buildings, according to my understanding, that they kill cattle and sheep in.

Q. You call one the hog building and one the sheep building and one the cattle building, perhaps, do you?

A. I would call one the hog building and the other two cattle and sheep combined.

Q. How far is the cattle building where cattle are presently killed, at least this one that you know about, in relation to the new killing building?

A. Well, only about a block and a half east, that is the cattle and sheep killing building, and there is another one that would be about a block and a half east and a block south, and the hog building would be about three blocks from that location.

Q. Now, you don't know how many buildings Swift has in which it kills hogs, do you?

A. No, sir, I don't.

Q. How long have you been with Swift?

A. Twenty-seven years.

Q. What are you going to kill in this new killing building?

[fol. 115] A. I understand they are going to kill all species.

Q. And are you sure you are going to kill hogs or do you know?

A. I am sure that we are going to kill hogs, apparently, on the basis of what I am told by people that are authorized to know those things in our organization.

Q. Who told you that, Mr. Tally?

A. The manager of the Chicago plant.

Q. What is his name?

A. Mr. Bermond.

Q. I think you said you did not know whether any start had been made on the construction of these buildings.

A. I don't think there is any start on the buildings. I think there is preparatory work that has been done for that purpose.

Q. Of what sort, Mr. Tally?

A. Oh, like caissons and such work as that. I am not much of a construction man; I don't know too much about that.

Q. Will you tell us, please whether this building, this new killing building is going to take the place of all of your present killing buildings or only part of them, and if so which?

A. I don't know that. I understood that it would be a substantial unit and might take over the entire killing operations, but that may not be correct.

Exam. Diamondson: Do you know whether they intend to abandon the present killing buildings when these pro-

[fol. 116] posed buildings are constructed?

The Witness: That is my understanding, yes, sir, so far as that purpose is concerned.

By Mr. Smith:

Q. Your understanding is that all of the other killing buildings, wherever they may be and whatever species they may kill presently, will be abandoned upon the construction and operation of this new building, is that what the man told you?

A. That is what my understanding of it is, yes, sir.

Q. Did you get that understanding from this gentleman whom you named a moment ago?

A. Yes, sir.

Q. In other words, we can understand that the capacity of this new killing building is equal to or in excess of the aggregate of all of your killing buildings that Swift has in Chicago presently?

A. If I am correct in that. It may not be that they are taking it all over there.

Q. Now, you had a good deal to say about the distances, the short distances, the convenience of those buildings for the receipt of livestock, but, of course, if all that livestock that comes in is not to be killed in this new building, then it would have to be moved to other buildings, wouldn't it?

A. If it came in under our proposed plan here, yes, sir.

Q. Yes.

[fol. 117] A. That would be our problem.

Q. That would be your problem?

A. Yes, sir.

Q. And you are yourself not in a position at this moment to say what the fact would be about that?

A. No, sir.

Q. If it should turn out that you were not going to kill in this new building, if you were not going to kill hogs in this new building, why, then the greater part of your directs which you would assume as being your preponderant movement would not be handled in this building at all, would they?

A. If that were a fact, yes, sir.

Q. You have witnessed a very steady increase in direct purchases over the years you have been in Swift's employ, have you not?

A. Yes, there has been an increase in the direct purchases.

Q. And it has been marked and it has been persistent, has it not?

A. Yes, sir.

Q. What is the reason for that, if you know?

A. Well, we have had to go out and buy livestock to get sufficient to take care of our Chicago requirements.

Q. You find you just haven't been able to buy it on the public market in Chicago, is that it?

A. In sufficient quantities to take care of our requirements.

[fol. 118] Q. And that is the reason you have bought more and more direct shipments?

A. Yes. That would be the reason, yes, sir.

Q. And then as you bought more and more directs, why, then correspondingly there is constantly less offered on the Chicago market because you already own it when it comes in here?

A. I don't know that that is a fact, no. I haven't testified to anything of that kind. I have made no preparation to discuss the reasons for the purchases of direct livestock or whether it reduces the supply on the Chicago market or what. My testimony does not go to that point.

Q. You have just been an observer, like myself, that direct shipments have increased constantly in the years?

A. Yes. I am only interested in that from a transportation standpoint.

Q. You made some comment on the yardage charges and you gave the tariff references. Those are under the jurisdiction of the Secretary of Agriculture, are they not?

A. Yes, sir.

Q. Have you ever assailed those yardage charges in any proceeding before the Secretary of Agriculture?

A. Not to my knowledge, no, sir.

Q. You are recognizing them to be fair for the purposes of this hearing, I take it, are you?

A. I have no comments to make because I haven't [fol. 119] analyzed the charge. I am involved in the transportation of the products of Swift & Company, the freight rates and the rules and regulations and I do not pay any attention to outside activities such as yardage charges and so on.

Q. But it is to avoid the payment of those yardage charges that you brought this complaint, isn't it?

A. Yes—no, that is not the purpose of this complaint. The purpose of this complaint is to secure direct delivery of livestock at our plant in lieu of our present Omaha deliveries. We are not interested in yardage charges in Chicago on directs. We don't use it.

Q. You take delivery at the Omaha plant instead of at the yards to avoid that yardage charge, don't you?

A. Yes, but this complaint did not bring that about.

Q. This complaint did not bring what about?

A. Avoiding yardage charges on the Chicago market.

Q. You have an opportunity to take this traffic either at the Omaha plant or at the chutes of the Union Stock Yards, don't you?

A. Yes, sir.

Q. And if you take it at the Union Stock Yards, you have to pay a yardage charge?

A. That is correct.

Q. If you take it at the Omaha you transport it over to your plant?

[fol. 120] A. That is right.

Q. And it is to avoid the transportation by truck on the one hand and the payment of yardage charges on the other that you brought this complaint?

A. The complaint involves trucking costs from the Omaha Packing Company to our Chicago plant.

Exam. Diamondson: I think that question ought to be directed to counsel rather than to the witness, Mr. Smith.

Mr. Smith: I think perhaps that is a fair statement, Mr. Examiner. I noticed that Mr. Rynder this morning did constantly in addressing Mr. Tally say, "Your complaint" and "what about your complaint," and so forth, and I fell into that practice.

By Mr. Smith:

Q. How do these animals which you purchase on the market reach the Swift plant?

A. Well, there is overhead runways that are used to get to our plant from the stock yards.

Q. Who built those runways?

A. I don't know.

Q. You don't know whose they are?

A. I don't know whether they belong to the Stock Yards Company or whether Swift & Company helped pay for them or what the story on that is. That goes way beyond my time.

Q. Your reference to the possibility that Swift & Company helped pay for them, does that go back to the time when Swift & Company had an interest in this yard?

[fol. 121] A. I don't know anything about it, Mr. Smith.

Q. You know Swift & Company did have an interest in the yard at one time, don't you?

A. No, I don't.

Q. You don't know that?

A. No.

Q. As far as you know Swift & Company may have had part ownership of those facilities, in compensation for which the yardage charge is now paid?

A. I have no information on it at all. I wouldn't have any views on it.

Q. Does that overhead viaduct through which you get these deliveries furnish a convenient way of getting your stock from the yards?

A. Yes, sir.

Q. About how long does it take to move stock over from the yard by that viaduct?

A. I don't know, Mr. Smith.

Q. That is transportation, isn't it?

A. Not in the category that is under our jurisdiction.

Q. How far is it from the chutes and sidings of the yards where the livestock is unloaded over to Swift's present plant?

A. Oh, probably a half a mile.

Q. And how far would it be to the new plant if it were built?

A. Oh, another block to two blocks further.

[fol. 122] Q. A block or two blocks further?

A. Yes.

Q. You discussed in some detail the distances from the interchange or the point of connection between Swift's

tracks and the Chicago Junction and these facilities which you have considered building. Do you know where the other packers are located in this area?

A. Yes.

Q. You know there are other packers here in Chicago?

A. Yes, sir.

Q. There are quite a number of them, aren't there?

A. Yes, sir.

Q. How many of them kill livestock in Chicago?

A. I guess all of them do.

Q. How many would that be, approximately?

A. Oh, there might be fifteen or twenty or more. I don't know all the names.

Q. Well, of those fifteen or twenty you know where the principal ones are located, do you not?

A. I have an idea of their general location, yes, sir.

Q. Are some of them closer to the interchange or the connection with the C. J. or would your new proposed plant be the closest?

A. Oh, I think Wilson & Company probably would be closer to the Ashland Avenue yards of the Chicago Junc-
[fol. 123] tion Railroad and we would probably be next.

Q. And then the others would be further away?

A. Yes, sir.

Q. Well, of course, as an experienced rate man you know that if distances were important at all here that the distances to those other places would have to be taken into account, too, don't you?

A. Not by me. I wouldn't know anything about that. I am only dealing with what we are seeking here in this case.

Q. But the person that was going to try to determine what would be reasonable and just for all alike rather than determining some special arrangement for some favored shipper would have to know that, wouldn't he?

A. It probably would be a factor that would enter his mind in consideration of the subject.

Q. You haven't offered any help on that subject, have you?

A. No. I am only working for Swift & Company.

Q. But you are working to get this change made that you want, aren't you?

A. For Swift & Company, yes, sir.

Q. And that is one of the things that would have to be considered in whether or not you get the change, wouldn't it?

A. I don't know. I don't know whether anybody else wants it.

Q. Do you think the Commission ought to do this and say that it would be available only to Swift?

[fol. 124] A. Well, I think the Commission would decide this case on the basis of what is before them. If anybody else has got any ideas of the same facility, they should approach the Commission and seek an answer from them in that connection.

Q. That is, if the Commission once knew that there were a number of packers here and being under the duty of making a determination under Section 3 of the Act, it would have to determine what would be fair to everybody, isn't that right?

Mr. Rynder: Mr. Examiner, I object to that.

Exam. Diamondson: This witness' opinion as to what the Commission might do is not important here.

Mr. Rynder: That calls for a conclusion of law by the witness.

By Mr. Smith:

Q. Well, you are clear as a factual matter, Mr. Tally, that any average distance from the Ashland Avenue yard to these various packing plants of these fifteen or twenty packers that you have referred to would be quite a different distance from the one that you have put so much emphasis on; that is true, isn't it?

A. It would be further than the one that we have pointed out here that affects our company.

Q. I believe you said that you were quite familiar with the operations in the Ashland Avenue yard and the lay-out there, did you not?

A. I said that I had a general idea of it. I have watched [fol. 125] the operation on several different occasions. I am not a yardmaster or out there every day. I won't say that I have complete knowledge.

Q. How many interchange tracks are there in that yard?

A. You mean where——

Q. In the Ashland Avenue yard.

A. Where freight is delivered by the western lines to the Chicago Junction Railroad?

Q. Where freight is delivered by all of these roads entering Chicago to the Chicago Junction.

Exam. Diamondson: Don't guess at it. If you don't know say so.

The Witness: I know there is about eight or ten.

By Mr. Smith:

Q. How many classification tracks are there?

A. I don't know the exact number. I think there are about twenty or twenty-five.

Q. How many cars do the interchange tracks hold?

A. I don't know that.

Q. How many cars do the classification tracks hold?

A. I don't know that.

Q. How many crews do the Chicago Junction operate in that yard?

A. I don't know that.

Q. How many foreign crews operate in that yard in the course of twenty-four hours?

[fol. 126] A. I don't know that.

Q. How many cars does the Chicago Junction handle, loaded and empty in the course of a year?

A. I don't know that.

Q. Do you know what the operation is on a line approaching the Ashland Avenue yard from the west, what the operation is that it performs in moving traffic, one, into that yard and, two, moving traffic into the chutes and sidings of the stock yards?

A. Well, the operation, as I have viewed it, is the western line, for example, bringing a mixed train of dead freight and livestock in brings them into the Ashland Avenue yards and leaves the dead freight there and takes the livestock away from that train and then with its own power takes it over to the Union Stock Yards and unloads it or waits while it is unloaded and takes the empty cars back again.

Q. You have had a good deal to say about the train that

brings down both livestock and dead freight and we might mention that for a moment. You did not want to give the Examiner the impression, did you, that all of the trains that come down there, that are brought down there by the railroads, all have set-outs at Ashland Avenue?

A. No, they have some solid trains of livestock.

Q. That go right to the stock yards?

A. That is right, yes, sir.

[fol. 127] Q. And would you say that the solid trains or the consolidated trains predominate?

A. I would say the consolidated trains predominate.

Q. Is that based on your observations?

A. Yes, sir.

Q. You think that more than half of them stop to set traffic out in the Ashland Avenue yard?

A. Yes, sir.

Q. And something less than half moves right through the yard down to the chutes and sidings of the Union Stock Yards?

A. Yes, sir.

Q. Well, that doesn't happen to be my information, but passing that, will you state to the Examiner how a line coming into Ashland Avenue from the west performs that operation? What does it do? Where is the engine and how does it handle it as you have observed it?

A. Well, the engine is usually facing east as it comes in and there performs its local switching by separating the dead freight from the livestock.

Q. I see. Where does the engine go? Does the engine run right straight through Ashland Avenue yard if it can get through?

A. That is my observation, yes, sir.

Q. In other words, a train coming in from the west, let us say one of these consolidated trains which you think pre-

[fol. 128] dominate, does that train head right straight through the Ashland Avenue yard and does the engine stop on the east side of the yard?

A. Yes, sir. It depends, of course, on the length of the train.

Q. And where is the livestock that is going to the chutes and sidings of the yard in that train?

A. Generally on the head end of the train.

Q. They are on the head end of the train?

A. Yes, sir.

Q. What do they do then when they go through this yard with the livestock right behind the engine?

A. They unhook the livestock from the dead freight and carry it on over to the Union Stock Yards & Transit unloading chutes.

Exam. Diamondson: That is, the line haul engine does that?

The Witness: Yes, sir.

By Mr. Smith:

Q. The line haul engine cuts off the dead freight which is behind the livestock and moves the livestock immediately over to the chutes and sidings of the Union Stock Yards?

A. Yes, sir.

Q. And then it comes back and shoves the dead freight into the Ashland Avenue yard?

A. No. From my observation through there it is different. The Chicago Junction power takes those cars and [fol. 129] classifies it for the different deliveries on their railroad.

Q. Maybe one of us is a little bit confused, Mr. Tally. What track, from your observation, does this line bring in this train on?

A. I don't know track numbers.

Q. I don't want you to give the numbers. What kind of a track is it? Is it the running track, the main track leading to Ashland Avenue?

A. I don't know that much about the details of it. I have just been an observer on a particular day and watched the operation.

Q. You have watched cars switched over there, is that right?

A. That is right; and how they switch them.

Q. Have you watched them switch them?

A. Watched them switch them. I don't know whether it is their track or what it is.

Q. I want you to take a simple movement of this consolidated train which you think predominates, with the engine on the head end and the livestock and dead freight

following and I want you to tell the Examiner just what that operation is by which the incoming road does these two things, gets the livestock into the chutes and sidings and gets the dead freight on the interchange tracks of Chicago Junction? Can you do that?

A. No, sir.

Q. What was the point of your testimony on that subject?

[fol. 130] Mr. Rynder: I object to that question.

Mr. Smith: Maybe I didn't understand what the witness was undertaking to show.

Mr. Rynder: Well, I object to that question, too. The testimony has been put in for whatever it is worth and to ask the witness what he thinks it proves or what the point was I think is something beyond cross examination.

Mr. Smith: I thought he was undertaking to explain the operations of the Junction and the Ashland Avenue y-rd to the Examiner and now he says he wasn't doing that because he does not understand it. Now I say perhaps that testimony had some other point that I overlooked and I am inquiring what it might have been.

Exam. Diamondson: I think that is a fair question.

Mr. Rynder: I request the witness not to answer that question because I think it is entirely improper.

Exam. Diamondson: Were you undertaking to show what the operation was in that yard?

The Witness: From a general standpoint, yes, sir. They merely bring the train into the Ashland Avenue yards and then they were split up and left for the C.J. to switch around and classify and then the livestock was taken over to the chutes.

Exam. Diamondson: If you were attempting to explain the operation, why, the counsel has a right to test your knowledge.

Mr. Smith: Well, now, Mr. Examiner, I think there might [fol. 131] have been one question on that, just going back for a second. The witness has said that he cannot explain that operation. Now, I will ask the reporter to read that question, and to read that part. It was on the basis of that that I inquired whether the testimony had some other basis. What was the question, Mr. Reporter?

Mr. Rynder: Let us stop there a minute, Mr. Examiner.

The witness has said that he observed trains come in, that he has seen engines on one end and seen them drop the livestock,—has seen them drop the dead freight and then go on with the livestock. Now, as an observer and not as a yardmaster or anything else I think that is perfectly competent testimony, but I don't think it is proper to ask him whether the track on which this is done was on a main track or track number 4, 5, 6 or something else.

Mr. Smith: We are not looking for what track it was on.

Mr. Rynder: The fact that he does not know the details that a railroad man might know does not invalidate any of his observations as to how the job on the whole was done.

Exam. Diamondson: Those observations were so general in any event that I assume the defendants are going to be able to supply the details.

Mr. Smith: That is right and I don't want to obscure this thing any further, Mr. Examiner, but Mr. Tally reached the point where he didn't know what the operation was and he [fol. 132] said it rather emphatically and I inquired whether there was some other point to the testimony that I had not gotten because I wanted to cross examine on it if there were and it was on that point that Mr. Rynder tried to stop the proceeding.

Mr. Rynder: Oh, no.

Exam. Diamondson: Proceed with the cross examination.

Mr. Rynder: I know, but counsel is unfairly commenting on the testimony. There is quite a difference between a man testifying to what he has seen and knows to be true in a general way and having such detailed information on it as a technician in that line may have.

Exam. Diamondson: He has shown on cross examination that the information was very general and that he did not know the details and I think we will proceed from that point on with the cross examination.

Mr. Rynder: He has not admitted for a minute that they do not bring the livestock trains in there in mixed trains, separate them in the Ashland Avenue yards and proceed with the livestock.

Exam. Diamondson: I think that is clear on the record.

By Mr. Smith:

Q. Mr. Tally, is there any other point in connection with the operations in the Ashland Avenue yard that you intended to emphasize in your testimony?

A. No, sir.

Q. You several times spoke of the Damen or the Ashland [fol. 133] Avenue yard. That whole yard is generally referred to as the Ashland Avenue yard, isn't it?

A. Yes, sir.

Q. Technically do you know what the boys down there refer to when the speak of the Damen Avenue yard?

A. No, I don't.

Q. Do you know what the north yard is?

A. No.

Q. How often have you been over in the Ashland Avenue yard?

A. About four or five times.

Q. In your twenty-seven years?

A. No, not in twenty-seven years. Probably in the last two years.

Q. You offer some pictures that show a track down to this proposed new facility of Swift. Do you happen to know the grade of that track?

A. No, I don't.

Q. Do you happen to know whether it is a level track or whether it is on a grade or would be when the new construction were established?

A. From my observation it is on a down grade.

Q. Is that a matter of some importance in the handling of livestock?

A. Not at that point I wouldn't think so, because they are coming in rather slow anyway on account of the switch-over [fol. 134] from the main line under the viaduct.

Q. Is there any difference in the switching operation depending on whether the traffic is livestock or whether it is dead freight?

A. No, I don't think there is. I think they should be both handled carefully.

Q. You think it all ought to be handled carefully?

A. Yes, sir.

Q. But actually do you know that the difference is that in

switching in every freight yard in the United States they kick dead freight and they shove livestock?

A. That is probably true, yes, sir.

Q. That is quite a difference, isn't it, when you come to classification and switching operations generally?

A. Well, my personal experience with that is that sometimes they have handled it like pig iron.

Q. Then do you file a claim?

A. We try to collect a claim on it. Sometimes we do and sometimes we don't.

Q. Then there is damage to livestock, isn't there, if it is handled that way?

A. Yes, sir.

Q. Then that is not a good way to handle it, is it?

A. No, sir.

Q. You get some fresh meat through the Ashland Avenue [fol. 135] yard, do you not?

A. Yes, sir.

Q. Do you happen to know that all of the traffic that comes in from all of the lines for delivery in the area by the Chicago Junction has to funnel through the Ashland Avenue yard? Do you know that?

A. Yes, sir.

Q. That is a fact, isn't it?

A. Yes, sir.

Q. Do you get a good deal of meat through that yard?

A. We do.

Q. Fresh meat?

A. Yes, sir.

Q. That is perishable, isn't it?

A. Yes, sir.

Q. Do you like to have that handled rapidly?

A. Yes, sir.

Q. Is it handled rapidly?

A. Sometimes, yes, sir, and sometimes not so rapidly.

Q. You do your best to get the most expeditious possible movement of that, do you not?

A. That is right, yes, sir.

Q. And you keep after the railroads to get what you think is a proper fast handling of that fresh meat, do you not?

A. Yes, sir.

[fol. 136] Q. Do you happen to know what the average

time is for the delivery of fresh meat to Swift after it is placed on the Ashland Avenue tracks until it is set at your plant?

A. No, I do not.

Q. Can you give us an idea about it?

A. No, sir.

Q. That is transportation, isn't it?

A. That is right.

Q. Can you say whether it might be an hour or whether it might be fifteen minutes or whether it might be seven hours?

A. Well, I know it isn't fifteen minutes and I don't think it is seven hours.

Q. You don't think it is seven hours?

A. No, sir.

Q. Would you be surprised if the average did turn out to be about seven hours? You would be surprised, wouldn't you?

A. Yes, I would.

Q. And I think you get some dead freight or non-perishable freight through that yard, do you not?

A. Yes, sir.

Q. Do you happen to know what the average time is that it takes the Chicago Junction from the time the dead freight is set on the interchange tracks till Swift gets it?

A. No, I don't.

Q. You did not look into that handling before you filed [fol. 137] this complaint and asked that all this livestock be turned over to the C. J. at Ashland Avenue?

A. No, sir.

Q. That is rather an important consideration, isn't it?

A. Well, we felt we were entitled to the delivery of livestock at our plant and that is the reason we filed the complaint.

Q. Do you want to hold up further than it is now delayed or held up the perishables, the meat and the dead freight, by turning this livestock in there or do you want to get them as fast as you are getting it now or perhaps faster?

A. We gave no consideration to those points. We think we are entitled to delivery and want to get the proper service necessary to operate our business.

Q. But it is your request that they undertake to handle this livestock with the dead freight, is that right?

A. That is right.

Q. And they have never handled it like that before, have they?

A. No, sir.

Q. And it would mean about 75,000 cars of loads and empties, wouldn't it, if they handled all the directs?

A. I don't know, Mr. Smith. All I know is our own part of it.

Q. How are empties handled now, the cars made empty that are brought in filled with livestock?

A. Some of them are switched again out to the line haul carrier and taken back to the railroad and in some cases [fol. 138] they are left there and the Chicago Junction switch them over for prospective loading.

Q. Well, now, in just what instances is it one way and in what instances is it the other?

A. I don't know the basis for it.

Q. Tell us then in what instances the empties are presently handled, the present empties, by the C. J.?

A. I don't know the details of that.

Q. You don't know that it is done at all, do you?

A. Yes, I know it is done but what brings it about is another thing, how they decide.

Q. When is that done, under what circumstances?

A. Oh, there were some union rules that forced the switching of empty livestock cars on the Chicago Junction Railroad.

Q. When?

A. Within the last couple of years, I believe.

Q. Is it still going on?

A. I believe it is.

Q. You don't know what cars?

A. No, sir.

Q. You do know that the line haul carriers bring livestock into the Union Stock Yards with their own power by the use of running rights over the C. J., do you not?

A. Yes, sir.

Q. That is the way it is presently done?

[fol. 139] A. That is my understanding.

Q. And don't you know that the crew that brings in that load waits right there for the empties and immediately takes them back?

A. Yes, sir, that is the practice generally.

Q. And what is the other practice?

A. Well, the cars are made empty and sometimes the C. J. takes them out for loads.

Q. We are just talking about empties that the C. J. takes out, Mr. Tally.

A. Those are two different steps, Mr. Smith. Sometimes I say the line haul carrier takes them back and goes back to its own terminals with them.

Q. On what roads does this happen?

A. I don't know that.

Q. Speaking of the empties on dead freight, what does the Junction do with those now?

A. Well, the empties that are taken out of the different plants, they are taken out in their yards and they are either furnished for loadings or taken back to the owning lines.

Q. Let us be specific. Does the Santa Fe bring traffic into the Ashland Avenue yard?

A. That is my understanding, yes, sir.

Q. And are the empties accruing from those loads of dead freight returned to the Santa Fe?

[fol. 140] A. Not in all cases. They are used for loading at industries on the Chicago Junction Railroad. In fact we get some of them for outbound loading.

Q. Are some of them returned to the Santa Fe?

A. I would imagine so.

Q. In what number?

A. I don't know that.

Q. Are you familiar with the Loomis yard?

A. The one at 47th and Loomis?

Q. Yes.

A. I have a general idea of that, yes.

Q. Is your knowledge of that yard similar to your knowledge of the Ashland Avenue yard?

A. Yes, sir.

Q. Do you know whether several thousand additional empty cars could be handled through the Loomis Street yard?

A. No, I don't.

Q. As far as you know that might be possible and might not be possible, is that a fair statement?

A. Yes, sir.

Q. Is that also a fair statement with reference to any freight that might be,—or, rather, with reference to any effort that might be made to increase the handling of empties through what is called the north yard at Ashland Avenue?

A. I would say yes. I don't know the details of it but I [fol. 141] will accept that.

Q. Well, you have made a complaint here and requested something be done without any investigation at all to determine whether or not it would be feasible or practical to do it, is that a fair statement and haven't you demonstrated it?

A. I have brought this complaint entirely on the basis that we were seeking delivery of livestock and felt we were entitled to it under the law to the limit of which we could get it; if we can't get it direct through the railroads, to get it through the Commission.

Exam. Diamondson: Whether facilities were available or not, is that right?

The Witness: I assume the railroad has facilities to handle all traffic it holds itself out to handle.

Exam. Diamondson: Well, whether the yards were inadequate or adequate?

The Witness: I don't go that far into it, Mr. Examiner, to inquire into facilities or yard limits and capabilities of the railroad to determine whether I am entitled to a rate structure under the Interstate Commerce Act.

By Mr. Smith:

Q. You made a good many comparisons between the handling of dead freight and the handling of livestock. Are those two commodities in competition one with the other?

A. Generally I would say they were in competition one with the other. Meat might be in competition with livestock.

[fol. 142] Q. What was the importance of all the comparisons you made between dead freight handling and livestock handling in this area,—the matter of reasonableness?

A. The reasonableness of handling a certain class of freight as compared with another class of freight under similar circumstances.

Q. Is there much similarity between the handling that has to be accorded on livestock and that which has to be accorded dead freight?

A. They both have to be switched.

Q. They both move in freight cars?

A. Yes, sir.

Q. And have to be switched?

A. Yes, sir.

Q. Is there any difference in the time element that is involved?

A. Well, the only difference in the time element, livestock may be involved in a feeding in transit time.

Q. If livestock is required to be given an additional unloading because of delay in terminals, does that cost something to somebody?

A. Yes, sir.

Q. It costs something to unload and to feed and to rest, does it?

A. Yes, sir.

[fol. 143] Q. And are claims usually filed because of loss of market or shrinkage, too, where there is an additional unloading for feed and rest?

Mr. Rynder: I question whether——

Exam. Diamondson: Suppose you ask him the question whether Swift & Company files such claims.

Mr. Smith: All right, sir.

By Mr. Smith:

Q. I will ask you that, Mr. Tally.

A. Yes, Swift & Company files claims where they feel they have a claim brought about by delays resulting in loss of markets and so on.

Q. Yes. And when there is an additional unloading and feeding and resting you usually have a claim, don't you?

A. It all depends on the facts.

Q. Well, where the facts are as I have indicated, that there is an additional unloading, you usually have a claim, don't you?

A. No, sir.

Q. Under what circumstances do you and under what circumstances do you not?

A. Where we think that the delay to the traffic is an unreasonable delay we make claim on the carriers for the additional expense.

Q. If a tremendous volume of this livestock, as it should turn out from the testimony, had to be given an additional [fol. 144] unloading in transit because of the congestion and delay created by this proposal of yours if made effective, would that be a reasonable or unreasonable delay with reference to the filing of claims?

A. Well, I would have to know the facts before I could say whether there was a basis for a claim.

Q. Well, I have stated the facts for you.

A. Well, the facts are too indefinite for me to pass on the legality of a claim.

Q. You would rather not commit yourself?

A. No, I would rather not commit myself without the facts, actual facts; not on generalities.

Exam. Diamondson: The question is based on the assumption that there would be congestion, too, isn't it, Mr. Smith?

Mr. Smith: Yes, it is. It is based on the understanding that the testimony will show that.

A. I would expect the railroads to handle my livestock with reasonable dispatch and prepare themselves accordingly.

Q. I think you are safe in your answer, Mr. Tally.

Coming back to this comparison between dead freight and livestock, which you emphasized so much, would you be happy to receive the same handling from the time standpoint on this livestock that you receive on the dead freight which you get at the flat Chicago rate as you pointed out?

A. I would want my livestock delivered with the neces- [fol. 145] sary dispatch for the proper operation of my business.

Q. Yes. You want it delivered at least as fast as you get it now, do you?

A. Yes, sir.

Q. And you would not want the Chicago Junction to slow up any of your meat or dead freight because of the handling of these 75,000 additional cars either, would you?

A. I cannot follow that 75,000 additional, Mr. Smith, because we have only got about 6500 involved and that is as far as I have gone and I wouldn't want it delayed, no.

Q. You are still thinking of this as a special arrangement for Swift, are you?

A. I am thinking of this Swift & Company complaint and I don't know whether anybody else wants it or is interested in it.

Q. Were you impressed by Mr. Blanchard leaving the room this morning, saying he was not interested in this direct matter of getting delivery?

A. I never gave it a thought until you mentioned it. I have been pretty busy.

Q. You were not impressed with it?

A. No.

Q. Neither was I. Now, isn't it true that in the Swift case we tried previously Armour was in there trying to get the same relief with reference to direct shipments? [fol. 146] You recall that, do you not?

A. They had a similar case, yes, sir.

Q. And they intervened in yours, didn't they?

A. I believe so, yes, sir.

Q. You discussed the application of the flat Chicago rates to traffic generally, with certain exceptions, that you say were to preserve minimum revenues. How long has that condition been in existence in Chicago?

A. Delivery to all industrial locations?

Q. Yes.

A. Oh, many years that I can recall.

Q. All the time you have been with Swift?

A. I believe that is correct, yes, sir.

Q. Well, it was in effect then at the time the Commission decided in the Hygrade case that this switching charge of $28.80 as it then stood was not unreasonable or unlawful, isn't that so?

A. I believe that is correct, yes, sir.

Q. The rate here, this $28.80 rate, as I said this morning in my opening statement, that is the same rate, simply

increased, that was in effect and involved in the Hygrade case, isn't it?

A. Yes. I believe at that time it was around $12, if I remember correctly.

Q. That is right. It is the same rate, isn't it?

[fol. 147] A. Only double.

Q. What circumstances have you, until the date this morning or today, with reference to the difference between dead freight and livestock in respect to dead freight being handled on a flat Chicago rate, or any other circumstances that you have mentioned, that was not in effect at the time your record was made in the Hygrade case?

A. I wasn't in the——

Mr. Rynder: Do you know the year in which that record was made, Mr. Tally?

The Witness: No. I wasn't in the Hygrade case. I don't remember what the facts of a similar nature would be but I know a lot of facts.

Q. Let us say it was some time within the twenty-seven year period that you have been with Swift and answer the question on that basis.

A. Well, in the beginning with Swift & Company twenty-seven years ago I was just a clerk in the office, I didn't know too much about what was going on or too much about freight rates and all the technical points as to delivery of livestock and the reasons for it and so on, I wasn't familiar with it.

Q. Let us say that the Hygrade case was decided about 1930,—actually it was later than that,—but let us say it was 1930, so that we have some respectable basis to discuss it. Now, are there any of these things that you talked [fol. 148] about this morning in respect to the difference between the applicable rates on dead freight and on livestock that did not exist in 1930?

A. I don't know of any, Mr. Smith.

Q. You don't know of any, do you?

A. No.

Q. On your exhibit—what is this one, Mr. Tally?

Exam. Diamondson: 10.

Mr. Smith: Exhibit 10, thank you.

Q. Starting on page 9 you devote a series of pages to rates on livestock. Those are your actual shipments at the Omaha plant, are they not?

A. Yes, sir.

Q. During that period that you say is one of your accounting periods?

A. Yes, sir.

Q. And that is the statement that you were talking about when you said that hogs predominate in your direct shipments, is that it?

A. Yes, sir.

Q. Did this include all of the shipments moving during that period?

A. That is what I asked for.

Q. Well, now, what distance did these shipments move?

A. Well, they varied. Some of them from Illinois and Iowa and I think there were shipments in there from as [fol. 149] far west as California,—sheep.

Q. Will you just indicate how you expected the Examiner to make use of this exhibit which does not disclose the distance that the railroads hauled this traffic in return for these freight charges that are received?

A. The purpose of this exhibit was to show the revenue received by the carriers on cars of livestock. I did not care to disclose the origin points of these shipments for obvious reasons. That is a matter of our own knowledge and information which we do not care to disclose to the public, and if the carriers wanted to get the information, why, they have it in their own records. Now, the car revenue was entirely to be compared with the minimum car revenue on other commodities on which they do provide direct delivery to all points on the Chicago Junction Railroad and other points in the Chicago Switching District where the revenue was not as great or equal to the livestock revenue.

Q. In other words, the only point that you ask the Examiner to consider is the comparison of the per car charges on certain livestock shipments that move for distances that are entirely unknown to him, with the revenue that accrued on certain dead freight for distances that are likewise entirely unknown to him, is that it?

A. That is correct, yes, sir.

Exam. Diamondson: And also covers intrastate shipments.

[fol. 150] The Witness: It covers intrastate as well, yes, sir.

By Mr. Smith:

Q. Some of these freight charges or per car charges would be pretty slim after $28.80 had been deducted from them, wouldn't they, Mr. Tally?

A. Well, on the dead freight they don't deduct $28.80 from them. They have got a division.

Q. I am talking about the livestock, if you don't mind looking at this.

Mr. Rynder: Do you expect to deduct $28.?

The Witness: No, sir.

By Mr. Smith:

Q. You will agree with me that $28.80, which is the presently applicable charge, that if that were deducted some of those revenues would be exceedingly thin, wouldn't they?

A. That is correct.

Q. Now, these dead freight revenues for these unknown distances, those are not actual shipments at all, are they?

A. No. They are points where they have rates, commodity rates published from. I assumed shipments are made, otherwise they would not publish commodity rates.

Q. Are you offering those as the minimum per car charges?

A. That is what they are, yes, sir.

Q. Are they, Mr. Tally?

A. They are minimum per car charges.

Q. Is the minimum now what is provided for in the tariff [fol. 151] or by the ODT regulation?

A. The ODT regulation, which would be substantially higher than these.

Q. So that these are not minimum charges in point of fact, are they?

A. They are minimum tariff charges.

Q. But they are not the minimum freight charges?

A. That is what you would have if you had a normal operation.

Q. Then will we have a normal operation here?

A. They keep on postponing the discontinuance of that right along. I couldn't say.

Q. So you are comparing the per car charges on livestock for unknown distances with per car charges on dead freight, on shipments which did not move and which if they had moved would not take those minima, isn't that right?

A. Under ODT, yes, sir.

Q. Will you turn to page 18? Now, Mr. Tally, from page 18 through to page 27 you have referred to tariffs applying to services at various other points in the United States, is that right?

A. Service of delivery of livestock direct to plants.

Q. All right. Now, you said that you participated personally, I think, in that case and that you worked out a meeting a short time ago with the carriers down at Nashville.

A. Yes, sir.

[fol. 152] Q. And you are familiar with the operations down there, are you, to some extent?

A. I have been down there, yes. I have got a general idea.

Q. That is, you were down there when you tried the case?

A. No, I wasn't in the case.

Mr. Rynder: No, that isn't true.

By Mr. Smith:

Q. You were not in the case?

A. No. I started the negotiation and then something happened to me and I wasn't able to continue.

Q. You have been there?

A. I have been in Nashville, yes, sir.

Q. Have you been out there and looked at the operations?

A. No, sir.

Q. You are not familiar with it?

A. No, sir.

Q. Now, just tell the Examiner at how many of those

points you are familiar with the operations and the physical lay-out, and so forth, at these various points?

A. Well, I will start out by saying that I don't know the detailed facts as to the physical operations at any of them. I have been there and looked it over from a general standpoint. I have been at Kansas City, I was in St. Joe and I have been at South Omaha, Nebraska and I have been at Nashville.

Q. Is your information about them less complete than it is about the operation of the Ashland Avenue yard?

[fol. 153] A. Probably, yes.

Q. I want to call your attention to three or four characteristics of these operations at Chicago and I want you to keep them in mind, if you will, for the purpose of the question.

At Chicago you have deliveries at the flat Chicago rate at the Omaha plant, do you not?

A. Yes, sir.

Q. That is the only thing I would like you to keep in mind. Now, there is also a public stock yards at Chicago, isn't there?

A. Yes, sir.

Q. And it is served by the tracks of a terminal railroad, isn't it?

A. Yes, sir.

Q. And your plant is located on that terminal railroad?

A. The Swift plant in the stock yards, yes, sir.

Q. Yes. Now, will you indicate to the Examiner how many of these points are points at which a packer which is located on a terminal railroad adjacent to a union stock yards posted with the Secretary of Agriculture, is permitted to receive direct shipments from that terminal railroad without any charge over the line haul rate where that carrier,—or, rather, where that packer also has a facility like your Omaha plant where it receives at the flat station rate? Now, just tell us how many of these points are like that?

[fol. 154] Mr. Rynder: Have you got all of the conditions in that question, Mr. Tally, or do you want to have it read?

The Witness: I think I understand it.

Mr. Rynder: You have not only got to have the public market but you have got to have a terminal railroad and you have got to have a plant like the Omaha plant.

Mr. Smith: Yes. In other words, you have got to have it like it is at Chicago.

A. I can't recall any place where the situation is identical.

Q. Where a packer receives traffic at some point other than Chicago similar to the arrangement under which you get it at the Omaha plant, do you regard that as being discriminatory against Swift at Chicago?

A. You mean where other packers got it?

Q. Where other packers have the advantage of a situation such as you enjoy at the Omaha plant, these other packers have that at points other than Chicago, does that discriminate against you at Chicago?

A. Yes, because we are not getting direct delivery to our plant at Chicago. We have to have a trucking operation from the location where we do get it to our operating plant, whereas these other packers have a direct delivery to the location where they perform their slaughtering operations without any additional expense.

Q. That is, if Armour at any of these outlying points [fol. 155] gets delivery at a flat station rate, such as you do at the Omaha, then you charge that to be discriminatory just in gross?

A. No, I——

Q. Or under certain circumstances?

A. No, I call that discrimination because I haven't got delivery at my plant operation location, whereas they do get it.

Q. In other words, as long as the plant burnt,—or as soon as the plant burned out at the Omaha, that made the situation discriminatory in favor of Armour, we will say, at Podunc against you at Chicago, is that right?

A. That is correct.

Q. That fire created discrimination, is that it?

A. Yes.

Q. That is the kind of discrimination you are talking about in this complaint?

A. No. I am talking about Interstate Commerce Act discrimination.

Q. I think we misunderstood each other. I thought you meant that was Interstate Commerce Act discrimination.

A. Not all of the Omaha Packing Company's plant burned.

Q. That made the difference.

A. That created the difference, yes.

Q. What is the reason that you get the flat Chicago rate at your Omaha plant?

A. Because the Commission said we were entitled to it.

[fol. 156] Q. Did competition have anything to do with it?

A. None whatever that I know about.

Q. If the North Western wants to compete with the Burlington in the handling of traffic into your Omaha plant it has to meet the rate, doesn't it, or you won't buy at a Chicago & North Western point?

A. We would probably try to control the buying on a line that did not impose a fair basis.

Q. So that if the Santa Fe and all the rest of them wanted to participate in that business that goes to the Omaha plant they didn't have any alternative, did they, but to meet that rate?

A. That is correct.

Mr. Rynder: That was not the way it came about.

The Witness: No. The Commission decided we were entitled to it.

Exam. Diamondson: The Commission prescribed it.

Mr. Rynder: Yes.

The Witness: Yes.

By Mr. Smith:

Q. They prescribed it at a time when it was apparent that the delivery of livestock by the terminal railroads was at the Union Stock Yards, isn't that so?

A. Well, at that time the delivery of livestock was made at both places. I don't believe I understand your question, Mr. Smith. I am sorry.

[fol. 157] Q. I think I did not make it plain, perhaps. At the time this case was decided that involved the handling of traffic to the Omaha plant, then as now this switching charge of $28.80 or its antecedent was in effect and the packers were

taking delivery of livestock at the Union Stock Yards at the flat Chicago rate as prescribed, is that it?

A. I think there was a plus charge at that time.

Q. That was taken off in the Livestock Exchange case.

A. Yes, sir, equally at the Omaha Packing Company as well as at the Union Stock Yards.

Q. Will you look at page 26, please, Mr. Tally? As I understand it that is an intrastate rate basis, is that it?

A. Yes, sir.

Q. Well, now, will you explain——

A. A rate division, not a basis. Not prescribed by the Iowa Commission. It is a rate published by the railroads.

Q. Within the State of Iowa?

A. Within the State of Iowa, yes, sir.

Q. Does this comparison that you make between those rates and the rates prescribed by the Interstate Commerce Commission indicate that these rates are too low or that the Commission's basis is too high, or what does it show?

A. The purpose for which I put it in was that the carriers provide delivery of livestock direct to the plant at the various locations, shown at that level of rates, which is [fol. 158] lower than the rates prescribed by the Commission in the interstate case.

Q. In other words, these points in Iowa get the same basis of rates, namely, the flat station rate, on a lower level of rates than you get at the Omaha plant for the same type of rate basis, is that right?

A. Yes, they get a direct rate on a lower level than the interstate basis there at the Omaha Packing Company or any other interstate place.

Q. You get at Omaha just what these people get at other points, including Swift, except all of these others are on a lower basis of rates?

A. Lower division of rates. These rates are not state prescribed rates.

Q. Why do you make a point of this? Do you think this would be violative of the Thirteenth Section if they were state compelled?

A. No. We were pointing out those are the basis off rates for joint line movement in the State of Iowa. The Joint Line basis in the State of Iowa is 80 per cent of the distance

basis, but these rates are not published on that basis. They are on a lower level.

Mr. Smith: That is all.

By Mr. Day:

Q. Are you familiar with the locations of the unloading chutes at the Omaha Packing Company?

[fol. 159] A. I have been over there, yes, sir.

Q. They are about a block west of Halsted Street, are they?

A. Just about, yes, sir.

Q. And they have to make quite an ascent to get to the street level?

A. I think they do when they come up off of 22nd Street to get down into that location, yes, sir.

Q. The pens are down along the north bank of the south branch of the Chicago River?

A. Right in that location, yes, sir.

Q. And after they get around on 22nd Street do they turn down on Halsted Street?

A. I don't think on Halsted Street, Mr. Day. I don't recall on Halsted Street. I have driven Halsted Street in my car many a time and the only thing I have seen there is a street car, but it may be about a block off the street.

Q. I am talking about truck routes.

A. Oh, I am sorry. I thought you were talking about railroads. They go down Halsted Street, yes, sir.

Q. To 39th Street?

A. Sometimes they do and sometimes they go down Archer Avenue to Ashland and then come down on Ashland and come in that way.

Q. In either case they run over on Ashland Avenue and then enter the yards from the west?

A. That is right.

[fol. 160] Q. From Ashland Avenue?

A. Yes, sir.

Q. So wouldn't you say the actual truck distance there is over three and a half miles?

A. Via the route they have to travel, yes, sir.

Q. Is the statement of shipments in your exhibit to the Omaha plant representative of what you get right along?

A. Well, generally so. It might vary during certain seasons of the year where certain species might predominate to a greater extent than in other seasons of the year.

Q. Well, I notice on page 12 you show a double deck car of cattle. That apparently is a typographical error, isn't it?

A. That is a mistake, yes.

Q. It is the second item from the bottom of the page, on the left.

A. Yes. Somebody maybe put down the "hogs, double deck" and continued with the D. D. for the cattle.

Q. Outside of that one car of cattle I notice the only other cattle you seem to have gotten at the Omaha property was that on April 1st, 1947. There is one April 2nd. That might be a misprint, too, in among the bunch of April firsts.

A. Well, there is one, yes, that could be. It is out of order at least. I don't know whether they put them in the proper order or not.

Q. There is eleven there anyway, and one mistake which [fol. 161] is shown as double deck. That makes twelve cars of cattle out of, what was it,—about 350 shipments?

A. Is that how many there are on here?

Q. I imagine that approximately.

A. If that is what it shows, yes.

Q. Where did you obtain the other cattle that you would have slaughtered during that period?

A. We probably bought them on the Chicago market.

Q. There wouldn't have been any directs shipped to you and handled through the stock yards?

A. No. We tried to find that information for Mr. Smith, to see how many directs we got in there and we weren't able to find any during several years.

Q. Another thing I observed in your statement is that a great many of these shipments seem to have been in multiple cars, that is, two for one or a car and a trailer, and so forth. In that case they would be handled under a two for one rule, would they?

A. You mean two single decks instead of one double?

Q. Yes.

A. Well, that is quite prevalent throughout the territory on failure of the carriers to be able to furnish a double deck car, so they furnish whatever facilities they have. As far as I know the tariff provides for that.

Q. In the case where they have to switch the empties, c
[fol. 162] course the switching road would charge for th
trailer as well as for the car.

A. That probably would be the case with the line hau
carrier. They would have to work that out with them

Q. Can you say whether a greater number of these ship
ments to the Omaha property were from country station
or concentration points as distinguished from public stoc
yards?

A. I would say most of them were from other than pub
lic stock yards. We buy stock at other yards and ship then
to the Omaha Packing Company location.

Q. I am wondering, too, if some of these single deck and
double deck descriptions are not misstated here. Where
you show a loading in excess of 25,000 pounds as a single
deck of hogs, that apparently is wrong on its face, isn't it

A. Yes. The 25,000 pounds should be a double deck.

Q. I see two that were over 24,000 and there are a numbe
of others like that.

A. I will have to apologize for whoever made it up be
cause I can't be there and do all of this.

Q. No, I appreciate that. And where you show a loading
of a single deck as high as 21,280, you would say that was
in error, wouldn't you?

A. I would think so, yes.

Q. Now, in discussing minimum revenue on this livestock
and dead freight I think you stated that a minimum of $27
[fol. 163] is required by the line haul carriers on dead
freight before they will absorb the switching charges?

A. Yes. That is referred to in that Raasch tariff.

Q. In your statement of dead freight shipments I notice
you show earnings of around $31 and that you also think
that means in that case the shipper would have to pay the
difference between the amount absorbed by the trunk line
carrier and the overage of that twenty-seven dollar limit.

A. He would have to pay whatever the minimum require-
ments were to get the delivery.

Q. Do you have in mind or contemplation shipping out-
bound livestock from your new facility?

A. Not to my knowledge, no, sir.

Q. You do ship outbound from the Omaha yourself, do
you not?

A. Sometimes, yes, we get livestock that can be used to better advantage at other places, but that is not too often.

Q. Now, the Chicago Junction has never switched livestock from connections to industries on its rails?

A. Not to my knowledge. They probably haven't been called on to do it because up until now nobody has had any facilities to receive it.

Q. In the matter of the tariff under suspension here, the present tariff provides this rate of $20.80 per car on all freight. That is the terminology used, isn't it?

A. Yes, sir.

[fol. 164] Q. And the suspended tariff only changes that in respect of two words, "except livestock"?

A. Yes, sir. In other words, eliminating the application of that rate so far as livestock is concerned.

Q. You stated that the new facility would be on a grade. Isn't it also true that the track leading into the facility would be on a sharp curve?

A. Not any greater than it is now. It is a curve, yes, sir.

Q. That is indicated in your exhibit 4, is it not?

A. Yes, sir.

Q. Can you tell us when the pictures offered as your exhibits 4 to 8 were taken?

A. I think it was in October of last year.

Q. Can you tell us the day of the week?

A. No, I can't.

Q. And you know that the Chicago Junction has no facilities such as are frequently used in the handling of livestock? It has no place to feed, water and rest livestock, has it?

A. No, I don't believe it has, no, sir.

Exam. Diamondson: Are there any such facilities in the Ashland Avenue yard?

The Witness: Not to my knowledge, no, sir.

By Mr. Day:

Q. Have you taken into consideration how you would load your outbound beef from this new facility in the face of having this livestock coming in?

[fol. 165] A. We have got separate tracks, which are shown on that print, exhibit 1, for loading our outbound

products, that are not the same tracks that would serve the livestock unloading facilities.

Q. Wouldn't there be interference there for the Chicago Junction, for instance?

A. No, I wouldn't think so because the meat goes out in the afternoon and the livestock comes in in the morning.

Q. Have you given any consideration to how long a time the Chicago Junction could ordinarily permit livestock to remain in its Ashland Avenue yard if cars of livestock were delivered there?

A. No. That would all depend on the last feed. Every car has got a different history.

Q. You would not expect the Chicago Junction to hook an engine on to every car of livestock as it came in and run it over to your plant, would you?

A. I don't think that is the way it would operate, no. They would have a schedule.

Q. How many times a day would you expect they could make deliveries of livestock under those schedules?

A. Within a reasonable time after the livestock arrived.

Q. Would you say three a day?

A. I don't know.

Q. How many would you think they could make?

[fol. 166] A. I haven't any knowledge on that, Mr. Day.

Q. Would you expect more than three deliveries a day?

A. I would expect as many deliveries as was necessary to meet the volume of tonnage that was in there.

Exam. Diamondson: How many deliveries a day do you get in the Omaha yard now?

The Witness: Well, they bring livestock over there at all times during the twenty-four hours.

Exam. Diamondson: How many times a day approximately?

The Witness: I don't know how many times, sir.

Exam. Diamondson: Well, would you say ten times, five times?

The Witness: I wouldn't like to guess because I don't know.

Mr. Day: That is all, then.

Exam. Diamondson: We will adjourn at this time until 9:30 tomorrow morning.

(Whereupon, at 5 o'clock P. M., Tuesday, February 24, 1948, an adjournment was taken until 9:30 o'clock A. M., Wednesday, February 25, 1948.)

[fols. 167-168] Wednesday, February 25, 1948.

Met, pursuant to adjournment, at 9:30 o'clock A. M.

[fol. 169] Proceedings

Exam. Diamondson: The hearing will be resumed. You may proceed with the cross-examination.

G. F. TALLY resumed the stand and testified further as follows:

Cross-examination (Continued).

By Mr. Belnap:

Q. Mr. Tally, is it your understanding that Swift & Company gets none of its directs through the yards?

A. I wouldn't say entirely none, Mr. Belnap. There may be some. I attempted to determine what amount we might receive through the yards that were direct shipments and our people were not able to locate them without going through a whole year's vouchers, which, in other words, indicated they were very small because they didn't have a separate account for it.

Q. Do you keep a separate account and record of the livestock that you get through Omaha Packing facilities?

A. We have the record of receipts down at the Omaha Packing Company location, yes, sir.

Q. Do you keep that by species and by head?

A. Oh, I presume they do. I have never examined it. I did not familiarize myself with all those details, but I did not feel that they had any part in just a rate case in trying to determine whether we were entitled to a lower rate than the existing rate, so I did not go into all those factors.

Q. I was interested from the standpoint of the volume of [fol. 170] the traffic.

A. I did give the number of cars, Mr. Belnap.

Q. Yes.

A. But not broken down as to species.

Q. I know you did. You keep currently, do you not, records of the stock that you do get through the yards either as market stock or as directs in one item?

A. I am sure they must have records of what they purchase on the Chicago market and separate them from any other.

Q. Could you supply us for the year 1947 according to species and head with your total slaughter at the Chicago plant and separately the number of head that you received through the U. S. Yards?

A. I don't know whether I can accumulate that information or not. I would have to inquire.

Q. Will you do so and let us know?

A. I will be glad to inquire, yes.

Q. If the record is conveniently available you will be willing to furnish it?

A. I will have to have somebody decide that for me, whether they are willing to give out that information.

Mr. Rynder: Will you please state again just what it was, Mr. Belnap?

Mr. Belnap: Your total slaughter at Chicago for 1947 by species and in terms of number of head.

[fol. 171] Mr. Rynder: I suppose you know that we have a great many come in by truck and those would be included.

Mr. Belnap: It would include those that came in by truck and those that came in by rail, but I am interested in the potential volume of traffic which is involved in the case which, as I understand it, is the difference between the slaughter and the stock obtained through the yards.

Q. Will you inquire whether your company is willing to furnish us on the record with that information?

A. I will be glad to make the inquiry.

Exam. Diamondson: Before the close of the hearing, Mr. Belnap?

The Witness: If my counsel is agreeable to that procedure.

Mr. Rynder: I think that information of that kind is not at all necessary to any issue here. It would disclose certain facts to competitors that are not usually disclosed in this kind of a case. I may say that the Secretary of Agri-

culture collects that information and publishes it in bulletins but always so that you cannot determine the numbers slaughtered by the individual packer, but gives it simply by location, but he considers the number of head slaughtered by the individual packer a matter of their own business.

Mr. Belnap: Mr. Rynder, I shall not press it if you want to decline to give it. I was interested in getting at the potential volume of traffic involved here and that would [fol. 172] be one approach. Now, if you don't care to disclose it, I will drop the matter.

Mr. Rynder: The potential volume of traffic as far as we are concerned has been stated by Mr. Tally; approximately 6,000 cars.

Mr. Belnap: I said I wanted that approach to the matter, but if you decline to do it I will drop the matter.

Mr. Rynder: I would say that I would not voluntarily furnish it.

By Mr. Belnap:

Q. Mr. Tally, could you furnish us for the shipments shown in your exhibit 10 at page 10 the number of head according to species and states of origin and then for the balance of the year 1947 give us like information, that is, as to the rail movement into the Omaha Packing facilities?

A. There again I don't know whether our folks are willing to disclose that information.

Q. I haven't asked you for the origins. I have asked you only for origin states.

A. I appreciate that.

Q. Shall I address that to counsel?

A. I would prefer that it be addressed to counsel, yes, sir.

Mr. Belnap: Mr. Rynder, are you willing to furnish that information?

Mr. Rynder: No.

Mr. Belnap: I might say, Mr. Examiner, I asked for that [fol. 173] for this reason: We have a statement by Mr. Tally that this period is representative. We are concerned with this volume from the standpoint of the species of livestock and we are also interested in it as to whether it is representative from the states of origin represented. Mr. Tally

has shown freight charges, some of them relatively high, some extremely low. I have no doubt that in Mr. Tally's opinion it is a representative showing. However, I don't think we should be compelled to rest on his opinion as to that matter when it is possible for the complaint to disclose to the Commission the remainder of the data which will show whether it is in fact representative.

Exam. Diamondson: Well, that is up to the complainant.

Mr. Belnap: But if the complainant declines to offer the necessary information to corroborate Mr. Tally's opinion, I shall not press that matter.

Exam. Diamondson: Let me ask you first, Mr. Tally: I don't know whether the record clearly show- whether these shipments that are listed on pages 10, 11 and 12 of exhibit No. 10 are all interstate shipments. Do you know?

The Witness: Most all of them are interstate shipments.

Exam. Diamondson: But there are some intrastate shipments?

The Witness: There are some Illinois shipments included in there.

Mr. Rynder: Mr. Tally, for the data that is shown on [fol. 174] exhibit 10, pages—maybe I should address this to you, Mr. Rynder.

For the data that is shown on exhibit 10 beginning at page 10 are you willing to disclose the number of head by species and states of origin?

Mr. Rynder: I believe I will answer that by saying "No", and let me interject something here.

As I understand it, my friend, Mr. Belnap, is representing two associations of what we may call commission men; that their purpose in this case is to oppose so far as they can this method of marketing known as the direct selling or direct buying, it being obviously opposed to their interest because they get no bit of change for their particular little services unless traffic is shipped to the yards and sold through them. It is perfectly obvious what their position is.

Now, the Commission has had such cases before it before this and I believe I am quoting exactly here what it said:

"The statute does not confer power to regulate the purchase and sale of articles. The propriety of country pur-

chases cannot be decided by the Commission. The commission men are not shippers and the practice does not involve any undue prejudice to any shipper."

The authority for that is National Livestock Exchange vs. C. B. & Q., 47 ICC 380, and all of that was repeated in the chapter on this direct buying in Livestock—Western [fol. 175] District cases of 1931, 176 ICC 1.

So I am not inclined to go along with anything that we do not consider necessary to the presentation of our case and to satisfy merely the curiosity of people who do not like this method of doing business because they do not get their little piece of gravy.

Mr. Belnap: I will undertake to argue the case, Mr. Examiner, at the appropriate time and I am quite sure you do not consider this to be the appropriate time. I am intervening in the proceeding. I am going to test if complainant is willing to run the risk of sustaining Mr. Tally's statement as to the representativeness of his showing and as to whether the shipments are almost entirely, or whatever word he used, interstate shipments, but again I say, if Mr. Rynder is not willing to run the risk of testing that I shall not press that point.

Mr. Rynder: I would like to say that I appreciate my brother's efforts to help me present the case properly and I am very grateful to him.

Exam. Diamondson: Well, Mr. Rynder, is there any objection to at least indicating which of these are intrastate shipments?

Mr. Rynder: No, none at all if that can be checked.

Exam. Diamondson: Could that information be furnished by the close of the hearing?

[fol. 176] Mr. Rynder: Can you get it up that quickly, Mr. Tally?

The Witness: I will try it if it is satisfactory to furnish it.

By Mr. Belnap:

Q. Mr. Tally, are all of the shipments which you receive at the facilities of the Omaha Packing Company owned by Swift & Company at the time the shipment is made?

A. I don't know definitely as to that, Mr. Belnap. The shipments are consigned to Swift & Company or Omaha

Packing Company. To that extent I have no further interest in whether it is owned at the origin point or destination point or where.

Q. On the transportation documents which are under your jurisdiction are others than Swift & Company shown as consignors?

A. Yes.

Q. Are the others so shown always agents of Swift & Company?

A. I have never examined it that close, Mr. Belnap, to see whether the word "agent" follows the name of the shipper or not.

Q. Let me inquire, if you please. Do you know whether or not owners of livestock will ship it to Swift at the Omaha Packing Company by rail before the livestock is sold to Swift?

A. I don't know that definitely, no, sir.

Exam. Diamondson: Do you have anything to do with the buying of stock?

The Witness: No, sir.

Mr. Belnap: He just handles the transportation documents.

[fol. 177] By Mr. Belnap:

Q. Mr. Tally, is there any shortage of unloading chutes or tracks serving unloading chutes or pens in which to hold livestock at the Union Stock Yards, and I use "shortage" in the sense of inadequate to take care of the livestock which may come to Chicago to be slaughtered either by Swift or by all of the packers located here.

A. I imagine they have ample facilities to take care of whatever comes in.

Mr. Belnap: That is all.

By Mr. Gladson:

Q. Mr. Tally, you not only said that there were 6500 carloads of livestock received at the Omaha yard but you also testified as to the cost of sending a car of each species through the stock yards. In view of the fact that the cost per car is meaningless unless we know the breakdown of

the 6500 cars, are you willing to give us the number of each carload of each species included in that 6500 figure? Perhaps I should address that to the counsel.

Mr. Rynder: The answer is no.

Mr. Gladson: You are not willing to give that?

Mr. Rynder: No.

Mr. Gladson: May I ask why, Mr. Rynder, in view of the fact that the cost per car is meaningless?

Mr. Rynder: Because I think it unnecessary to the presentation of our case. We are not here to satisfy the curiosity of everybody who may want to make us do a lot of work. [fol. 178] Mr. Gladson: Mr. Examiner, I am not going to press it but the complainant comes in and gives some testimony as to how much per car it costs to send the animals through the stock yards and then refuses to give us the number of cars that would be sent in the course of a year through the stock yards.

Exam. Diamondson: He can stand on that presentation.

Mr. Rynder: Now, let me recall what happened. He mentioned the yardage charge which he stated he had and then he merely went on, so the Commission might know, to state the range that that would be for different species dependent upon the number in the car. That is all he gave on that. He said if a car contained so many cattle it would make a high and low of that, and so many hogs it would make a high and low of that.

By Mr. Gladson:

Q. How did you arrive at the number of animals per car in making these computations?

A. That was just from general knowledge of about what number of head of the various species of livestock might ordinarily be shipped in a car. I have no specific car attached to it.

Q. It is not based on the experience at the Omaha?

A. No, sir.

Q. Referring to your exhibit 1, I see on that diagram what purports to be truck unloading chutes and also a livestock buying yards building. Is it part of your plan to conduct a business of buying livestock at those new yards?

A. That includes a facility that if anybody that owns

[fol. 179] livestock wants to bring it in by truck and offer it to Swift & Company for sale, we are ready to buy it.

Q. You would not discourage him then?

A. No, sir.

Q. How long has Swift & Company owned or controlled the Omaha Packing Company?

A. Well, I can't tell you the exact figure. I have known the Omaha Packing Company as being part of Swift & Company during my association with them for twenty-seven years.

Mr. Gladson: That is all.

Exam. Diamondson: Any further questions on cross?

Mr. Quasey: I have one question, Mr. Examiner.

By Mr. Quasey:

Q. Mr. Tally, in answer to Mr. Gladson's question about the buying of livestock, you propose to buy livestock either coming in by rail or by truck at the proposed location here?

A. Well, we will buy whatever comes in there by truck if it is offered to us, or the opportunity to buy it. I don't know about the rail shipments that are consigned to us. As I testified, I don't know whether that is purchased after it arrives there or purchased under some agreement before it is shipped or what.

Q. I see.

Mr. Quasey: Perhaps some other witness could answer that question, Mr. Rynder. We understand that you plan [fol. 180] to purchase livestock which may be shipped to you by rail also, as well as livestock shipped by truck. Is your answer in the affirmative to that?

Mr. Rynder: I am not answering.

Mr. Quasey: You are not answering?

Mr. Rynder: No.

Mr. Smith: Mr. Examiner, I have a question or two that I will be glad to withhold until Mr. Rynder has finished his redirect.

Mr. Rynder: Not if it is cross examination.

Exam. Diamondson: Can't you proceed now, Mr. Smith?

Mr. Smith: Yes, I will be glad to. Mr. Rynder, are you going to have a witness who knows something about this

exhibit 1 and about these buildings that are supposed to be erected here?

Mr. Rynder: No, I have no witness beyond what we have put in.

Mr. Smith: Are you going to post this yard as a public stock yards?

Mr. Rynder: Well, now, that is a law question, I think, that you are asking the witness.

Mr. Smith: Maybe he can answer it. Let us find out.

A. My answer to that is that there is no such program contemplated that I know of. As far as I know it isn't even considered a public stock yards.

[fol. 181] Q. How do the trucks get in here to this new stock yards that you are proposing to construct here,—over some viaducts or tunnels, or how do they get in here to this new facility that you propose?

A. They will come in at street level off of Ashland Avenue and turn into 43rd Street.

Q. They will come in and you will look over the stock and decide whether you want to buy it, and if they don't like the price or you don't like the livestock they will truck it out of there?

A. I presume so.

Q. They won't know when they come in whether you are going to buy it or not if it is intended for market?

A. I presume so.

Q. What about the stuff that comes in by rail and you decide not to buy, what happens to that?

A. I don't know about that.

Q. You are not guaranteeing to buy everything that comes in, I take it?

A. I don't know anything about the cars that are brought in under those conditions, Mr. Smith. I testified I don't know whether those cars that come in are all purchased upon arrival at destination or not. I have no investigation of that business.

Q. I wasn't talking about the stuff that comes into the [fol. 182] Omaha. I wasn't referring to this question of Mr. Belnap's, as to whether this stuff that comes into the Omaha belongs to Swift at the time it is loaded at the

country points. I am talking about this livestock yards buying building here. We understand each other?

A. Yes.

Q. Is that what you are talking about?

A. Yes, sir.

Q. If there is to be a rail market there that means that either the purchaser or the seller can reject any proposed offers, I take it, doesn't it?

A. Yes, sir. If you will examine that closely you will notice that it is merely for the truck facility and there is no livestock rack that connects with that location.

Q. What is there here that could inform me as to what kind of livestock you are going to buy at this market, in this exhibit number 1?

A. There isn't anything on that exhibit that shows the kind of livestock because we wouldn't even know what kind of livestock was going to be offered to us by truck to buy until it arrives.

Q. Where is the rail stock that comes in to you to look at and decide whether you are to purchase it, where is that to come in?

A. I don't know whether that livestock is going to come in [fol. 183] by rail that we are going to look at.

Q. And you don't know it is not?

A. No.

Q. You just don't know anything about that?

A. If that is the way you want it, yes, sir.

Q. Well, is that the way you want it?

A. I don't care.

Exam. Diamondson: What is the operation in connection with the weighing of stock which would come in there? Do you have a scale there?

The Witness: Yes, sir. We will have a scale at this location. We have a scale at the Omaha Packing Company. This is merely a transfer of the Omaha Packing Company operation to this new location.

Exam. Diamondson: It is your own scale?

The Witness: Yes, sir.

Exam. Diamondson: Operated by your own weighmaster?

The Witness: Yes, sir, under authorized weighing issued by the weighing inspection bureaus.

By Mr. Smith:

Q. Will there be any other bidders at this market that you are establishing or proposing to establish here?

A. That is not a market, Mr. Smith, for anybody but Swift & Company to buy livestock offered to them by truck.

Q. Well, then, the answer is "No", there won't be any [fol. 184] other bidder but Swift.

A. That is right.

Q. It is a market but it is a market at which only one buyer and various proposed sellers will be present.

A. Just the same as the Iowa packers or anybody else that have truck receipts offered to them for purchase.

Q. I don't happen to know about that, but these people will bring this stock in and exhibit it and you may buy it and may not, and if that happens and if it comes in by truck it will be trucked out and if it comes in by rail presumably it will go out by rail or by truck, is that it?

A. I will agree with you on the truck part of it but I can't go that far on the rail part of it.

Q. What qualification do you want to make?

A. Because I don't understand that the rail receipts are operated that way.

Q. As to the rail you simply don't know what the proposal may be, if any?

A. No. The cars are consigned to Swift & Company and Omaha Packing Company as far as I know.

Q. That is on truck shipments. That is on truck shipments you are talking about?

A. All shipments.

Q. That is direct shipments that are consigned to Swift?

A. Yes, sir.

[fol. 185] Q. But this livestock buying yards building, that relates to some other business than simply receiving direct shipments that have been bought in the country and billed in, I take it?

A. That is a facility for everything I suppose, either that may be trucked in direct or that may be offered to us by the owner or the seller of the livestock.

Q. Will you look at your exhibit 1, please? You note the words inscribed within the building which is designated

the new killing building, the words, "Beef and small stock killing." Do you see those words?

A. Yes, sir.

Q. What do they mean?

A. That will be the part of the building where they will kill beef and lambs and calves.

Q. Well, exactly what part of the building is it? It looks like it might be all the building to me.

A. Well, it is the larger proportion of the building, the eastern end of the building. Just west of there you will note the words, "Future hog killing" included in that building.

Q. That is in the part that seems to be inscribed within a broken line. Is that right?

A. Just west of that black line, yes, sir.

Q. Yes. Well, now, will you explain, please, why one line is solid black and the other broken?

A. No, I can't explain that, sir.

[fol. 186] Q. You don't know that?

A. No, sir.

Q. You have a fairly modern hog killing plant down here in the yard area, do you not?

A. I don't know how modern it is.

Q. Do you know whether you have a hog killing plant?

A. Yes, sir.

Q. Where is it?

A. We have a hog killing plant at Exchange Avenue and Racine.

Q. How far is that from this building marked, "New killing building"?

A. Oh, about three blocks.

Q. About three blocks?

A. Yes.

Q. That is the only hog killing plant you have?

A. No. We kill hogs at the east house also.

Q. And where is that in relation to this?

A. About two blocks from the new killing building.

Q. Any place else?

A. Not to my knowledge.

Q. Well, now, would the manner in which the draftsman has prepared this exhibit 1 indicate to you that the design

was to build this beef and small stock killing building first and maybe tentatively at some later time conceivably build this future hog killing building that is referred to in there, [fol. 187] or are you completely in the dark on that?

A. I don't know what the program is.

Q. Well, if you don't presently have any plans for building a hog killing facility here, why, the great bulk of your directs would not be handled in this building adjacent to these new proposed unloading tracks at all then, would they?

A. If that were a fact, yes, sir.

Q. And whether it is or not you just don't know, is that it?

A. That is right.

Mr. Smith: As I understand it, Mr. Rynder, you are not going to offer any witness who does.

Mr. Rynder: No.

Mr. Smith: No?

Mr. Rynder: No.

Mr. Smith: That is all.

Exam. Diamondson: Any further questions on cross examination? Any questions on redirect?

Mr. Rynder: I might say, Mr. Examiner, that the reason for some of these exhibits is that we figure after the livestock is delivered to us it is of no concern to the railroads whether we kill it in one house or in another, or whether we should drive it all over to the old place we have now instead of killing it in the new house. We think that has nothing to do with transportation after we get it.

[fol. 188] Redirect examination.

By Mr. Rynder:

Q. Mr. Tally, somewhere in your cross examination it was suggested that the distances to some points in the stock yards, to some of the packing points, was greater than the distance to the proposed Swift facility and that distance was an important item to be considered in such a matter. I wanted to ask you if distance has been considered in any way in the switching arrangements either on the Chicago Junction or throughout the whole Chicago Switching District on the trunk lines?

A. Generally the switching charge is the same regardless of the distance within the Chicago area.

Q. Well, as to——

A. Single line movements is one rate and two and three line movements are a higher rate.

Q. What I am getting at is this: Take the Chicago Junction first, and as I understand it with minor exceptions all dead freight will be delivered to any industry on the Chicago Junction. So far as you know does that rule apply regardless of whether the Chicago Junction switches it a half a mile or four miles over to near the lake front?

A. That is right, the switching charge is the same.

Q. Or down to 15th Street?

A. Yes, sir.

Q. The same?

[fol. 189] A. Yes, sir.

Q. Whether it is five blocks or five miles or more, is that right?

A. Yes. I believe the rate is the same regardless of the distance.

Q. And the Chicago rate includes all of those deliveries regardless of distance?

A. To industry locations, yes, sir.

Q. Yes. Now, when you take the trunk lines operating into Chicago, for example, sticking first to just one switching line, does that arrangement, whatever it is, apply regardless of whether the delivery be five blocks from where the switching road picks it up or it be twenty-five miles?

A. Generally that is true, yes, sir.

Q. Do you know of any distinction within the Chicago District except the difference for two or three line hauls?

A. No, I don't recall any. I don't have any in mind now.

Q. And even for two or three line hauls the distance factor has nothing to do with it, has it?

A. No, sir.

Q. Is the answer "No"?

A. Yes, sir.

Q. Mr. Tally, what would you say is the principal supply needed by a packing house in order to function as such?

A. Livestock.

[fol. 190] Q. And without that there would be no occasion for the construction or operation of a packing house, would there?

A. That is correct, yes, sir.

Q. Does a packing house need supplies other than livestock in order to perform its primary function?

A. Yes, sir. It purchases many other commodities which are related to the packing industry, such as salt, boxes.

Q. Coal?

A. Coal.

Q. Oil?

A. Many commodities.

Q. And are all of those commodities without question delivered to the packing houses in the stock yards area?

A. Yes, sir.

Q. It is only as to the principal commodity that there seems to be a difference, is that it, to-wit, livestock?

A. Yes, sir. There is a rate in there today on livestock but it is higher than on any other kind of freight.

Q. Yes, but the carriers are attempting here to cancel that, aren't they?

A. Yes, sir.

Q. But the one supply for the packing house which they are objecting to a delivery through someone is the principal supply needed by the packing house, is that right?

A. Yes, sir.

[fol. 191] Q. Now, throughout the United States at other than Chicago have the packing houses and packing centers gotten away from that rule and brought it about that they do obtain the delivery of livestock to their plants by rail?

A. Yes, sir.

Q. Chicago is the only place where that archaic discrimination still remains in effect, is that right?

Mr. Smith: That is objected to as calling for a conclusion, not any statement of fact.

Exam. Diamondson: Objection sustained. Please do not lead the witness so much either, Mr. Rynder.

By Mr. Rynder:

Q. Well, do you know of any other important packing center where there is such a rule?

Mr. Smith: That is objected to as being entirely indefinite, "such a rule." I am sure I don't know what he is talking about.

By Mr. Rynder:

Q. Well, then, take them down the line, the various cities that you can name.

A. Well, at Kansas City, Kansas they provide delivery of livestock direct to the plants of Armour, Cudahy, Wilson and Swift, I think, at the flat rate to Kansas City.

Q. How about Omaha?

A. At Omaha deliveries are made to Wilson & Company at the flat Omaha rates. At East St. Louis, Illinois the Hunter Packing Company secure direct delivery at its [fol. 192] plants. At Waterloo, Iowa the Rath Packing Company get direct delivery. At Cedar Rapids, Wilson & Company get direct delivery. At Ottumwa, Iowa J. H. Morrell & Company get direct delivery. At Austin, Minnesota George A. Hormel & Company get direct delivery. At Mason City, Iowa Armour & Company get direct delivery. At Newport, Minnesota Cudahy Packing Company get direct delivery.

Q. I believe that is enough by way of illustration, Mr. Tally, some questions were asked you as to why you put in testimony here as to the switching arrangements, charges, divisions, and so forth on dead freight as compared with livestock. Are you advised whether so far as livestock is delivered in the Chicago area the allowance or division made for livestock is exactly the same as that made for delivery of dead freight for the same carrier to the same destination?

A. Yes, sir.

Q. What is the fact in that connection?

A. The same division is allowed on livestock as is allowed on dead freight for the terminal lines making the switching service to the industrial location.

Q. Now, in the various places where you have pointed

out in your exhibit that the line haul carriers provide for plant delivery here in the mid-west, the line haul carrier absorbing the switching charge of the delivering line, are those switching charges all the same on dead freight and on [fol. 193] livestock?

A. I believe they are absolutely the same, yes, sir.

Q. Do you know of any instance where the switching charge on livestock is higher than on dead freight?

A. No, I do not.

Q. Mr. Tally, some questions were asked you as to difficulties of delivery due to the so-called Federal 28 hour law. Is there anything about that law that is peculiar to or related only to the Chicago Junction Railway?

Mr. Smith: Who asked those questions?

Mr. Rynder: You did, either you or Mr. Day asked about the difficulties of short time.

Mr. Day: I didn't mention the 28 hour law.

Mr. Smith: I didn't mention the 28 hour law on cross examination.

Mr. Rynder: I don't know whether you mentioned it or not but you asked what would happen if there wasn't time to deliver the shipment.

A. It would have to be fed.

Q. Would that 28 hour law apply to all interstate transportation of livestock whatever the destination?

A. Yes, sir.

Q. And you were recently speaking of a number of points where you knew of the delivery of livestock to the plants; at Kansas City, Omaha, and so forth. I take it the 28 hour [fol. 194] law applies to all those deliveries?

A. It does. In fact it applies throughout the United States.

Q. And the 28 hour law has applied to every shipment in the past destined to the facilities of the Omaha Packing Company at 2320 South Halsted Street?

Mr. Smith: Aren't you worried about asking the witness some leading questions, Mr. Rynder?

The Witness: Yes, sir.

By Mr. Rynder:

Q. Have you ever heard of any serious difficulties on account of the 28 hour law in connection with deliveries to the Omaha Packing Company?

A. No, sir.

Q. Now, Mr. Tally, I believe that Mr. Smith in an effort to magnify the situation here indicated that if our complaint were granted the Chicago Junction might be required to deliver 35,000 carloads of livestock per annum. Have you any idea what compensation it would receive for that delivery if it received the same amounts from the trunk line carriers as it now receives on dead freight?

A. Yes. It would probably be more than a half a million dollars.

Q. Would it be approximately $20 a car?

A. Yes, sir.

Q. And as applied to 35,000 cars?

A. That would be $700,000.00.

Q. Something over $700,000.00?

[fol. 195] A. Yes.

Q. Have you heard some statements that that railroad is now operating at a deficit?

A. Yes, I have heard a comment made by one of the officials of the railroad.

Mr. Smith: May I have the last question and answer, please?

(Question and answer read.)

By Mr. Rynder:

Q. You haven't yourself investigated that question?

A. No, I haven't.

Q. Of operating expenses and income received in recent months. It was, I believe, suggested in your cross examination that you were asking for some sort of a discriminatory or unduly favorable arrangement for the delivery of your livestock at the new location. I wondered if you had seen the terms of the contract under which the New York Central is operating the Chicago Junction, which.

binds the Junction and the New York Central to discriminate in every possible way in favor of the stock yards.

Mr. Smith: That is objected to as improper on a dozen grounds; among others that it is not the best evidence. If we are going to talk about a contract, let us have the contract here, Mr. Examiner.

Exam. Diamondson: Objection sustained.

Mr. Rynder: Mr. Day, would you be willing to agree that [fol. 196] certain language appears in Article 6 of the lease from the yard company to the Chicago Junction, dated December 1, 1913?

Mr. Day: To what effect, Mr. Rynder?

Mr. Rynder: The copy I have of it reads as follows. The Junction agrees to:

> "To conduct, manage, and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to the benefit, advantage and behoof of the business and affairs of the Yards."

Mr. Day: Yes, I will concede that that is in the contract.

By Mr. Rynder:

Q. Mr. Tally, if a charge for a service not desired, needed or necessary to the delivery of your stock is imposed upon it, as apparently there is an interpretation here by the defendants, does that produce a cost to the industry that must either be made up in the price of its goods or be absorbed by the industry out of its operating expense?

A. Yes, sir, that is correct. It would more likely be absorbed by the industry.

Q. What is your opinion, on the question of good business administration, in having unnecessary parasitic charges such as those?

Mr. Smith: That is objected to on the ground this witness has not been qualified as an efficiency expert. It has not been shown that he knows anything about that sub- [fol. 197] ject and it seems to me it is a purely hypothetical question because counsel has not referred to the charge he

is talking about. We are not advised that there is any charge that he could refer to.

Exam. Diamondson: Objection sustained.

Mr. Rynder: Well, any charge of that kind must be borne by the industry and disposed of in one way or another.

Mr. Smith: The same objection.

Exam. Diamondson: Is this witness qualified to answer that?

Mr. Rynder: I think it is so obvious that perhaps an answer is unnecessary, but I take it, Mr. Examiner, if somebody imposes a charge on you of a dollar you have got to get it back from somebody or stand it out of your own pocket and that is all it amounts to.

Exam. Diamondson: Well, the answer would only be an opinion anyhow.

Mr. Rynder: It would be more than an opinion but it is so perfectly obvious that I drop the question. I believe that is all on redirect.

Exam. Diamondson: Any other questions?

Recross-examination.

By Mr. Smith:

Q. Mr. Tally, with reference to this comparison between dead freight and livestock which you discussed yesterday and which your counsel has adverted to, you agree, do [fol. 198] you not, that when livestock is handled to and unloaded at the point that the Commission and the Supreme Court has said to be the line haul carrier's terminal for livestock in Chicago, you do get the flat Chicago rate?

Mr. Rynder: Just a minute, Mr. Tally. I object to that question.

Mr. Smith: Well, I will reframe it.

By Mr. Smith:

Q. Do you get the flat Chicago rate on livestock delivered and unloaded at the Union Stock Yards that originates in the entire Western Classification territory?

A. If we ship livestock through the Union Stock Yards as a destination that would be the flat Chicago rate, yes, sir.

Q. Just as on dead freight, is that right?

A. We would not get any dead freight through the Union Stock Yards, of course.

Q. But you would get the flat Chicago rate on it, as you testified, where you did take it in this switching district?

A. Yes, sir.

Q. In addition to the fact that you get the flat Chicago rate on livestock when it is delivered at the Chicago terminal for livestock, you also get it unloaded, which you do not get on dead freight, isn't that right?

A. That is right, but we have the dead freight at our plant facility when it is delivered there and we don't have the livestock at our facility when we take it at the Union [fol. 199] Stock Yards at the flat Chicago rate. We still have an expense added to that.

Q. Now, will you turn to these various markets that you referred to in which there is a delivery which is what you say you want at Chicago? What is the first one you named?

A. Kansas City.

Q. Where does Cudahy take its livestock at Kansas City?

A. They are served by the Rock Island Railroad in Kansas City.

Q. So they have a plant that is on the Rock Island, just as you have the Omaha plant on the Burlington here in Chicago, is that right?

A. That is right.

Q. They do not get it on a terminal railroad, do they?

A. Well, the Rock Island is not a terminal railroad and the Burlington is not a terminal railroad at the Omaha Packing Company. It is a line haul carrier but serves that particular location.

Q. We understand each other. The Cudahy plant is not located on a terminal railroad in Chicago and it does not get its traffic on a terminal railroad in Chicago that handles traffic for particular roads, does it?

A. The Cudahy Packing Company hasn't got a plant in Chicago.

Q. I am talking about Kansas City.

A. You said "In Chicago."

[fol. 200] Q. I am sorry.

A. No, they do not. They have a plant facility located on the Rock Island Railroad in Kansas City.

Q. Where is the Wilson & Company plant located in Kansas City?

A. On the Kansas City Southern.

Q. And Armour & Company?

A. On the Frisco.

Q. And Swift?

A. On the Union Pacific Railroad.

Q. How about the Fowler Packing Company?

A. I don't know the Fowler Packing Company; I really don't know.

Q. You were not checking the Fowler Packing Company?

A. I did not include them.

Q. So that each one of those packers gets its shipments not on any terminal railroad that serves all those carriers but they take deliveries from the line haul carriers that bring the stock into their plant, is that right?

A. That is right.

Q. You are not telling the Examiner that the situation is similar to the one at Chicago, where all the carriers would have to turn the livestock over to the Chicago Junction for delivery by them in that area, are you?

A. That is another switching line to me, the same as if [fol. 201] the Union Pacific had a car of freight, of livestock for the Cudahy Packing Company at Kansas City, Kansas. It would turn it over to the CRI&P Railway to switch to the Cudahy Packing Company, or just the same as a line haul carrier in Chicago would turn it over to the Chicago Junction Railroad to switch to the Swift & Company facility.

Q. Do you think there might be any difference in respect to congestion and time involved in handling the stuff and the delay that would result and the situation of producers who wanted to send their stuff to the stock yards and matters of that kind?

A. I have no opinion on this.

Q. You have no opinion at all?

A. No, sir.

Q. As to whether or not the situation would be similar or different?

A. No, sir.

Q. Is that what you mean?

A. Yes, sir.

Q. What is the next point?

A. I think probably I said Omaha. That is the first one on the statement.

Q. Where does Swift take its stock at Omaha?

A. On the Union Pacific Railroad, directs.

Q. It doesn't take it on any terminal road which serves [fol. 202] the stock yards, such as we have at Chicago?

A. Not known as a terminal railroad, no, sir.

Q. Well, did you want to call the Union Pacific a terminal railroad, is that what you mean? Would you like to consider the Union Pacific as a terminal railroad?

A. I consider the Union Pacific Railroad when it performs a switching service for account of any other railroad a line haul carrier in the same category as the Chicago Junction Railroad in Chicago.

Q. Swift takes its direct shipments of livestock on the Union Pacific?

A. Yes, sir.

Q. What about Wilson?

A. They also take it on the Union Pacific at South Omaha, Nebraska.

Q. Does Swift also take livestock at the yards at Omaha?

A. Directs?

Q. Yes.

A. I don't know whether they do or not. I doubt it without checking into the actual facts on it, Mr. Smith.

Q. What about Armour?

A. I don't know anything about Armour & Company.

Q. What about Cudahy?

A. I don't know anything about either one of them, but they don't have a line serving their plant, such as [fol. 203] Wilson and Swift, so I presume they must go through the stock yards.

Q. So at Omaha it comes to this, doesn't it, that Wilson and Swift have the same situation at Omaha that Swift has at Chicago in respect to its Omaha plant, is that a fair statement?

A. Of having direct delivery at the flat destination rate, yes, sir.

Q. And in answer to your counsel's question when you were undertaking to show, I take it, discrimination, your reference to Omaha rested upon the fact that your own company and Wilson have a delivery situation similar to that at your Omaha plant in Chicago, is that right?

A. No, my answer to that question went to all deliveries of livestock to other packers throughout the territory included in exhibit No. 10.

Q. We are talking about Omaha at this moment.

Exam. Diamondson: Call it South Omaha so there won't be any confusion on the record

Mr. Smith: Excuse me, South Omaha. Repeat the question, will you please?

(Question read.)

A. I answered that, yes, sir.

Q. All right. What is the next point?

A. I can't remember the order.

Mr. Smith: Will the reporter give us the next point, [fol. 204] please, that Mr. Tally referred to in answer to Mr. Rynder's question?

(Record read.)

Q. All right, Mr. Tally, what was the next point?

A. East St. Louis, Illinois.

Q. All right. Now, what packer at East St. Louis gets delivery at its plant?

A. The Hunter Packing Company.

Q. There are about six or seven packers there, are there not?

A. Yes, or more probably.

Q. And how long has the Hunter Packing Company been taking deliveries at its plant?

A. Oh, I don't know. The tariffs provide for it. I don't know just how long it has been going on.

Q. Might it have been going on since 1914 as far as you know? When did you hear about it?

A. I have known generally for several years that they did receive direct shipments at that location. Whether it has been going on since 1914 I wouldn't be able to say.

Q. And what road is the Hunter Packing Company on?

A. Pensylvania Railroad.

Q. And it takes this stock at its plant located on the Pennsylvania?

A. Yes, sir.

Q. So that situation is analogous to your getting this [fol. 205] traffic at the Omaha plant in Chicago, isn't it?

A. Yes, that is right.

Q. All right. What is the next point?

A. Waterloo, Iowa. I want to qualify that answer, Mr. Smith, when I say "Yes", with this statement, that when the Hunter Packing Company or any others get direct delivery at their plant of livestock, they have it at their plant. When we get it at Omaha Packing Company we don't have it at our plant. We have got to transport it to our plant.

Q. You are referring now to the fire you had a few years ago?

A. No, sir, I am talking about the location of the Omaha Packing Company as compared with the Swift & Company plant operations location.

Exam. Diamondson: You are talking about the present situation?

The Witness: Yes, sir.

By Mr. Smith:

Q. Well, now, what packer gets these deliveries at Waterloo that you had in mind?

A. Rath Packing Company.

Q. That is one of the big packers?

A. Yes, sir, one of the big Iowa packers.

Q. Any terminal railroad located in Waterloo, Iowa?

A. Not that I know of. The Illinois Central serve that particular plant.

Q. This packing company has its plant located on the [fol. 206] Illinois Central, doesn't it?

A. Yes, sir.

Q. What other roads serve Waterloo?

A. The Chicago Great Western Railroad and the C. R. I. & P. Railway.

Q. Is there a public stock yards at Waterloo?

A. No, sir.

Q. Where else would they take the stock except at their plant?

A. Well, if there is no pens any place on the line haul carrier's railroad, that would be the only place they could unload it.

Q. At the plant?

A. Yes, sir.

Q. What is the next place?

A. Cedar Rapids, Iowa.

Q. I beg pardon?

A. Cedar Rapids, Iowa.

Q. Any public stock yards at Cedar Rapids?

A. No, sir.

Q. Any terminal railroad there?

A. No, sir.

Q. What packer gets deliveries at the plant there?

A. Wilson & Company.

Q. Any place else it could get them at Cedar Rapids? [fol. 207] A. I don't know whether there is another location they could get them or not. The tariffs provide they will make delivery at that location, though.

Q. The carriers do deliver livestock at Cedar Rapids, is that what it comes to?

A. At the Wilson & Company plant, yes, sir.

Q. What is the next point?

A. Ottumwa, Iowa.

Q. What company gets deliveries at its plant there?

A. J. H. Morrell & Company.

Q. Any public stock yards where it could get delivery there?

A. Not to my knowledge.

Q. Is there or not?

A. To my information there is no public stock yards there.

Q. And what company is it that gets delivery there?

A. J. H. Morrell & Company.

Q. Well, they have a situation like yours at the Omaha plant, except they do not have any public stock yards at which they could take it, do they?

A. Well, the situation is not like the Omaha Packing Company because they have delivery at their slaughtering plant facility. The Omaha Packing Company is a receiving location which requires further transportation to get to the slaughtering facilities of Swift & Company.

Q. You have delivery at your plant right at the stock [fol. 208] yards here, taking it at the stock yards and paying the lawful yardage charges filed with the Secretary of Agriculture, don't you?

A. Yes.

Q. You get delivery right at your plant, don't you, if you pay those charges?

A. You have got to drive from the stock yards to our plant.

Q. Any terminal railroad at Ottumwa, Iowa?

A. No, sir.

Q. What is the next point that you referred to?

A. Austin, Minnesota.

Q. Austin, Minnesota?

A. Yes.

Q. Have you ever been to Austin?

A. Yes, sir.

Q. How big is it?

A. Oh, I would guess it is 40,000 people.

Q. Any stock yards there?

A. No, sir, not a public stock yards.

Q. No public stock yards at which this packing company could take delivery?

A. No, sir.

Q. What is the packing company which you refer to there?

A. George A. Hormel & Company.

Q. Is there any terminal railroad at Austin?

[fol. 209] A. No, sir.

Q. Where is the Hormel Packing Company located in Austin?

A. I couldn't give you the street definition. I have only been there once. I am unable to answer you.

Q. What railroad is it located on?

A. On the Great Western Railroad and the Milwaukee Railroad.

Q. What is the next point?
A. Mason City, Iowa.
Q. What packer are you referring to there?
A. Armour & Company.
Q. Any public stock yards there?
A. No, sir.
Q. Any terminal railroad there?
A. No, sir.
Q. What road is Armour on?
A. M. & St. L. Railroad.
Q. What is the name of their plant there,—C. Decker & Sons?
A. That was the one they purchased many years ago and I identify it as Armour & Company. They may have some corporate title for it.
Q. That is a subsidiary of Armour & Company?
A. Yes, sir.
Q. In the absence of any other place to take the live-stock at Mason City, Iowa, Decker has been taking the stock there at its plant since 1899, hasn't it?
[fol. 210] A. I don't know, sir.
Q. It is at that time that you were a partner in the Union Stock Yards at Chicago, isn't it?
A. I don't know that we were ever a partner.
Q. You don't know the history of your company in its relation to the stock yards here, do you?
A. No, sir.
Q. What is the next point?
A. I think I said Newport, Minnesota.
Q. What is the packer there?
A. Cudahy Packing Company.
Q. Any public stock yards at Newport, Minnesota?
A. No, sir.
Q. Have you ever been to Newport?
A. No, sir, only going by there on the train.
Q. Any terminal railroad there?
A. No, sir, according to the tariffs and the railroad guides.
Q. And what is the packer there you say?
A. Cudahy Packing Company.
Q. And where is it located, where is its plant?

A. It is located on the Chicago, Milwaukee, St. Paul & Pacific Railroad.

Q. What is the next point, Mr. Tally?

A. I think that was all.

Mr. Smith: That is all.

[fol. 211] By Mr. Day:

Q. Mr. Tally, you stated that distance was not considered in making switching rates and mentioned the Chicago Junction particularly. Isn't it a fact that local switching charges of the Chicago Junction are based on the different zones in which it operates?

A. Yes, but those zones are fairly good size and the same charge would apply for the short haul within the zone and the long haul within the zone.

Q. Within the zone?

A. Yes, sir.

Q. But to another zone the charge is higher?

A. That is right but your connecting line switching charge is the same to all zones.

Q. And on the Chicago Junction there are what,—nine zones altogether?

A. There are several of them, yes, sir.

Q. When you refer to the switching charges or rates you are referring to the charges on dead freight, are you not?

A. That applied on livestock as well as dead freight and still does as a result of this suspension proceeding.

Q. Well, I think you covered that yesterday in your testimony. You did not want to give the Examiner the impression that the Chicago Switching District rates apply without exception throughout the district, did you?

A. No. I qualified it.

[fol. 212] Q. There are some exceptions?

A. Yes, sir.

Q. Made to fit special conditions?

A. Yes. I couldn't keep them in my mind.

Mr. Day: That is all.

Exam. Diamondson: Any further questions?

By Mr. Gladson:

Q. I have some questions. Do you have a packing plant at South St. Paul?

A. Yes, sir.

Q. Is there a public stock yards at that point?

A. Yes, sir.

Q. What is it, what stock yards company?

A. United Stock Yards Corporation I guess owns it.

Q. It is the St. Paul Union Stock Yards?

A. It used to be known as the St. Paul Union Stock Yards.

Q. Do you receive directs at that place?

A. Yes, sir.

Q. And do you receive them through the stock yards or are they delivered to your plant?

A. They are through the stock yards. We have no facilities for receiving direct at the plant at that location.

Q. And you pay the published yardage rate in order to get them through the stock yards, do you not?

A. That is correct, yes, sir.

Q. What is the situation at Sioux City? Do you have a [fol. 213] plant there?

A. Yes, sir.

Q. And do you receive directs?

A. I don't know whether they buy directs for Sioux City. I imagine they do, but they come through the stock yards.

Q. And what stock yards is there at that place?

A. Sioux City Stock Yards Company.

Q. Do you pay a yardage charge there?

A. Yes, sir.

Q. Do you have a plant at Forth Worth?

A. Yes, sir.

Q. Is there a stock yards company at Fort Worth?

A. Yes, sir.

Q. Do you receive directs at Forth Worth?

A. Yes, sir.

Q. And how do you receive them at that place?

A. Some at the plant direct and some through the stock yards.

Q. Do you have a plant at Milwaukee?

A. Yes, sir.

Q. Is there a public stock yards at Milwaukee?

A. Yes, sir.

Q. What company is that?

A. I guess it is the Milwaukee Stock Yards.

Q. And do you receive directs at that point?

A. I can't recall whether we get directs through the [fol. 214] yards or at the plant without checking it.

Q. My information is that you receive them direct. Is that about right?

A. I believe that is it but I didn't want to make a misstatement.

Q. Do you have a plant at Portland, Oregon?

A. Yes, sir.

Q. Do you receive directs at that plant?

A. I can't recall whether we get those directly at the plant or through the stock yards. We get directs there, yes, sir.

Q. What stock yards is there at that place?

A. The North Portland Stock Yards.

Q. Would you accept my word for it, though, for the fact that you do receive it direct at that place, or would you want to check it?

A. I will take your word for it.

Q. Do you have a plant at San Francisco?

A. Yes, sir.

Q. Is there a stock yards located at South San Francisco?

A. I believe there is at South San Francisco, yes, sir.

Q. Do you receive directs at that yard?

A. No, we receive directs direct from or to the plant, at the South San Francisco plant.

Q. Do you or one of your subsidiaries have a plant at Brighton, Massachusetts?

[fol. 215] A. Yes, sir, Brighton, Cambridge, and so on, all those little municipalities.

Q. Is there a stock yards company located at that place?

A. Yes, sir, the Brighton Stock Yards.

Q. Is it true, is it not, that you receive your directs through the stock yards?

A. No, sir, we receive those directly at the plant.

Q. Do you have a plant at Sioux Falls?
A. No, sir.
Q. Do you have a plant at South St. Joseph, Missouri?
A. Yes, sir.
Q. And what yards company is located there?
A. The St. Joseph Stock Yards Company.
Q. Do you receive directs at that plant?
A. Yes, sir.
Q. And do you receive them through the yards?
A. Both ways.
Q. Who controls all of the stock yards that I have just mentioned? Are they all United Stock Yards Company properties?
A. Well, they purchased a number of stock yards several years ago and without checking specifically I would say with reservations that they are probably the stock yards they purchased.
Q. And from whom did they purchase them?
A. They did purchase the interests of Swift & Company [fol. 216] in those stock yards.
Q. At various western packing house points you mentioned in response to questions by Mr. Smith where a packer is located on the rails of a line haul carrier, the other line haul carriers meet the competition of the carriers on whose rails the packing plant is located. Is that true at all places where a line haul carrier does not serve a plant but it publishes rates direct to the packing plants?
A. Generally that would be true. There is a considerable reservation to that. Say Iowa: There are limitations by certain railroads as to competitive traffic, in which they do not provide for the absorption of the switching charges by the line serving the industry, but through this immediate western territory the answer is yes.

Mr. Gladson: That is all.
Exam. Diamondson: Any further questions?

Redirect examination.

By Mr. Rynder:

Q. Mr. Tally, I believe in answer to a question by Mr. Smith you said that you get the flat Chicago rate on live-

stock if it were consigned to the stock yards, but what is the fact as to whether you can get possession of the stock for that flat Chicago rate?

A. No, I do not get possession of the stock without paying the Chicago yardage charge.

Q. Now, I thought that through these questions there [fol. 217] was quite a suggestion of a distinction between the Chicago Junction as a strictly terminal railroad and other situations where a line haul carrier becomes the switching terminal when the traffic is delivered by another line. Have you any information as to whether the Chicago Junction is strictly an independent railroad in and of itself or whether it is in effect a part of a line haul carrier?

A. Well, the New York Central Railroad operate the Chicago Junction Railroad under some lease arrangement that goes back several years and certain officers of the New York Central Railroad are also officers of the Chicago Junction Railroad.

Mr. Smith: Let me clear your mind on that, Mr. Rynder. I was emphasizing the consideration as to whether it was a terminal railroad because of the fact that where there is a terminal railroad like the Chicago Junction all this traffic converges on the tracks of this carrier. You have the congestion that is depicted in this record because of that situation. That is the point I was emphasizing, not the stock ownership of a particular piece of property.

Mr. Rynder: Mr. Day, I take it we can stipulate that the Chicago Junction is being operated or leased, whatever you want to call it, under and in accordance with the terms and conditions set by the Commission in the Chicago Junction case, 71 ICC 631.

Mr. Day: That is true, and, as you know, condition 3 of [fol. 218] that decision requires that the Chicago Junction be operated independently. That is, the Chicago Junction has to treat all of the railroads into Chicago the same as it would the New York Central. It cannot make any distinction between them.

Mr. Rynder: It cannot discriminate between the other connecting lines.

Mr. Day: It has got to treat them absolutely the same; one rate and operating arrangements.

Mr. Rynder: I understand that.

Mr. Day: That is the substance of that condition.

Mr. Rynder: In a word, under Section 3 of the traffic situation as respects the other roads must be maintained as they were, is that it?

Mr. Day: That is right.

Mr. Rynder: But I take it that if there was any profit from the Chicago Junction, that would ultimately go to the New York Central.

Mr. Day: And by the same token these deficits that the witness testified to have to be assumed by the New York Central.

Mr. Rynder: By the New York Central either way, yes, sir. I believe that is all.

Exam. Diamondson: Any further questions? You are excused.

Mr. Rynder: Mr. Examiner, I desire to offer in evidence [fol. 219] exhibits 1 to 10, inclusive.

Exam. Diamondson: They will be received.

(Exhibits Nos. 1 to 10, inclusive, Witness Talley, received in evidence.)

Exam. Diamondson: We will take a short recess.

(Whereupon a short recess was had.)

Exam. Diamondson: Call your next witness, Mr. Rynder.

H. McCaw was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Will you please state your name, residence and occupation?

A. H. McCaw; 9048 South Laflin Street, Chicago. My position is manager of provision department, Swift & Company, General Office, Chicago.

Q. What has been your experience in Swift & Company's business, I mean the length and the positions you have held, and so forth.

A. I have been in the provision department since 1920. Prior to that for nine years I was in the various accounting departments at the Omaha Packing Company and in the Chicago General office.

Q. Mr. McCaw, is the provision department, as you call it, concerned principally in the purchase of hogs and the sale of hog products?

[fol. 220] A. The provision department handles the purchases of live hogs, the utilization and disposition of the product and the selling in a wholesale way and in carload lots, and supervision over the sale of the products, although not in direct charge of the salesmen themselves.

Q. Are you by reason of your position and experience acquainted with the competition which must be met by the Chicago plant of Swift & Company in attempting to obtain supplies of livestock and particularly of hogs?

A. I am.

Q. From what section of the country are those supplies necessarily obtained?

A. Principally from the midwestern corn belt, of which Iowa is the major hog producer in that territory.

Q. Please state in your own way the competition for the purchase of hogs which has developed in that territory.

A. Government statistics indicate that in the early 1920's the major packers with plants in Iowa killed an average of 200,000 hogs per plant or less per year. By 1928 they were killing an average of nearly 1,000,000 hogs in each major plant.

Mr. Knudson: Excuse me, Mr. Rynder. He uses the term, "Government statistics". Could you tie that down to anything more specifically?

Mr. Rynder: Those are, as I understand it, the bulletins [fol. 221] issued by the Secretary of Agriculture which show the amount slaughtered in districts. They do not give the individual packers.

Mr. Knudson: They are Department of Agriculture bulletins?

The Witness: Well, government I had better say. I think that all comes from the Department of Agriculture. They issue them weekly by areas.

Mr. Knudson: There are lots of government departments

issuing bulletins nowadays. The Department of Agriculture issues a good many itself.

The Witness: I don't know the official name of the publication.

Mr. Rynder: But the bulletins that we receive that give that information are issued by some bureau of the Department of Agriculture.

Mr. Knudson: Yes. I wouldn't want to cause any delay. Now, if you can find out the title of those bulletins so that we can check your figures, I would appreciate it.

Mr. Rynder: We have them, but I am not sure that we have got them down here.

The Witness: This increase in local interior slaughter was mainly at the expense of receipts that formerly went to the Chicago market. This condition indirectly affected our Chicago plant, as well as many of the eastern packers who depended on the Chicago market as a source of their [fol. 222] hog supplies. Inasmuch as the movement of Iowa hogs to the Chicago market was decreased considerably, Swift & Company was forced to establish buying stations in interior Iowa to compete with the interior packers for these hogs.

Swift had established buying stations at a good many of the railroad-owned stock yards in Iowa prior to 1928 and soon after that; and in addition thereto, Swift built stock yards of its own at Spencer, Cherokee and Oelwein, Iowa. Swift also purchased hogs in Iowa through independent dealers operating stock yards in various parts of the state. It is needless to say that wherever and through whatever source we purchased hogs in Iowa, as well as at many other interior markets in Southern Minnesota and adjoining states, we found a highly competitive condition in that the interior packing plants as well as packers located elsewhere were all competing for the Iowa hogs.

Q. Will you please name some of the packers located at interior points with whom you experienced such competition?

A. Some of the principal packers with whom we were and are in strong competition in the buying of hogs at interior Iowa points and in adjoining states are as follows:

Cudahy Brothers, Cudahy, Wisconsin; Cudahy Packing

Co., Newport, Minnesota; Wilson and Co., Cedar Rapids, [fol. 223] Iowa, and Albert Lea, Minnesota; Dubuque Packing Co., Dubuque, Iowa; Armour & Co., Mason City, Iowa; J. H. Morrell & Co., Ottumwa, Iowa; Hath Packing Co., Waterloo, Iowa; Kingan & Company, Storm Lake, Iowa; Oscar Mayer & Co., Madison, Wisconsin; George A. Hormel & Co., Austin, Minnesota; Armour & Co., Wilson & Co., ——, ——; Cudahy Packing Co., Kansas City, Kansas; Hunter Packing Co., East St. Louis, Illinois.

Mr. Smith: Those are the ones that Mr. Tally referred to, aren't they, in his testimony a few moments ago?

The Witness: He referred to some of them. I don't know if it is the exact list or not.

Mr. Smith: It looks like the same list.

The Witness: There are, of course, in addition many small eastern packers who are also buying hogs through order buyers or dealers in Iowa because of the fact that they cannot get their supplies at the terminal markets as was the case prior to the 1920's.

By Mr. Rynder:

Q. Do these interior packing plants have certain advantages over the Chicago plant of Swift & Company?

A. They do. The interior packing plants have a definite advantage over the Chicago plant because they slaughter hogs practically at the point of production, whereas we have [fol. 224] to ship live hogs from the same origin territory to keep the Chicago plant operating. Thereby we incur the extra expense of freight to Chicago on live animals, transit shrink, yardage charges on hogs that might be brought through the Chicago Stock Yards facilities, or trucking expenses for hogs trucked from our subsidiary Omaha Packing Company plant to the Swift plant at Chicago. These extra charges are naturally a disadvantage to us in that they add to the cost of our raw material and put us at a competitive disadvantage in the cost of our manufacture of the product.

Q. Does this situation cover a territory somewhat greater than the State of Iowa alone?

A. While we speak in this connection mostly all of Iowa and Southern Minnesota, where the direct selling of hogs

has grown to the greatest extent, the same factors apply also in Illinois, Wisconsin and parts of northern Indiana, which are considered territory tributary to the Chicago plant.

Prior to the early 1920's most of the hogs from these areas came to the Chicago market. Now, however, because of the factors previously mentioned, that condition applies to the wider area just mentioned. There is the direct buying competition of eastern packers, of which there are many located at points distant from the terminal market and who in former years had their hogs purchased on terminal markets such as Chicago. Since this change in marketing [fol. 225] conditions they have found themselves in a position similar to the Chicago packers, so that of necessity they had to go to the country to get hogs, which also affected the receipts at the Chicago terminal market adversely.

Q. What information have you concerning the competition met by the Chicago plant in undertaking to market its products?

A. Statistics furnished by the Bureau of Agricultural Economics, U. S. Department of Agriculture, on meat production and consumption show that about 50 per cent of the hogs in the United States are raised west of the Mississippi River while 70 per cent of the pork is consumed east of the Mississippi. This would indicate very definitely that meat produced at interior plants west of the Mississippi River would of necessity have to be sold east of the Mississippi. The bulk of the consuming population is further east than Chicago. Consequently, these interior packers become a very active force in competition with Swift & Company's Chicago plant in selling the meat produced at its Chicago plant.

Most of the areas in which these interior packers are located are rural areas, although there are a few large cities along the Mississippi River. Necessarily, therefore, the interior Iowa packers, in whose territory the greatest expansion of direct selling took place, were and are forced to sell the largest part of their pork production east of these states and east of Chicago.

[fol. 226] Q. What channels of sale or distribution are

used by Swift & Company in disposing of the products of its Chicago plant?

A. The Chicago plant distributes its meat products through wholesale houses or branch houses located in various parts of Chicago. It also distributes a portion of its products through car route sales and branch houses to the principal larger cities located east and southeast of Chicago, including the Atlantic seaboard. Our salesmen at all of these principal distributing points report to us continuously the highly competitive situation which exists throughout all of our selling areas.

Q. Do you have competition in the selling area from the same general line of packers that you know of as being in competition in the purchase of hogs in the surrounding states?

A. Yes, sir.

Q. And to a certain degree do they follow the same methods of distributing their products; that is, branch houses or what not?

A. In a good many cases certain of these same packers have branch houses and other selling agencies in the same cities in which we are attempting to market the products of the Chicago plant. I also know from personal experience due to calls which I have made with salesmen in this distributing area that this competitive situation exists.

Q. Can the Chicago plant obtain higher prices for its [fol. 227] products in order to recoup the greater expenses incurred by it?

A. No. The meat products must be sold at prices no higher than that received by packers who are so located as to have an advantage in the factors I have mentioned, such as additional freight to Chicago, transit shrink, terminal costs or charges, and so forth.

Mr. Rynder: I think that is all the direct testimony, Mr. Examiner.

Exam. Diamondson: You may cross-examine.

Cross-examination.

By Mr. Day:

Q. Is the bulk of the hogs handled at your Omaha Packing Company plant in Chicago stock that originates in Iowa?

A. The bulk did you say?

Q. Yes.

A. A large number. I don't know whether it is the bulk or not. Not more than half.

Q. And the rest are hogs that originate in other states nearby?

A. Some originate in Wisconsin, Southern Minnesota and Illinois and occasionally Indiana.

Q. And the lambs are generally from points in the far west, aren't they?

A. Our business is pretty specialized. I am just a hog expert.

[fol. 228] Q. I beg your pardon. How many concentration yards does Swift maintain in Iowa?

A. We have one at Boone, Iowa, one at Clinton, Iowa and one farther up the river, I think we call it McGregor, and there are three on the eastern side of the Mississippi River.

Q. In Illinois?

A. In Illinois.

Q. And you also use these facilities at Spencer, Cherokee and Oelwein as concentration points, do you?

A. Whenever we—we have disposed of those.

Q. You have disposed of those?

A. Yes.

Q. How many hogs would you say Swift & Company takes out of Iowa in a year?

A. A large number but I wouldn't want to guess.

Q. Would it be a million or more?

A. You mean including places like Sioux City, St. Joe, Kansas City?

Q. In Iowa, yes.

A. Including what we call in Omaha—pardon me, including what we kill in Iowa?

Q. Well, you can include them all.

A. Yes; there would be a million.

Q. How many packing plants do you operate in Iowa?

A. Four, including Sioux City.

[fol. 229] Q. Where are the others?

A. Marshalltown, Iowa; Des Moines, Iowa; Perry, Iowa.

Q. Is the plant at Marshalltown operated as Swift & Company?

A. Swift & Company name?

Q. Yes.

A. Yes, sir.

Q. And how about the plant at Des Moines?

A. It is operated as the Iowa Packing Company, a division of Swift & Company.

Q. When you referred to the consumption of pork east of the Mississippi River being 70 per cent weren't you using an old figure, twenty-five years old perhaps?

A. I don't think it is that old. It is probably old.

Q. There has been quite a shift of population to the west and south in recent years, hasn't there?

A. I don't think enough to change the consumption of pork.

Q. You think that figure is still good, do you?

A. I think it is pretty good.

Mr. Day: That is all.

Mr. Smith: Will you mark this as an exhibit, please?

(Exhibit No. 11, Witness McCaw, marked for identification.)

By Mr. Smith:

Q. Will you look at defendants' exhibit 11, please, and tell me what that is?

A. Swift & Company Year Book 1947.

[fol. 230] Q. Your operations in 1947, as revealed by the last pages of that report, show that you have met this competition that you speak of quite successfully, is that not so?

A. This document shows Swift & Company's position as to the whole company.

Q. Yes.

A. It is entirely possible that one unit of the business could have made all the money or none of it or some of it or lost it. As I see it, it does not reflect the operations that we are talking about here.

Q. It reflects them but it reflects also some other operations. Wouldn't that be a more accurate statement?

A. It reflects the total of them all.

Q. Yes.

Mr. Rynder: May I see the exhibit, please?

Mr. Smith: Defendants offer what has been identified as defendants' exhibit 11.

Exam. Diamondson: Any objection, Mr. Rynder?

Mr. Rynder: No.

Exam. Diamondson: The exhibit will be received.

(Exhibit No. 11, Witness McCaw, received in evidence.)

By Mr. Smith:

Q. Well, now, have you been meeting your competition successfully on hogs? You pointed out that this did not necessarily reflect your business on hogs.

[fol. 231] Q. In the Chicago area operations it is difficult, if not impossible, to meet the competition successfully because of the extra costs that I mentioned.

Q. Do you have a segregation of your expenses as between species so that we can see, on some basis, to see on some basis used by the company what its results were on hog operations?

A. Well, the accounting department keeps figures, of course.

Q. You are in the accounting department?

A. No, sir.

Q. What does that show for this year 1947 as to the results of your hog operations?

A. I don't have those figures.

Q. Well, you must have seen them in the light of the statement you gave to a question I asked just a moment ago.

A. I know over a period of years that Chicago operations do not compare favorably with the others.

Q. They do not compare favorably with your other than Chicago operations?

A. That is right.

Q. But how favorable are they in intrinsically?

A. I don't know what that means.

Q. Well, suppose you bring here for us this afternoon this segregation which shows your Chicago operations on hogs for 1947. Will you do that?

A. I don't know whether I have authority to give out that [fol. 232] information.

Mr. Rynder: No.

The Witness: I don't know if I have authority to give out that information. I don't have it in my hand.

By Mr. Smith:

Q. And you haven't it in your head either, do you, sir?

A. No. That is right.

Q. Yes. Now, you don't know what the result of your Chicago operations were on hogs for 1947 or for any prior year, do you?

A. No, except that they weren't good.

Q. What do you mean by "weren't good"? As compared with some other?

A. That is right.

Q. Compared with what other plant of Swift?

A. Well, most of the others.

Q. Well, now, will you bring in those figures that underlie and support that statement?

A. I don't have the figures.

Mr. Smith: I would like to see those figures, your Honor, or I would like to have the answer stricken.

Exam. Diamondson: Is complainant willing to furnish the figures?

Mr. Rynder: No, sir. Counsel led himself into that answer. It isn't cross-examination at all.

Mr. Smith: Well, you are talking about competition and I [fol. 233] think it is appropriate to find out how you are getting along.

Exam. Diamondson: The witness has testified with respect to the competition. I think counsel has a right to test his knowledge with respect to it.

Mr. Rynder: He didn't say anything about profits or lack of profits for the Chicago plant.

Mr. Smith: That is the whole point of competition, whether you are making profits or whether you are not,

and whether you are holding up your end in the competitive struggle. Of course you have got competition. I hope you have.

Mr. Rynder: Well, the answer is we won't bring in those figures.

Exam. Diamondson: Complainant can stand on its right to refuse to furnish figures.

By Mr. Smith:

Q. Have you seen the figures which show the result of Swift's operations on hogs at Chicago or at any other point for the year 1947?

A. Yes, I see them. I don't see them regularly but they are available in the accounting department.

Q. In other words, your accounting department does have this segregation as between the results of its hog operations and other operations?

A. Yes, I believe they have.

Q. Do you know?

A. Yes, I know that they have figures for anyone to see [fol. 234] that indicate the results of the various sections of the business.

Q. Is that the answer?

A. Yes.

Q. Well, now, rather than telling me whether in your opinion the results on hogs were good or not good, will you state what the investment was in your hog operations and what the rate of return was for 1947?

A. I don't know.

Q. And you didn't know when you said they were not good?

A. I didn't say anything about the rate of return on the investment.

Q. Not, but you said the operations were not good.

A. That is right, but it has got nothing to do with the investment.

Q. That didn't have anything to do with the investment?

A. That is right.

Q. Or the expenses?

A. Expenses influence results, surely.

Q. And so far as you know, although you characterized the operations as not being good, the rate of return on

the investment might have been one per cent or eleven per cent, is that right? You don't know?

A. There might have been a loss to them and no return.

Q. You are devoid of any knowledge on that object?

A. As to the exact figures, yes.

[fol. 235] Q. Can you approximate it as to whether it was about one per cent or about fourteen per cent?

A. No, sir. We don't issue any results as per investment that I know of.

Q. Before the accounts of Swift were re-stated in 1947 did you ever have a better year than you had during that year?

A. Not very many. There might have been one but I——

Q. There might have been one year better than 1947 you say?

A. I don't think there was more than one or two. It is in the books there.

Q. 1947 might have been recorded as the best year Swift ever had, might it not?

A. Yes, it might have been. I worked pretty hard.

Q. You have got a little help down there, haven't you?

A. Yes.

Q. Well, now, you give us here the number of hogs killed in Iowa by the Iowa packers in 1920 and the number killed in later years. Have you made any increase in the number of hogs killed by your company since 1920?

A. Total company?

Q. Yes.

A. The only way I could answer that would be to say there has been very little change based on the total slaughter of the country.

Q. I am not asking you about the total slaughter of the country. I am making it easier for you than that. I [fol. 236] am just asking you about Swift.

A. The reason I answered that way is that numbers by themselves vary from year to year depending on the size of the hog crop, so it is a little hard to answer it, but I would say that our kill has been about the same.

Q. Well, how many hogs did you kill in 1920?

A. I don't recollect.

Q. Can you give us an approximate figure?

A. No, I wouldn't want to go back that far in my memory.

Q. When did you start working for the company?

A. 1911.

Q. What is the earliest year that you can give us as to the hog killing of Swift? You found it here for the Iowa packers and I just wondered if you might know for Swift.

A. Those figures were general figures.

Q. What is the first year you can give it to us for Swift?

A. I don't know that I can give you the exact figure. We had a peak of 15 million which, I think, was 1944. That was the peak hog year. Prior to that I think eight to ten million would catch a good many of the years.

Q. And what would catch 1920?

A. I wouldn't want to guess at it.

Q. What was it in 1947?

A. In 1947 it was somewheres between nine and ten, I believe.

[fol. 237] Q. And how many are these Iowa packers killing now?

A. I don't know exactly what they are killing now but my guess is from the trucks you see around and what you hear about buying hogs——

Q. If you say you don't know I believe I would rather have you say you don't know.

A. O. K., I don't know.

Q. You don't know.

Mr. Knudson: Are these answers you are giving restricted to Chicago?

The Witness: No, that is the total country.

By Mr. Smith:

Q. Well, now, you know that Swift kills more hogs than all the Iowa packers together, don't you, in Iowa?

A. No, I don't know that.

Q. You don't know that?

A. No.

Q. You don't know and you don't have any knowledge about the relationship between the number that they kill and the number that you kill?

A. No.

Q. You are really not able to measure very well this competition you get from these Iowa people, are you?

A. If you were out through Iowa and went around to try to buy hogs you would be able to measure it very well.

Q. Can we measure it by the fact that you buy and kill [fol. 238] more than all of them combined?

A. No, sir, because we are talking about part of the United States, one state, and you are comparing that with Swift's entire kill in the country.

Q. I am talking about Iowa because you talked about Iowa.

A. I am sorry, I lost it. We don't kill as many hogs in Iowa as they buy, I am sure of that.

Q. But you don't know how many they buy and you haven't said how many you buy. How many do you buy?

A. Well, I can't tell you what we buy because we buy and ship to different places.

Q. What percentage of your hogs slaughtered by your company in 1947 were purchased in Iowa?

A. I can't answer that.

Q. Approximately. Don't you have charge of these hog purchases?

A. Yes, sir.

Q. And you don't know what percentage of your total is bought in Iowa?

A. No.

Q. Approximately?

A. No, or any other state.

Q. The interest of these people that sell hogs is in getting the best price they can for them, isn't it, as you understand it?

A. A seller of hogs?

[fol. 239] Q. Yes.

A. I would think so.

Q. And if he can get a competitive price in Chicago for his hogs he will ship them to Chicago, won't he?

A. You are asking me to say what a producer would do. All I can say is under those conditions he would tend to market his hogs where he got the most money.

Q. Yes. Are you in charge of hog purchases for Swift?

A. Yes, sir.

Q. Well, now, you spoke about some lack of hogs on the Chicago market. Is it due in considerable part to the fact that you purchase the hogs before they have a chance to get to Chicago?

A. I don't know which comes before which.

Q. It is the hen and the egg business, is it?

A. To some extent, it is a very argumentative point, but I feel we fell behind the procession a great deal and we now have one plant in Chicago killing only a small number. We once had three. I think if we had been very quick in our outside buying that we would be killing more than that in Chicago.

Q. How many do you kill in Chicago?

A. Well, in Chicago we kill maybe 5, 6 hundred thousand a year. That is 10 or 12 thousand a week. I think that is about right.

Q. If the producer can get a price at Chicago that is as [fol. 240] good as the price that you pay him in the country, plus his transportation charges, why, then he would just as soon ship to Chicago, I take it, wouldn't he? Would that be your experience?

A. He can ship them wherever he wants.

Q. You would not care to comment on whether if there were a competitive price here at Chicago, why, he would just as soon sell here as on the farm?

A. I don't know whether he would or not. There are other angles. He drives to town, you know, in a truck and gets his hogs sold the same day. The next day, if he has consigned them to Chicago, he has got a day market risk. There might be other things in his mind.

Q. Do you expect that these central markets are going to be closed up because you and the other packers are going to continue to buy more and more of this stock on the farms?

A. I hope not.

Q. You hope not. But you have been taking action which has been leading directly to that result for years, have you not?

A. That is not correct.

Q. Well, your direct shipments to us are gradually increasing over the years, are they not?

A. We had to stay in business.

Q. The direct shipments in Chicago at this time are right close to 50 per cent of the total rail movement, are they not?

[fol. 241] A. I don't understand that question. Rail movement where?

Q. To Chicago.

A. Stock Yards?

Q. Of the total rail movement to Chicago approximately 50 per cent are now direct shipments, isn't that so?

A. I don't know that.

Q. You don't know that?

A. No.

Q. Now, you spoke about the great advantage that the interior packers have, the packers located at the small points, in one part of your testimony.

A. Yes, sir.

Q. In the light of that why is it that all the great packers have their principal packing plants at Chicago?

A. Well, I guess they grew up there, started there and they got a big investment. Chicago is the center of the meat business yet.

Q. And now you are adding to your investment in Chicago, aren't you, or proposing to?

A. We are proposing to.

Q. Will that be a large investment?

A. Well, large to me, yes.

Q. How large is it in amount?

A. I don't know what it will be.

Q. Would that indicate to you that that large investment [fol. 242] of your company and other companies in Chicago and the great increase in that investment that is presently contemplated, that there are some greater offsetting advantages to business here, the packing business in Chicago, which accounts for this concentration of the packing business here?

A. We have a big investment here besides the meat business, strictly hogs and cattle. We have got by-product

units and make many other things and you cannot operate your packing plant without killing some livestock. The killing facilities are in need of replacement, but as far as hogs are concerned, when we get to the building of hog facilities it is going to be substantially smaller than what we have now, very small compared to what we had fifteen to twenty years ago.

Q. Well, about that new plant down here, apparently you have some information about it. You are not going to kill hogs in this new plant that you are now proposing to build?

A. My understanding is that eventually we are going to kill hogs there, yes.

Q. Are you going to kill them in this building that you have in contemplation now?

A. My impression is that we are going to add hog facilities later on, although part of the buildings, I think, are going to be constructed with the idea that later on hogs will go in there.

Q. When does the plan contemplate the construction of [fol. 243] the hog building?

A. I don't know.

Q. The building that is now contemplated is for the killing of beef and small stock, is that right?

A. It is for killing those animls, yes.

Q. And small stock does not include hogs?

A. No, sir, not in the general packing house terms.

Q. And where do you intend to continue your hog killing presently?

A. As far as I know we are going to continue to kill at the same place we kill now.

Q. And where is that?

A. Racine Avenue and Exchange Avenue.

Q. How far have you progressed with this new packing house, this killing building?

A. I don't know how far they have progressed.

Q. Do you ever get out there in that neighborhood?

A. Well, it has been some time. As far as I know the last time I was out there I think they were still building cars out there.

Exam. Diamondson: Any construction started on the buildings out there at the present time?

The Witness: Not that I have seen.

By Mr. Smith:

Q. When you spoke about buildings cars out there you meant at the plant of the General American Transportation Company. That is the plant that is on that [fol. 244] location now, isn't that right?

A. Yes.

Q. That is what you meant by building cars?

A. Repairing, I guess. I might be a little off about that. I haven't been over there in three or four months.

Q. Are you going to buy hogs at this livestock buying yards building?

A. We haven't decided that yet.

Q. You have not?

A. No.

By Exam. Diamondson:

Q. Do you buy all the hogs for the Chicago plant?

A. Sir?

Q. Do you buy all the hogs for the Chicago plant?

A. No. We buy hogs in the yard there.

Q. I say do you buy them, are you the buyer?

A. I give the instructions. I don't go out in the yards.

Q. Do you go out of Chicago to buy hogs?

A. No. We buy them from Chicago on the telephone in talking to our buyers that are located at the other markets or out in the country.

Q. You buy them in Iowa, do you not?

A. Yes.

Q. For the Chicago plant?

A. Yes, sir.

[fol. 245] Q. Don't you have to meet the competition of those plants in Iowa?

A. Well, that would only happen occasionally because these locations are such that we buy mostly in their local territory. However, we give orders for hogs to independent operators and dealers who are located in the same territory as one of our plants might be.

Exam. Diamondson: Any further questions?

By Mr. Smith:

Q. Will you tell us, please, in comparing the economic position of Swift & Company with these Iowa packers what advantages they have in buying hogs and processing them and selling them in Iowa and what you have in the way of advantages at Chicago? Are you able to do that?

A. It was all right until you said something about the advantages at Chicago.

Q. The advantages that each has and the disadvantages that each has, Iowa versus Chicago.

A. Well, Chicago versus Iowa has a disadvantage.

Q. And what is that disadvantage?

A. Well, the freight rates, cost of bringing in livestock.

Q. It is the difference between the freight rate on livestock and the freight rate on dressed meat, is that it?

A. That is a question—yes, that is a factor.

Q. And name the others.

A. Well, you have to face this shrink in the meat when [fol. 246] you ship livestock, live hogs from Iowa to Chicago and kill it.

Q. There is a natural shrinkage during the transportation process of livestock?

A. If you buy a hog in Iowa and kill it there, you will get more meat after you kill it then if you ship that same hog to Chicago and kill it. It loses weight traveling.

Q. All right. Now, what else?

A. And you have a disadvantage going through from Iowa east to Chicago compared to bringing hogs into Chicago and slaughtering them and then reshipping the meat. There is an advantage in the through rate. There is the cost of handling them at Chicago if you pay expenses at this end that you don't have at the other end. Labor costs used to be higher. I think they are pretty much the same now.

Q. Is that all of them?

A. I don't think of any more.

Q. Now, what advantages, if any, are on the other side of the ledger at Chicago? Can you think of any?

A. Well, I don't think there are any.

Q. The fact that livestock shrinks,—have those conditions such as you have named, the fact that livestock shrinks

in transit, and the fact that there is a difference in the rates on livestock compared to what it is on dressed meat and that labor costs may or may not be higher in Chicago, have those factors changed since Swift established its central plants in Chicago? Did livestock shrink in the [fol. 247] old days when they established the plant here?

A. Well, they were established here, I guess, before 1900. I don't know what the freight rates were then.

Q. I am talking about the shrinkage. Would that have occurred in those old days?

A. I would think that the hog anatomy hasn't changed.

Q. And what the situation is as to the relationship between the livestock and the fresh meat during that period you perhaps don't have in mind?

A. I think that situation to a varying degree may have been in effect for a long time.

Mr. Smith: I think that is all.

Exam. Diamondson: Any further questions?

Mr. Belnap: I have a question or two.

By Mr. Belnap:

Q. You spoke about giving orders to dealers in the immediate vicinity of your Iowa plants. What do you mean you give orders to dealers?

A. We give an order, if I know of any car of hogs, at a price for that day.

Q. If the dealer will ship you a carload of hogs you will give him a price which you have named in giving him the order?

A. We will give him the price that we will pay that day at his point.

Q. At his point?

[fol. 248] A. At his point or at another point that he might ship from.

Q. You acquire title to the hogs at the point of shipment when that sort of an order is accepted, do you not?

A. I didn't hear you.

Q. I say you acquire title to the hogs at the point of shipment when that sort of an order is accepted, do you not?

A. That is a legal question. I don't know.

Q. Do you buy them at that point or do you buy them from him when he delivers them to you?

A. We buy them from him f.o.b. and he loads them on a car.

Q. Do you have hogs sent to you at this Omaha Packing Company facility which come in by rail and you had not bought them at the time they came here?

A. That we haven't bought?

Q. Do you have hogs which you haven't bought at the time of their arrival?

A. Yes.

Q. Where do those hogs come from?

A. Well, they might come from the same territory I mentioned before.

Q. Where is the price agreed to on those hogs?

A. Sometimes it is agreed to over the phone before shipment. Sometimes it is agreed to when the hogs arrive. We buy them both ways.

Q. Where are the weights determined in the case of such [fols. 249] hogs on which you settle the price you pay?

A. When we set the price at the plant, the weights at the plant.

Q. After they are trucked over to your plant?

A. No, sir. At the Omaha Packing Company.

Q. At the Omaha Packing plant?

A. Yes.

Q. Do you have your own scales, Swift scales there?

A. We have scales at the Omaha Packing Company, yes, sir.

Q. They are Swift scales, are they not, your scales?

A. Yes. It is our scale. I imagine we own the scales.

Q. Yes. Are those hogs watered and fed before they are weighed?

A. They are not fed and I don't think they are now watered. They were during the war, I believe. I think they are not now watered.

By Exam. Diamondson:

Q. Are they unloaded into the chutes and pens at the Omaha Packing Company plant?

A. Yes, sir.

Q. Or in the trucks?

A. Trucks and cars both.

Q. I mean are they unloaded into trucks or into pens first?

A. No. We unload them, store them, weigh them and hold them.

Q. And you don't feed or water them?

A. No, sir, we don't feed. He asked me before about watering. If we hold the hogs, yes, then we feed them and water them but that is strictly between ourselves. In other words, if they are not going to be killed the same [fol. 250] day we would then water and feed them.

Q. You mean you water and feed them after you have purchased them?

A. After we have purchased them, yes.

Q. And you truck your purchases down to your killing house?

A. To the Chicago Stock Yards plant.

Q. A distance of how much?

A. 24th to 47th. 23 blocks. Three to four miles.

Q. Would three and a half miles be approximately right?

A. Yes, that would be pretty good.

By Mr. Belnap:

Q. Do you receive any of your direct hogs at the Union Stock Yard & Transit Company facilities?

A. As a general thing no. I think there has been an occasional time, but as a general thing we don't.

Q. Why do you not?

A. Well, we prefer to handle them at the Omaha Packing Company. The trucking cost is less than a yardage charge, for one thing.

Q. Is there anything else other than that one thing?

A. Sir?

Q. You said that is one thing. Is there something else?

A. Well, there might be. We never considered it. If we came to consider it there might be other angles enter into it.

Q. Why do you receive any of your directs at the stock yards?

A. There might be times when trucks break down or

truckers may not be working or we might get loaded up [fol. 251] down there at the Omaha Packing Company, or, I don't know. It has been done very seldom.

Q. Of the five or six hundred thousand hogs you kill in Chicago, what proportion of those in 1947 were acquired on the Union Stock Yards?

A. I would say something less than half.

Q. Can you come any closer than that from your knowledge of your business?

A. No. It varies from day to day and week to week what we buy here.

Q. You say something less than half. Would it be as little as 20 per cent?

A. I think it would be more than that.

Q. Would it be as much as 30?

A. You are asking me to answer something that I am not sure about.

Q. I thought you might be able to reach it within 10 per cent. I don't want to pin you down to any precise figure.

A. I don't have it in mind what it is but it is less than half, that is the best I can do.

Q. You are not sure whether it is as much as 30?

A. It might be.

Q. But you don't know?

A. No, sir.

[fol. 252] Mr. Belnap: That is all.

By Mr. Gladson:

Q. Do you compete with Armour at Chicago?

A. We compete with everybody.

Q. Does Armour have any plant corresponding to your Omaha Packing plant?

A. Not that I know of.

Q. You know, do you not, that Armour get most of their directs through the stock yards?

A. That is my understanding.

Mr. Gladson: That is all.

Exam. Diamondson: Is your question confined to hogs only?

Mr. Gladson: Yes, that was confined to hogs.

Exam. Diamondson: Hogs only. Any further questions?
Mr. Knudson: Yes, I have one question.

By Mr. Knudson:

Q. I am curious to know, Mr. McCaw, the extent to which hog prices on the Chicago market from day to day influence you in your directions to your agents out in the interior in the hog purchases that you order them to make from day to day? Can you give a general statement with reference to that?

A. Yes. We buy hogs in Iowa at the market in Iowa.

Q. You call up the yards or ascertain from the Chicago yards on the day that you give the order to your Iowa buyer what hog prices are delivered in Chicago?

A. We know what the Chicago market is and we know [fol. 253] what the market is at all points.

Q. Does your knowledge of prices at the Chicago yard affect you in any way with respect to the directives you give your dealers in the interior to make purchases?

A. I don't think so. I think we buy hogs if we want them at the market wherever they are being sold. There is quite a variation from time to time in the markets at the different points. There isn't much use in sitting in Chicago and bidding a price in Iowa that might be available in Chicago or Cleveland or some other place. That won't help you to buy hogs in Iowa.

Q. To use your own expression, "if you want them", do you determine in any manner whether you want Iowa hogs on a given day in the light of prices that are quoted you on the Chicago market for the hogs that are present in the Chicago yards?

A. I don't believe that the Chicago market is recognized in Iowa as the Iowa market.

Mr. Smith: I don't understand that. I would like to ask a question about it. Are you through?

Mr. Knudson: Yes.

By Mr. Smith:

Q. May we understand from that that if hogs are selling at $20 in Chicago and your man out in Iowa tells

you over the telephone that you have got to pay 30 out there, that you go ahead and tell him to pay 30 out there?

A. I wouldn't last long.

[fol. 254] Q. I wouldn't think so. So that what you are saying to us now is that you give very careful consideration, in the interest of holding your job, to how this price that you have got to pay in Iowa compares with the Chicago price before you go ahead out there, isn't that so?

A. No, sir. You give a very extreme case, but I would have to decide whether the hog market in Iowa at $20.10,—whether I wanted the hogs or not, or if it was $19.10 whether I wanted the hogs or not, and I might not want them if they were $19.10.

Q. I put an extreme example of it, but the fact is that you give very careful consideration to the relationship of the Chicago price to the prospective Iowa price or the farm price before you decide which to do, don't you?

A. No, sir. I said to you that we give account to the hog market in Iowa and if we want the hogs at that price we take them.

Q. And you give account as to what you had to pay on the Chicago market at that time.

A. No, sir.

Q. You just said that you had to do that to hold your job.

A. No, sir. I said we won't pay a ten dollar premium for hogs at one place.

Q. Because of the relationship between the two prices?

A. No, not at all.

Mr. Smith: That is all.

[fol. 255] By Mr. Belnap:

Q. How much premium would you pay to avoid the Chicago market?

A. Sir?

Q. How much premium would you pay to avoid delivering any hogs on the Chicago market?

A. I am not going to answer that question.

Mr. Belnap: That is all.

Exam. Diamondson: Any further questions?

Mr. Quasey: Yes.

By Mr. Quasey:

Q. Mr. McCaw, I understood you to say that the livestock receipts at your Omaha plant here are weighed immediately upon arrival.

A. What?

Q. Are weighed immediately upon arrival.

A. Immediately upon unloading.

Q. That is, they are weighed up?

A. Yes, sir.

Q. And does that go for both rail and for truck hogs?

A. Yes.

Q. And are the weights then obtained the weights on which you settle with the owner?

A. That is right, unless we have previously bought them at f.o.b. weights in the country.

Q. Yes. Now, you speak about the Iowa market price. Is there a public livestock market anywhere in the State of Iowa?

[fol. 256] A. Yes, sir.

Q. Name those, please. Could you name those, any one?

A. Sioux City.

Q. All right. Any others?

A. I don't recall any of any size.

Q. Now, Sioux City is located in the extreme northwest corner of the state, is it not?

A. Yes, sir.

Q. Wherever you operate a concentration point do any other buyers come into that same place and offer to buy the livestock that is brought into that concentration point?

A. Yes, I think they do.

Q. Do you know that for a fact?

A. Cudahy Brothers at Cudahy, Wisconsin, had two big yards either at Belle Plaine or at Tama, they kind of ran both together there. The other packers have a lot of buying stations. Whether they all have a concentration privilege or not, I don't know.

Q. I am talking about a concentration point or a buying station.

A. There are lots of buying stations in Iowa.

Q. Yes, but are there any buying stations at which more than one packer buys at the same time?

A. The packer-owned stations they all operate themselves. The dealer stations take bids from anybody, from [fol. 257] any packer in the United States that wants to buy from him.

Q. Now, isn't it a fact that in practically all instances there is just one buyer at a buying station, except in the case of dealers that you mentioned?

A. At the packer-owned stations there would be only one buyer, but there might be two stations in the same city.

Q. But it would be a private buying place, wouldn't it?

A. Yes, just like the Omaha Packing Company.

Q. Now, are the hogs that are bought at the country points, are they weighed immediately upon arrival there?

A. At the Omaha Packing Company?

Q. No, out at one of your buying stations in Iowa.

A. At the stations that we operate they are weighed as they come in.

Q. And those are the pay weights?

A. Those are the weights we pay for.

Q. And, of course, they are not either fed or watered or rested before they are weighed there.

A. No.

Mr. Quasey: I believe that is all.

Exam. Diamondson: Any further questions? Mr. Rynder?

Redirect examination.

By Mr. Rynder:

Q. Mr. McCaw, some questions were asked you, I think, on the general theory of whether Chicago was still not the principal packing point of the United States. Think- [fol. 258] ing of facilities or packing houses rather than investment, does the Swift operation in Chicago compare at all with the total of its operations at other points?

A. Are you talking about hogs or total?

Q. Hogs and everything else put together. I mean about

how many other packing houses does Swift have in the United States?

A. We have about 30 plants at which we kill hogs, maybe 35 or 38.

Mr. Smith: Now that you are going into this, Mr. Rynder, will there be any objection then to our getting the actual figures that you are attempting to elicit in an informal way?

Mr. Rynder: You can take the witness when I am through.

By Mr. Rynder:

Q. I am asking you whether the Swift operations at Chicago in hogs or in total are a small part of its nation-wide operations in meat packing?

A. The hog operations in Chicago are a small part.

Q. Are major operations of that kind carried on at such points as St. Paul, Omaha, Sioux City, St. Louis, and so forth?

A. Yes, sir.

Q. And at many other points?

A. Yes, sir.

Q. I believe you stated that over a period of years you had reduced your hog killing capacity or operations at Chicago, have you not?

A. Yes, sir.

[fol. 259] Mr. Rynder: That is all, thank you.

Recross-examination.

By Mr. Smith:

Q. Will you give us, please, the percentage in respect to each species of livestock, percentage of the total killed by Swift in the United States that is killed at each of Swift's plants?

A. You mean to remember that in my head?

Q. With reference to hogs, which is your specialty, to make it easy. Will you tell us what percentage of Swift's total killing of hogs is done at Chicago and what percentage at each other point where Swift kills hogs?

A. I can't answer that for each. I would have to have all the figures in my head.

Q. I am not suggesting that you answer that out of your head. Will you get those figures?

A. I don't know whether the figures are available or not.

Mr. Smith: Will you give us those figures, Mr. Rynder?

Mr. Rynder: No.

Mr. Smith: And will you give us like figures in respect to every other species of livestock?

Mr. Rynder: No.

Mr. Smith: That is a rather anomalous situation, Mr. Examiner, when counsel himself undertakes to develop this and ask general questions of the witness on the subject and then declines to support it by the actual figures. [fol. 260] Mr. Kaylor: What does it amount to?

Mr. Smith: I don't know. I would like to look at the figures?

Exam. Diamondson: The record will show what complainant's position is, Mr. Smith.

Mr. Rynder: We are not here in the position of satisfying every curiosity seeker that has come into the hearing room, Mr. Examiner.

Mr. Smith: You have excited my curiosity. You have gone into this yourself.

Mr. Rynder: Well, I am not satisfying it.

Mr. Smith: Evidently not.

Exam. Diamondson: Are there any further questions of this witness? You are excused, Mr. McCaw.

We will recess until two o'clock:

(Whereupon, at 12:20 o'clock P. M., a recess was taken, to reconvene at 2:00 o'clock P. M.)

[fol. 261] AFTERNOON SESSION

2:00 P. M.

Exam. Diamondson: The hearing will please be resumed.

Mr. Smith: Mr. Examiner, in a number of instances it will be remembered and readily identifiable on the transcript that the last witness who was on the stand for

Swift & Company made certain general statements about animals slaughtered at certain points and certain other subjects, a part of which was in reply to Mr. Rynder and a part of which was in reply to my question. In a number of those instances the witness or counsel declined to furnish the actual records or figures to substantiate those general statements.

The defendants move to strike the statements of the witness in those several instances where there was a refusal to furnish the actual figures as being testimony offered without proper foundation and incompetent and not the best evidence.

Exam. Diamondson: Your motion will be shown on the record. Do you desire to reply to that?

Mr. Rynder: I am not particularly interested in what your ruling may be on that, if I understand it correctly. I think those were all questions that were brought out on cross-examination by counsel, where counsel asked the witness some questions and then wanted him to produce some figures to back it up or something. I have no objection to the entire cross-examination being stricken.

Exam. Diamondson: How about the direct?

[fol. 262] Mr. Rynder: There will be no objection on the direct, I understand.

Mr. Smith: I am making the motion with reference not only to the testimony that was given in response to questions on cross-examination, but the same situation which developed both on direct and on redirect by Mr. Rynder.

Exam. Diamondson: Your motion will be shown on the record.

Mr. Smith: And ruling deferred?

Exam. Diamondson: That is right.

Do the complainants have anything further at this time?

Mr. Rynder: Not at this time. We expect to have some witnesses whom I expect will be rebuttal witnesses and not having heard the defendants' case, however, I can not tell what we will want to do in that respect. A considerable time ago we wrote or requested the carriers asking for certain information which I believed covered just three points, some stipulations as to certain train consists of livestock trains coming to the Chicago Junction interchange at Ashland Avenue, and to team track de-

liveries in Chicago, the number of cars and as to whether actual deliveries were made to packing plants in this mid-western area which is named.

I understood that Mr. Smith had assembled that information and in fact he has heretofore shown us a draft of it, and it is not important to me at what stage of the hearing it goes in, but that would be a part of our direct case.

[fol. 263] Mr. Smith: Well, Mr. Examiner, it is important to us when the plaintiff makes his case. Yes, Mr. Rynder asked us for information and I think he will bear me out in my statement that we furnished him everything he asked for. That was our purpose, and I think we have done so. We want to hear the Plaintiff's case before we put in the Defendant's case, and I think we are entitled to know whether he has finished or not. If he has not then he should proceed and conclude his case.

Mr. Rynder: The only reason I stated that as I did is because it has not been given to us yet in final shape to put in as an exhibit. I think the train consists went back for a further check on a couple of loads and the original thing about deliveries at the Western Trunk Line plants went back. We had one draft of it in a shape that we could not introduce here as an exhibit, and as it was not made up in exhibit form to check on a delivery at some certain point, I believe Evansville, I am only too glad to put it in at this time if it is available now in such shape as we can offer it in some way and have it copied with a sufficient number later, but I have not gotten it myself.

Mr. Smith: I understand from my associate, Mr. Babcock, it was necessary to check the Gulf, Mobile & Ohio and we did that and got the figures yesterday afternoon, and do you have those here?

[fol. 264] Mr. Babcock: I believe I do. That was the only one, was it not?

Mr. Rynder: The North Western.

Mr. Babcock: I gave you that three or four days ago.

Mr. Staley: I have only one copy.

Mr. Smith: We did not undertake to supply you your exhibits.

Mr. Rynder: No.

Mr. Smith: You have got it except Gulf, Mobile & Ohio, and do you have that with you?

Mr. Babcock: We have that here.

Mr. Rynder: I would like to ask for permission to have them copied in sufficient number to file as an exhibit.

Exam. Diamondson: Any objection?

Mr. Smith: Not at all, sir.

Exam. Diamondson: That may be done and later you may supply them.

Off the record.

(Discussion off the record.)

Exam. Diamondson: On the record.

Mr. Rynder: Mr. Examiner, I am now in possession and in position to offer as Exhibit No. 12 a statement prepared under Mr. Smith's direction and entitled "Information concerning deliveries of livestock by rail at points specified in paragraph 7 in complaint in Swift & Company v. [fol. 265] A. T. & S. F. R. Company, et al, in I. C. C. Docket No. 29,909."

Exam. Diamondson: The facts in this exhibit which have been identified as No. 12 have been stipulated to by the parties?

Mr. Smith: Yes.

Mr. Rynder: Yes.

Exam: Diamondson: The Document will be marked as Exhibit No. 12 and received in evidence.

(Exhibit No. 12, Witness Rynder, received in evidence.)

Mr. Smith: Now with reference to the deliveries on team tracks, Mr. Examiner, they asked us if we would agree that certain of these roads made deliveries on team tracks and we told them that we were going to show that if they did not and so all they have asked of us was that we agree that these certain roads did make certain deliveries on team tracks and we told them that we agreed to that and so that is stipulated *be* between us and if that is a part of the plaintiff's case that can be put in at any time so far as we know.

Mr. Rynder: I saw one little statement which I have not now. I have a copy of it now which I would like to

have you read. I would like to have permission to have that copied in sufficient number to file as an exhibit.

Mr. Smith: That appears to be the statement that we furnished to you, Mr. Rynder.

[fol. 266] Mr. Rynder: Mr. Examiner, I should like to have permission to file as a part of our case on direct as soon as copies can be made, copies of two sheets bearing this title at the top "Swift v. A. T. & S. F. R. Company, et al, in I. C. C. Docket 29809, memorandum." The following figures show the carload deliveries of livestock by railroads named below at their respective team tracks in Chicago.

Mr. Smith: We will stipulate that those are the correct figures.

Mr. Rynder: Without further elaboration, Mr. Examiner, the third statement I would like to file here is a copy of the information furnished by Mr. Smith as to train consists of certain trains that I have heretofore described.

Mr. Staley: That will be one copy combining the information which you have given to me so that it correctly shows the latest information that you have given to me?

Mr. Smith: No objection on our part.

Mr. Rynder: When we made those original reports the Nickel Plate was included amongst them and they sent us a statement direct which should be included with this statement, or this same information. I don't understand it too well since we have not had a chance to talk to anybody about it. I particularly do not know what is meant by C. R. & I. at the heading.

Mr. Smith: I don't think the statement is informative. [fol. 267] I can not understand it and I never saw it before. It is something that you asked the Nickel Plate directly to furnish to you and apparently they did, but I don't know anything about it.

Mr. Rynder: All I know is that this is in response to a request.

Mr. Smith: Why did you ask counsel for certain information and go direct to the roads on the other?

Mr. Rynder: We did not. We sent these requests to the

roads before we were advised that you had been employed as counsel in the case.

Mr. Smith: Then Nickel Plate sent it to you directly?

Mr. Rynder: As I understood it, all of the other roads referred the request to you and for some reason not known to us the Nickel Plate sent us this information direct.

Mr. Smith: Well, I would object to it subject to an opportunity to check its accuracy. I have never seen it before and I know nothing about it.

Exam. Diamondson: When the copies have been made you tender them at that time and if there is no objection it will be given an exhibit number at that time. We have in the record, however, received Exhibit No. 12.

Mr. Smith: There is one thing more, Mr. Examiner. I have been advised that some of the traffic officers of the roads which I represent have been subpoenaed to testify here and Mr. Rynder just made some reference to call-
[fol. 268] ing certain witnesses on rebuttal. He has not heard our testimony, of course, and is not apprised of what, if any rebuttal is required, and it is fairly obvious to me that whatever he wants to get from these traffic witnesses is a part of his case in chief and it could not be otherwise. I think that we ought to have that evidence as a part of his case.

Mr. Rynder: My view is that we may not use them at all, but if so it will be on rebuttal and if it does not appear that they are necessary witnesses on rebuttal, we will excuse them.

Exam. Diamondson: All right, if you have nothing further at this time, you may proceed.

Mr. Rynder: Just a moment, I was only answering that one thing. The question arose here in the course of the examination of Mr. Staley by the Examiner, wherein the Examiner asked a question as to just what service was included within the stockyards yardage charges. Mr. Gladson tells me they have a gentleman here who can state just what services are included within those charges and if that is true I should be glad to call him as a witness on that point only.

Mr. Gladson: Mr. Heinemann is here.

Mr. Rynder: You understand that I am calling him as a witness on that point only?

Mr. Gladson: I may want to ask him some questions on [fol. 269] that particular point.

Mr. Rynder: Surely, but I just want to make it clear that he is not my witness for any other subject.

Mr. Gladson: Then we will call him as our witness.

Mr. Rynder: Mr. Heinemann?

C. B. HEINEMANN was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name.

A. C. B. Heinemann.

Q. What is your present business position, Mr. Heinemann?

A. Executive vice-president of the National Independent Meat Packers Association.

Q. You are not officially connected with the Chicago yards?

A. No, sir.

Mr. Rynder: May I inquire, Mr. Gladson——

Mr. Gladson: He has been retained by the Stockyards for the purpose of testifying in this case. I think you will find out that he knows what you desire.

By Mr. Rynder:

Q. Do you know what services the Union Stockyards and Transit Company are offering in the so-called yardage charges of 65 cents on cattle, etc., that is filed with the Secretary of Agriculture?

A. Yes.

Q. It is about that that I desire to interrogate you. Per- [fol. 270] haps we can get to it by a couple of eliminations.

Mr. Knutson: Mr. Rynder, I don't want to interrupt you, but we propose later to put into evidence as an exhibit the tariffs that are published by the Union Stockyards, Chicago, and will they contain the description of the services which you are after?

Mr. Rynder: I think Mr. Heinemann will probably agree with me that the tariff does not item by item describe the services.

The Witness: That is correct, nor does it break it down.

By Mr. Rynder:

Q. Mr. Heinemann, I was saying we probably could proceed first with a couple of eliminations. Yardage does not include the unloadings of livestock at the pens?

A. That is true; it begins where the unloading service ends.

Q. The unloading charge is taken care of by this allowance or absorption by the trunk line railroads?

A. Presumably that is true.

Q. I mean it covers that?

A. In principle that is correct, Mr. Rynder.

Q. Whether it is sufficient in amount is something else?

A. That is right.

Q. Another thing that we can eliminate, I take it, is the charges for feed furnished to the livestock?

A. That is true, except as to those cases where the packer may want it fed like over a week end or a holiday or some- [fol. 271] thing of that sort.

Q. Just a moment. I mean if the shipper, the consignee or commission man or whoever he is wants feed furnished to his livestock in the stockyards, that is a charge separate and in addition to the yardage charge?

A. That is part of the yard service that is embraced in that all-inclusive term "yardage" which covers your facilities and services, but I will agree with you that there is a separate charge for your feeding service.

Q. Yes, in other words, if I got a bill it would be yardage so much and so many pounds of hay or so many pounds or bushels or corn or something like that extra?

A. That is correct.

Q. Now, with those two eliminations will you please describe what services and facilities are actually covered by these yardage charges?

A. Well, your major element would, of course, be represented in your facilities and in the investment in those facilities as to which the yardage charge must be applied against in working out your return on that investment.

In the actual handling, when the livestock is unloaded from the car and made available to the consignee or his employee, it is customary in the majority of instances for the employees of the consignee to remove that stock if they go to the sales division, or if they go to the packer they are moved to either a holding pen if he so designates or [fol. 272] to his runways for his plant.

Q. Then in speaking of this covering the use of facilities, I suppose by that you mean principally holding pens and runways?

A. That would cover all of your facilities, runways, water, light, structures of all kinds, including everything in the hotel for livestock.

Q. If the livestock is sold by a commission man to a packer buyer is it not also weighed by the Stock Yards Company and the weights given to the buyer and seller?

A. That is true to the commission as well as to the packers when he wants it weighed.

Q. Is that included within the yardage charge too?

A. Yes, without extra charge.

Q. No extra charge?

A. That is correct.

Q. Do you think we have covered everything that is included in the yardage charge?

A. Well, you might break it down to more detail, but I think you have the comprehensive description there and you have included in your facilities those services which go to make up the stockyard complete service.

Exam. Diamondson: Is there any paper transaction that takes place also under that yardage charge, transfer of [fol. 273] documents or something of that sort or billing?

The Witness: Yes. Ordinarily, of course, the posting of the arrivals and all of those records are matters for recording in the proper offices of the Stock Yards Company and that is done in each and every instance and they are accurately checked for the obvious reason you are handling a very valuable commodity.

Of course in dealing, in response to Mr. Rynder's question, that stockyards service includes all of these little details plus the fact that in the maintenance of a market, if a stockyards operator is on his toes, he must do a lot of

things to insure the integrity of that market for the patrons of all sorts, for the packers, for the livestock producers, and to protect it in every way that he can within the law and within reason.

By Mr. Rynder:

Q. One thing more, Mr. Heinemann. I have no doubt you covered this in the general term of the use of the term "facilities", but it is a fact that if the livestock is consigned to a commission man for sale it is held in the pens assigned to him pending sale, is it not?

A. Ordinarily the pens are allocated and that is not a mandatory allocation. In other words, it is permissible for his occupancy and his employees take it to the pens which may have been assigned to him for that particular period.

Q. But the use of those pens, pending sale is not charged [fol. 274] for otherwise than in the yardage charge, is that correct?

A. That is right.

Mr. Rynder: I believe that is all I want to ask on that.

Cross-examination.

By Mr. Gladson:

Q. Mr. Heinemann, just what animals is the yardage charge assessed against?

A. At the Chicago market it is assessed against all animals which enter the yard from either rail or truck or so-called drive-in transportation without exception.

Q. Is that the basic charge of the yardage company?

A. Yes.

Q. Is it a correct statement to say that any stockyard service that these animals receive for which there is no other charge in the tariff is covered by the yardage charge?

A. That is right, and that service is there awaiting call of the patron of the yard.

Q. As a practical operation of the yard, are a considerable number of directs received at the Chicago yard?

A. Yes.

Q. Do you know what service in fact is rendered on the direct hogs?

A. That is not a constant and unvarying process, but as a general proposition in the ordinary procedure in the handling of the shipments, they are unloaded and possession is taken promptly by the consignee, the packer's consignees in the case of directs and ordinarily they are re- [fol. 275] moved by whatever means of egress there may be assigned for that particular movement, whether it is overhead or in the underpass or in whatever route they traverse.

If that packer as in many cases wants the animals watered, fed or weighed, those services are performed without any additional cost other than the yardage plus the cost of the feeding.

Q. Do you happen to know which packer consigns or buys the largest number of directs to the yard?

A. Presently it would be Armour & Company.

Q. Do you know whether Armour & Company directs are weighed by the Stockyards?

A. They are now, but they have not always been.

Q. Do you know whether or not there is a scale set aside for them?

A. There is, sir.

Q. Or scales?

A. As the volume may justify, that is right.

Q. Are these animals held in holding pens?

A. Yes, frequently.

Q. And space has been allocated for that purpose?

A. Yes.

Q. Is there any limit on the time that an animal may stay in the yard after it has once had a yardage charge? [fol. 276] A. There is no limit up to the present time that has ever been enforced against that holding.

Q. Do you know whether Armour's hogs are fed?

A. I know they are.

Q. By the Stock Yards Company?

A. Yes, they have been and I assume they still are.

Mr. Gladson: That is all.

By Mr. Smith:

Q. In view of the way the business is handled down there at the yards, is it necessary that the direct shipments which are not taken immediately from the unloading chutes be transferred within a brief period to holding pens?

A. They have to be to clear the runways of the stock-yards and the alleys.

Q. Sometimes the exigencies of that service are such that that transfer has to be made within just a few minutes, is that not true?

A. That is true because of the constantly arriving trains necessitating the immediate clearance of these alleys immediately in back of the chutes.

Q. So that the yardage charge is designed in part to reflect that fact, that it is not possible or it has not been possible for the patrons of the yards to take the stock in many instances immediately from the unloading chutes, is that right?

A. That is correct, especially on holidays, week ends and [fol. 277] at unseemly hours of arrival.

Q. As a matter of fact, hasn't that situation occurred every day?

A. I should say it would almost without exception, and that service is included in your yardage.

Mr. Smith: I am going to offer some figures here to show the actual direct shipments received at the Union Stock Yards in the last ten years and separately for each year and as a matter of fact Mr. Heinemann that will show that the average number of directs received at the yards in the last five years, the average annual for that period is 30,976 cars. Is your familiarity with this such that that is approximately the right figure?

The Witness: According to the observations I have made on it, you are just about in line with my thinking.

By Mr. Smith:

Q. Is yardage assessed not only on the direct shipments, but on all other shipments which come to the yard?

A. Through any egress in the yards, sir.

Q. Is there any shipment on which a yardage charge is not assessed, that is, received at the yards?

A. No, sir.

Q. Well——

A. Perhaps I should exempt from that the exhibition stock that once in a while may be taken over to the National Building, but I mean market stock or stuff through [fol. 278] the regular market.

Q. That is not ordinary livestock?

A. That is right.

Q. And it does not unload at the chutes of the Union Stock Yards?

A. That is right, and it is not set by the line haul carriers because it is a special shipment.

Q. Now so far as the yardage service is concerned, the total revenues of the yard are made up by the yardage on these directs which as you say have been running around 37,000 cars a year and the yardage charge on the producers stock that is sold through the commission agency?

A. That is right.

Q. The returns on whatever investment the stockyards has down there is made up by those two increments, the yardage it collects from directs and the yardage it collects from all other traffic?

A. There are some little accessorial additions to that, but those are the major elements.

Q. If the direct shipments were lost to the yard and it would have to receive any given rate of return on its investment, then the deficiency would have to be made up in the event of the loss of the directs by the producers livestock, isn't that correct?

A. That is quite obvious, yes.

[fol. 279] Q. Did you see these photographs that Mr. Kelly offered yesterday, some of which showed some overhead viaducts over which livestock is moved?

A. I did not examine them, I am sorry to say.

Q. Well, you have referred to a certain overhead runway or viaduct over which livestock is moved to the packing plants from the yards?

A. That is right.

Q. Is that part of the plan that is covered or presumably is covered by the yardage charges?

A. That is right.

Q. Will you explain to the Examiner, please, in a general way what those overhead viaducts consist of and what their purpose is?

A. Primarily, Mr. Examiner, they were constructed originally with the idea in the handling of livestock you were dealing with a commodity that did not lend itself to readily mixing with ordinary street traffic. To move from the stockyards to these packing houses you had to either depend upon the private street outlets or you had to do as they did, construct these overhead runways at a very tremendous expense, taking this traffic completely above the pens in which the trading is going on and which the animals are being held in and enable the consignee or in the case of the animals being bought locally on that mar- [fol. 280] ket, to move them directly to their respective packing houses.

Q. Could you indicate to the Examiner by using a yardstick of linear feet or blocks or miles or what not, the extent of those overhead runways?

A. Well, I should say your longest run would be the one that goes over to the Wilson plant, which is west of Ashland Avenue, picking up somewhere in the vicinity of Morgan Street, which would be approximately one mile in length.

Q. Does each packer have a runway or does several packers use a given runway, or how is that?

A. It is like railways, it has a main runway and frequently they have lateral runways from that major one although some move directly to the packing houses.

Q. Now suppose Swift bought the stock on the Chicago market as it does in certain instances, I understand, and that stock was to be moved over to one of the killing plants of Swift & Company. Will you indicate how that would be handled and over what runways? How close can that stock be brought to the killing plant of Swift & Company by means of these overhead runways?

A. Well, they are the runways used to move the animals directly to the killing building and generally to the killing floor.

Q. We have been told that Swift has several killing

plants. Are there presently these overhead runways to those plants?

[fol. 281] A. To the present plants, yes.

Q. By the use of those runways is stock delivered immediately at those killing plants?

A. If they so desire them moved that way, yes, they would be.

Q. Does that overhead runway in the case of Swift lead then right to the Swift Building, whichever building it would happen to be?

A. There would be a lateral line off the main line runway which would lead you right into the Swift floor wherever they want the stock delivered.

Q. Does the Stockyards own and have an investment in the viaducts up to we will say Swift's property line and Swift maintains the viaduct beyond that point, or how is that handled?

A. I don't want to go outside of my personal knowledge on that, but it has been my understanding that the construction of the main runways was by and at the expense of the stockyards Company and that in some cases the runway does go over land owned by others under some sort of an easement with those owners.

Q. With the result that the Yards does furnish the overhead runways right to the Swift Building and to the other buildings?

A. That is right.

Q. When was that investment made?

[fol. 282] A. That goes back long before I came to the yards in 1907.

Exam. Diamondson: And the Stock Yards makes all necessary repairs and maintenance on the runways?

The Witness: Yes.

Exam. Diamondson: When you say the main runway, do you include the laterals?

The Witness: Let us call them the highways.

Exam. Diamondson: How about the laterals?

The Witness: That I would not want to testify about because I am not familiar with that.

By Mr. Smith:

Q. Mr. Heinemann, will you be good enough to inform yourself on these overhead runways that lead down to the several Swift plants so that you can advise us before this hearing closes as to the particular runways leading to Swift plants which belong to and are maintained by the Yards and what, if any, portion belongs to and is maintained by Swift?

Exam. Diamondson: And the distances or the length of those runways?

The Witness: With the permission of counsel.

Mr. Gladson: Yes, that is all right.

The Witness: Yes, I will be glad to do that.

Exam. Diamondson: Any further questions?

Mr. Rynder: Yes, I have a few.

[fol. 283] Redirect examination.

By Mr. Rynder:

Q. I understood you to say, perhaps inadvertently in answer to a question from Mr. Smith, that the total revenue of the stockyards accrued from yardage and feed charges plus some minor incidentals?

A. I said some accessorial charges, yes.

Q. You had not included then the revenue that comes in from unloading? In other words, doesn't your revenue come in from three sources?

A. I figure that from a railroad revenue standpoint although it is one corporation.

Q. The revenue goes into the treasury of the Union Stock Yards?

A. That is right.

Q. So it comes from three sources?

A. I had no thought of ducking it, Mr. Rynder.

Exam. Diamondson: The unloading charges are paid by the railroad?

The Witness: That is right.

By Mr. Rynder:

Q. You were speaking of the runways used to the Swift plant, I take it, those would be used only on stock purchased by Swift on the Chicago Stock Yards?

A. No, sir, not if you have any directs.

Q. Or directs that come to the stockyards?

A. Yes.

[fol. 284] Q. And they pay the stockyard charge?

A. Yes. That refers to that part of the runway that leads directly into your plant. Of course that same overhead can be and is used by some of the other packers in some instances, but you are right, so far as your runways are concerned.

Q. What I am trying to get at is this: You are perhaps familiar, Mr. Heinemann, over the years at our operation at Omaha's plant in a general way?

A. Reasonably so.

Q. And trucking the livestock down to the yards, 41st Street?

A. Yes.

Q. That traffic would not use those runways, would it?

A. That is correct.

Mr. Rynder: That is all.

Recross-examination.

By Mr. Smith:

Q. I want to clear up this one thing. The Yard company performs certain services as a common carrier for hire under the ruling of the provisions of the Supreme Court, is that not so?

A. That is correct.

Q. And that service and the charge is therefore under the jurisdiction of the Commission?

A. Yes.

Q. Then the Yard company performs certain other serv-[fol. 285] ices, yardage and perhaps some others that are under the jurisdiction of the Secretary of Agriculture?

A. Correct.

Q. I was asking you or intended to ask you about that part of the revenue of the yard which comes from its serv-

ices and is applicable to its investment in respect to that phase of its business other than the unloading. Did you so understand me?

A. Yes, I thought I made it clear we pick up the line of demarcation where that unloading stopped.

Q. And you answered on that basis?

A. Yes.

Q. I thought so.

A. Yes, sir.

Mr. Kaylor: Is this 65 cent charge a charge that is considered as what you might call a common carrier charge?

The Witness: No, sir. That is really better classified as a warehouseman's charge. We refer to it as hotel for livestock or in other words kind of a room charge.

Mr. Kaylor: Is there a tariff published on that?

The Witness: With the Secretary of Agriculture and those charges incidentally have been approved by the Secretary in each case.

Exam. Diamondson: I understand they have to be approved before you can charge them?

[fol. 286] The Witness: That is correct.

Mr. Kaylor: Does that charge go into your common carrier accounting operation?

The Witness: I would not want to answer that.

Mr. Rynder: I was just wondering, Mr. Examiner, as I read the Packers and Stockyards Act, I believe it is substantially the same in principle as the Interstate Commerce Commission Act. The Stockyards may file a tariff and the Secretary may suspend it. Isn't that right?

The Witness: Not when your rates are frozen by the Secretary of Agriculture; you better go down there with your hat in your hand and justify it before you get a change.

By Mr. Rynder:

Q. But nevertheless the law says he can suspend them?

A. You can not change your rate even by publication unless you go down and petition. I should not be arguing the law with you because we have a good counsel, but I mean in actual practice. If your stockyards rates are frozen and most of them are frozen by order of the Secre-

tary of Agriculture, you must petition to get a modification of that before you are allowed to change it.

Q. That is the same as if the Interstate Commerce Commission had made a rate order.

A. Only I think they are a bit more strict in that respect. I don't mean to say that critically.

[fol. 287] Q. I did not know the yardage charges of the Union Stock Yards and Transit Company of Chicago had ever been fixed by an order of the Secretary.

A. Well, I think there has been considerable time wasted if they are not fixed by stipulation or agreement of some kind because they have to come down there before they can make any changes in them and make a proper showing.

Exam. Diamondson: Off the record.

(Discussion off the record.)

Exam. Diamondson: On the record. The witness is excused.

(Whereupon, the witness was excused.)

Exam. Diamondson: Do you have anything further?

Mr. Rynder: Nothing more at this moment.

Mr. Smith: At this moment, and I take it that means the plaintiff rests except for this evidence that has been referred to and which the Examiner has said could be offered later, those several exhibits?

Exam. Diamondson: Is that correct?

Mr. Rynder: Yes, the exhibits plus any rebuttal testimony.

Exam. Diamondson: You are through with your case in chief?

Mr. Rynder: Yes.

Exam. Diamondson: The defendants may proceed.

Mr. Day: Mr. Kinsella.

Mr. Smith: I find I made a misstatement this morning. I said I had copies of Defendant's Exhibit for Identification [fol. 288] No. 11. I find actually that this is the only copy that I have and it has been marked and I would like to ask if Mr. Rynder could reciprocate some of the information we gave him by furnishing for the record as many copies as may be required of this document?

Mr. Ryder: We will be very glad to do it.

Mr. Day: Mr. Reporter, will you mark this document—these documents as Defendant's Exhibits Nos. 13 and 14 for identification.

(Exhibits Nos. 13 and 14, Witness Kinsella, marked for identification.)

JAMES J. KINSELLA was sworn and testified as follows:

Direct examination.

By Mr. Day:

Q. Will you state your name, occupation and place of business?

A. James J. Kinsella, superintendent of the Chicago River & Indiana Railroad Company, residing in Chicago, Illinois.

Q. How long have you held your present position?

A. My last appointment was February 15, 1946.

Q. How long have you been connected with the Chicago River & Indiana Railroad Company or the Chicago Junction Railroad?

A. 42 years.

Q. You are familiar with the location and operations on those railroads, are you?

A. Yes.

Q. Will you describe the Chicago River & Indiana and [fol. 289] Chicago Junction Railroad?

A. The Chicago River & Indiana Railroad Company hereinafter referred to as the River Road and The Chicago Junction Railway (The C. R. & I. R. R. Co. Lessee) hereinafter referred to as the Junction, are exclusively switching companies located entirely within the City of Chicago and operate 224.35 miles of track. They have connections with 27 railroads, 22 trunk lines and five switching lines and serve 653 industries, as listed in the Chicago Junction Railway Tariff No. 22-S ICC-CJ-No. 74 and The Chicago River & Indiana Railroad Company Tariff No. 59-Q ICC-No. 122, with 823 side tracks and maintain 11 team tracks and three freight stations.

Q. Now supposing you describe the Junction right-of-way. Where does it begin?

A. The Junction right-of-way begins on the north near Ogden Avenue and 14th Street. From that point a double track extends in a southerly direction to approximately 39th Street and Western Avenue. From that point it is a three track line turning and running in an easterly direction to 40th and Wells Street where it reverts to a double track line that extends to 40th Street and Calumet Avenue, from where a single line of track is operated to 40th Street and Lake Park Avenue where it joins the single track line of the Illinois Central Railroad.

Q. Now you have referred to 39th Street as such. That [fol. 290] is shown on some of the maps as Pershing Road?

A. Yes. I remember the old designation probably better than I do the proper one.

Q. The map marked for identification Defendant's Exhibit No. 13 shows the street as both 39th Street and as Pershing Road on another part?

A. That is right.

Mr. Kaylor: 3900 south?

Mr. Day: That is right. I think it is less confusing to all of us to call it 39th Street. I think the location can be better identified.

Now from the main right-of-way that you have been describing, will you state what extensions there are from that line?

A. From this main right-of-way on the south are the following extensions: A double track branch from 40th and Western Avenue to 43rd and Leavitt Streets connecting there with the River Road main right-of-way tracks. A double track branch from 40th Street and Ashland Avenue southwesterly to 42nd and Damen Avenue at which point it joins the River Road main right-of-way. That is shown in this yellow block.

A double track branch from 40th to 45th Street, on Loomis. That is also in the yellow block in a southwesterly direction.

A double track branch from 40th Street and Packers

Avenue along Elizabeth Street to 46th Street. That is in the green block.

[fol. 291] Exam. Diamondson: That is the first line running from north to south in the green block?

The Witness: Yes.

Mr. Kaylor: That is in zone 2?

The Witness: Zone 3.

Mr. Kaylor: The yellow block is zone 2?

The Witness: Yes. A double track branch from 40th Street and Union Avenue to 48th Street and Peoria Street; that is also in zone 3.

By Mr. Day:

Q. Zone 3 is the packing town?

A. Yes, that is the packing territory.

Q. That is where most of the large packing plants are located?

A. Yes, all with the exception of Wilson & Company. (Continuing) —where connections are made with a double track branch line extending southeasterly and easterly to 49th and Wallace Streets to a connection with the Chicago & Western Indiana Railroad. That is the last north and south route in zone 3. That starts in zone 4.

Q. The part marked in purple?

A. Yes, it comes down into zone 3. And a double track branch running southwesterly to 49th and Aberdeen Streets to a connection with the Indiana Harbor Belt Railroad and the Grand Trunk Railway System. That is also in the green and it runs eastward.

Exam. Diamondson: That is down near the center of the [fol. 292] map or the bottom center of the map?

The Witness: Yes, and it is right here.

Exam. Diamondson: That is to the left of the last described track?

The Witness: Yes. Extending from this main right-of-way to the north is a double track branch running eastward from Packers Avenue to Union Avenue. That is in zone 3.

Exam. Diamondson: Running from west to east?

The Witness: Into Zone 4, yes.

Exam. Diamondson: Running from west to east at the top of the green block on the map?

The Witness: Yes. And from which there extends a double track branch running north along Iron Street to 32nd Street. It moves out of here into what we know as zone 5, from 3 into 5.

By Mr. Day:

Q. Northwardly?

A. Northwardly. And a double track branch running north along Racine Avenue to 31st Place. That is also out of zone 3 in the green into zone 5.

Exam. Diamondson: It runs from north and south up through the center of zone 5 block?

Mr. Day: Well, it extends northward, if you please.

The Witness: Northward up through the center of zone 5, yes.

By Mr. Day:

Q. To the north end of zone 5?

[fol. 293] A. It follows the contour of the Chicago River.

Also along this main right-of-way between Packers and Union Avenues are laid tracks and switches for entry into the three sections of the livestock district wherein are located the ten livestock chutes of the Union Stock Yard and Transit Company of Chicago with a capacity of 350 cars.

That is right here in what is known as the south division and it enters the middle division and this is known as the northern division.

By Mr. Day:

Q. That is where the market livestock is unloaded?

A. Yes.

Q. By the line haul carriers?

Exam. Diamondson: That is the three lines shown across the top of the center of the green block?

The Witness: That is right.

By Mr. Day:

Q. Now describe the River Road right-of-way.

A. The River Road right-of-way begins near 42nd Street and Damen Avenue from a connection with Junction tracks. From that point its double track line extends in a generally southerly direction to 49th Street and Oakley Avenue to a connection with the tracks of the Indiana Harbor Belt Railroad Company. Right here and it follows into the yellow zone and right south into zone 2 to 49th Street with a connection of the Indiana Harbor Belt.

A single line of track extends from a connection with the [fol. 294] Indiana Harbor Belt Railroad Company at 49th Street and Western Avenue in a generally westward direction to 48th Street and Central Park Avenue. It comes down over here.

By Mr. Day:

Q. That goes into zone 7?

A. Zone 7.

Mr. Kaylor: It commences in zone 7?

The Witness: That is right.

Mr. Kaylor: And ends up in zone 7?

The Witness: That is right.

By Mr. Day:

Q. Running from east to west?

A. That is right, from that point to here. From that point the tracks of the Atchison, Topeka & Santa Fe Railway Company are used, under a trackage agreement to 40th Street and Hamlin Avenue. It crosses these tracks down here.

Q. Into zone 8?

A. Into zone 8, the pink.

Mr. Kaylor: It starts in zone 7 and goes northwardly into zone 8?

The Witness: That is right. (Continuing) To a River Road single line of track that runs westerly to Pulaski Road and thence in a southwesterly direction to 47th Street and Kildare Avenue. All in zone 8.

A double track branch connection with the main right-of-way at 43rd and Leavitt Streets extends in a northwesterly direction to 40th Street and Western Avenue [fol. 295] where it joins the Junction tracks. That is all in zone 2.

By Mr. Day:

Q. In a northwardly direction?

A. In a northwardly direction. On the northern portion of the junction, extending from 14th Street to 39th Street are connections with the Chicago & North Western Railway at 14th Street, the Chicago, Burlington & Quincy Railroad at 21st Street, up near the top. The Illinois Northern Railway at 46th Street; the Atchison, Topeka & Santa Fe Railway Company, Illinois Central Railroad (western division) and Chicago Produce Terminal Company at Ash Street, right here.

Mr. Kaylor: Will you describe that?

The Witness: These are the Illinois Central and Santa Fe tracks and this is the Chicago Produce Terminal.

By Mr. Day:

Q. That is just above the place marked "zone 9"?

A. Yes.

Q. Over those two words?

A. That is right. Gulf, Mobile & Ohio Railroad (Alton) at 39th Street, Pennsylvania Railroad, Baltimore & Ohio Railroad, Baltimore and Ohio Chicago Terminal Railroad, Chicago Great Western Railway, Chicago, Milwaukee, St. Paul & Pacific Railroad, Minneapolis St. Paul and Sault Ste. Marie Railroad Company, Pere Marquette District of the Chesapeake and Ohio Railway Company at 39th Street by use of the Baltimore & Ohio Chicago Terminal Railroad or Pennsylvania Railroad tracks at that point. They use these other lines of railroads and get in here just [fol. 296] north of zone 2.

Exam. Diamondson: From the northwest corner of zone 2?

The Witness: Yes.

By Mr. Day:

Q. The track running between zone 2 and zone 6?

A. That is right, at the northwest corner of zone 2.

On the eastern portion of the junction are connections at Normal Avenue with the Pennsylvania Railroad, Chicago and Western Indiana Railroad and its tenant lines, the Chicago & Eastern Illinois Railroad Company, Erie Railroad, Grand Trunk Railway System and Wabash Railroad Company. That is here in zone 4.

Exam. Diamondson: Right in the center of zone 4?

The Witness: That is right. (Continuing) —at Wentworth Avenue with the Chicago, Rock Island and Pacific Railway Company, New York Central System and New York, Chicago and St. Louis Railroad Company, also in zone 4, and at Lake Park Avenue with the Illinois Central Railroad, the Chesapeake and Ohio Railway and New York Central System (Michigan Central) those lines using Illinois Central Railroad tracks at this piont. That is away over in the extreme east end of zone 4.

By Mr. Day:

Q. They are near Lake Michigan?

A. Yes, right there. On the southern portion of the River Road are connections at 49th Street and Oakley Avenue with the tracks of the Indiana Harbor Belt Railroad Company and the River Road main tracks are used [fol. 297] by the Indiana Harbor Belt Railroad Company, the Atchison, Topeka & Santa Fe Railway Company and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company to reach the tracks of the Junction. The south end of zone 7 and it comes into zone 2 and moves northward in zone 2, the yellow block, and they have the option of going northward to this end toward zone 6 or they can swing east and come in from the east end from zone 3.

Exam. Diamondson: When you say running east, do you mean into the Ashland yard?

The Witness: Yes, that is right. It curves right around it.

By Mr. Day:

Q. Now will you describe a number of industries and particularly the packing-slaughtering plants?

A. The Junction proper serves 499 industries having 645 private sidings.

Q. Did you say 645?

A. Yes, 645 private sidings, nine team tracks and three freight stations which are located in 11 operating districts, among these industries are the following slaughtering plants served by the Junction and the particular operating district in which they are located:——

Mr. Smith: May I ask a question before you read those? What part of the loads which go to these 499 industries and these 645 private sidings, nine team tracks and three freight stations in these 11 operating districts pass through [fol. 298] the Ashland Avenue yard?

The Witness: They must all be received in the Ashland Avenue yard.

By Mr. Smith:

Q. What about the empties?

A. Empties likewise. Any car that the C. J. or C. R. & R. receives from a connecting line for delivery to industries or a large portion of its intermediate business must by agreement with the labor organizations be yarded in the Ashland Avenue south yard.

Exam. Diamondson: That is done under actual operating conditions?

The Witness: That is right.

Mr. Kaylor: What did you mean — while ago when you said it skirted it?

The Witness: Moved around it to the south.

Mr. Kaylor: What company's cars move that way?

The Witness: The Milwaukee and Santa Fe bring all of their livestock through this route.

By Mr. Smith:

Q. I think the Examiner is a little confused by your statement that some of that traffic skirted the Ashland Avenue yard and your statement to me that all of the

traffic passes through Ashland Avenue yard. Will you explain that, please?

A. When you use the word passes through, it does not [fol. 299] pass through the yard but it must be yarded in that yard.

By Mr. Day:

Q. I think where the witness is confused is in one case he was asked about C. J. business and when he stated that these other railroads skirted the south end of the Ashland Yard, you mean with their own business going over to the livestock chutes of the Stock Yards Company?

A. Yes, or if they had cars to deliver to us for subsequent handling they would have to be moved up to the east end and put them into this yard.

Q. Into the Ashland Yard?

A. That is right.

Mr. Smith: Is that clear now?

Mr. Kaylor: I thought he meant the Chicago Junction skirted that yard for some shipments, but I see it is the other railroads.

The Witness: That is right.

By Mr. Day:

Q. Will you name the slaughter houses served by the Chicago Junction?

A. Agar Packing & Provision Company, Halsted Street.

Q. You might point that out.

A. Halsted Street is zone 4. Armour & Company, Horn, Packingtown, Backway, and 47th Street. Those are all included in zone 3.

Bohack, H. C. Company, Incorporated, State Line. That is in zone 5.

[fol. 300] Brennan, P. Company, Halsted Street, zone 4.

Hygrade Food Products Corporation, Halsted Street, zone 4. P. Brennan & Company is right here at Emerald Avenue on the north side of the railway. The Agar plant is a little farther east at a point called Union Avenue.

Exam. Diamondson: In zone 4?

The Witness: In zone 4, yes. The Illinois Meat Com-

pany, Halsted Street, is zone 4 also, and it is on the north side of the right-of-way at Halsted Street.

Miller & Hart, Incorporated, 47th Street. They are approximately at 46th Street and Packers Avenue. This is Packers Avenue and this is 47th Street.

Mr. Kaylor: Running north and south in zone 3?

Exam. Diamondson: Approximately the center of zone 3?

The Witness: Pretty close down to the south end.

Exam. Diamondson: Locate them as closely as you can, will you?

The Witness: Yes. Reliable Packing Company, Loomis Street. They are fronting on 47th Street and what I would term between Loomis and Bishop Street in the extreme southwest end of zone 3.

By Mr. Day:

Q. The names of the streets are shown on the map?

A. Yes. Roberts & Oake, Packingtown. That is in this section which is Elizabeth Street, zone 3, at approximately [fol. 301] 46th Street, between 46th and 45th Street.

Q. That is also toward the south end of zone 3?

A. That is right. Ussell Packing Company, Halsted Street, zone 4, here, near Normal Avenue on the north side running roughly about 40th Street.

Siegel-Weller Packing Company, Loomis Street. They are at 45th Street and Loomis in Zone 3. Down here in this corner with a diagonal street called Gross Avenue.

Swift & Company, Horn, Packington, and Backway. They are all through the northern part of zone 3 and these three main branches. I think roughly it can be said that Swift & Company runs south to about 42nd Street and all of these three leads are in zone 3. The plants of Armour & Company are south of those.

Wilson & Company, Ashland Avenue. They are approximately at 41st and Ashland on the west side of the street in zone 2, this yellow block, just south of our yard tracks.

There are also two off-line slaughterers, namely, Cee Bee Packing Company located at 3840 South Emerald Avenue. Emerald Avenue is located in zone 4 just north of 39th Street; on the western end of zone 4. And the Illinois Packing Company located at 911 West 37th Place.

By Mr. Day:

Q. That is in zone 5?

A. Zone 5, right about here.

Mr. Kaylor: Southeast zone?

[fol. 302] The Witness: Yes.

Exam. Diamondson: In the southeastern corner?

The Witness: Yes.

Mr. Knudson: Before you put your next question, may I ask whether the last question contemplated the handling of only dead freight or does that include the serving of these various plants by delivering livestock to them over these lines?

Mr. Day: Are you asking me the question?

Mr. Knudson: Yes.

Mr. Day: No, there is no delivery of livestock to any of these plants. They all take delivery through the facilities of the Union Stock Yard and Transit Company.

Mr. Knudson: In your use of the words "serving these plants" you contemplated only serving them with dead freight?

Mr. Day: Yes.

Mr. Knudson: And taking dead freight from them?

Mr. Day: That is right.

Mr. Knudson: Outbound?

Mr. Day: That is correct.

By Mr. Day:

Q. Now, your Exhibit No. 13 shows a number of zones. Will you define those zones?

A. Zone 1. This zone extends from Ogden Avenue near 14th Street on the north to 39th on the south, a distance of almost three miles and from Campbell Avenue on the west to Western Avenue on the east, a distance of two [fol. 303] blocks.

There are two main tracks running through this zone and one auxiliary track running from approximately 31st Street to 39th Street. Within this area, between 15th and 18th Streets are five industries. That is in this portion here (continuing), with nine private sidings and the Junction's freight house No. 2 with five tracks.

There are no further industrial developments served by this line from 18th Street south, with the exception of two industries at 31st Street with two private sidings, a Junction team track located at 35th Street and a single industry with a single siding at 39th Street.

However, on this line are the connections with various railroads previously described.

Q. You have enumerated them already?

A. Yes.

Exam. Diamondson: Did you say which carrier the Chicago Junction connects with at the northern end?

The Witness: The North Western Railway.

By Mr. Day:

Q. Will you describe zone 2?

A. Zone 2, within the area from 39th on the north to 47th on the south, Western Avenue on the west and Ashland Avenue on the east, comprising one square mile, are the three main tracks and one auxiliary lead track running from approximately 39th Street and Western Avenue in a generally easterly direction to Ashland Avenue and [fol. 304] continuing eastward. The tracks about split the center of this yard in zone 2.

Mr. Kaylor: Would you call that what yard?

The Witness: This yard?

Mr. Kaylor: Yes.

The Witness: There are really three yards here, the north section is known as the Ashland Avenue north yard; the center section is the Ashland Avenue south yard; and immediately south of the south yard is the Damen Avenue yard. And the following Junction and River Road facilities and industrial developments: River Road, Oakley Avenue Yard, 14 tracks—car capacity 225. That is the tracks here at the northwest corner of zone 2. Leavitt Street Yard 23 tracks, car capacity 700, zone 2.

Claremont Avenue District, that is in the extreme west end of zone 2 running from approximately 43rd Street to near 47th Street. This district extends from 42nd on the north to 47th Street on the south, Pan Handle Railroad tracks on the east and Western Avenue on the west and his sixteen industries with 22 side tracks and the River

Road Base Yard, five tracks with 70 car capacity. This district is reached by using the tracks of the Pan Handle Railroad, under a trackage agreement, and that line has joint switching rights in the same district and handles its own business.

I will describe the movement and you can understand [fol. 305] it better. We move out of this yard here.

By Mr. Day:

Q. What yard?

A. Oaklay Avenue.

Q. Northwardly?

A. Northwardly to 39th Street where we have a diversion to the tracks of the Pan Handle and we come south on the tracks of the Pan Handle to approximately 46th Street in zone 2, and then enter into this industrial development here.

Q. The Claremont district which you already have described?

A. Yes, that is right. Seeley Avenue Yard, 10 tracks, car capacity 250. That is up in the northwest corner of zone 2.

Q. Running generally from east to west?

A. Yes. Hermitage Avenue Yard, 9 tracks.

Q. Do you want to give the number of tracks and car capacities?

A. Yes, I said Seeley Avenue Yard, 10 tracks, car capacity 250; Hermitage Avenue Yard, 9 tracks, car capacity 200. Hermitage Avenue is down in the northeast corner of zone 2.

The northern group of these tracks in this section here is the Ashland Avenue north yard.

Q. That is zone 2?

A. All in zone 2. The Ashland Avenue north yard has 24 tracks with a car capacity of 700.

The Ashland Avenue south yard has 33 tracks with a car capacity of 1,125.

[fol. 306] The Damen Avenue Yard has 15 tracks with a car capacity of 550.

Then there is also the McKinley Park Industrial District, 12 industries with 34 private side tracks and the

Junction freight house No. 6 with ten tracks. That fronts on 39th Street or Pershing Road. That is right here.

The entire plant of Wilson & Company and the repair facilities of the Wilson Car Lines totaling 43 tracks. They are just south of our tracks and run from Ashland Avenue west to about what would be called Walcott Street, or Honore Street.

Q. That is probably shown as Lincoln on the map?

A. It is Lincoln on the map and it is not Walcott. The repair and yard facilities of the General American Transportation System, 21 tracks. There are up in this group here.

Exam. Diamondson: Just south of the Damen Yard?

The Witness: That is right, just south of the Damen Yard.

By Mr. Day:

Q. The facilities of the General American Transportation Company were also referred to here this morning. That did not refer to the location that you are mentioning now?

A. No.

Q. The location of the General American that was referred to this morning is probably the one that has been taken over by Swift & Company?

A. Down here.

[fol. 307] Q. East of Ashland Avenue?

A. Zone 3, east of Ashland Avenue.

Hoyne Avenue industrial district with 11 industries having 20 side tracks and the Junction base yard serving this district with 15 tracks. This is the Hoyne Avenue section in here and this is the yard facilities although I might say all of the lines are not there now because the yard has been more or less cut up.

Mr. Kaylor: Describe it, please. In zone 2?

The Witness: It is in zone 2.

Mr. Kaylor: And to the west and the tracks run north and south?

The Witness: That is right. This yard is also used as a base from which to serve five industries with 13 private side tracks, that lie between the south line of 47th Street

and the north line of 49th Street, and from Leavitt Street to Hoyne Avenue. That is this little group here which is pretty well defined by the names of the streets. Leavitt Street is at the bottom of zone 2.

By Mr. Day:

Q. That is around the bulge of the yellow at the south end of zone 2?

A. That is right.

Q. Is the Junction and River Road enginehouse and shop also located there?

A. Yes, this denotes the roundhouse and the shop facilities.

[fol. 308] Q. How many tracks there?

A. 20.

Q. Will you describe zone 3?

A. Zone 3. Within the area extending from 39th Street on the north to 47th Street on the south, Ashland Avenue on the west and Halsted Street on the east, comprising one square mile, are the three main tracks and auxiliary tracks described in connection with zone 2.

Q. They run generally from east to west?

A. Generally in and eastern direction.

Q. Toward the north end of zone 3?

A. Yes, right here in the center section. (Continuing)—which enter this zone at about 40th Street and Ashland Avenue and continue east with the auxiliary track extending only to Packers Avenue. That is this street here beyond the center in zone 3.

A second auxiliary track extending from Ashland Avenue to Loomis Street only; that is down to this first branch of tracks in the northwest corner of zone 3.

Exam. Diamondson: How many tracks do you have running from zone 2 to zone 3 at Ashland Avenue?

The Witness: There are seven tracks on the Ashland Avenue bridge but they converge to four tracks later.

Exam. Diamondson: So that you have what you might call a bottleneck there of four tracks between these two?

[fol. 309] The Witness: Yes, that is right. Three main or running tracks and this auxiliary lead track.

Exam. Diamondson: Three running tracks and an auxiliary lead track?

The Witness: Yes.

Mr. Kaylor: Have you summed up the number of tracks that you have for use for private sidings or use for these different number of cars in each of these yards? Can you tell me how many tracks you have in zone 2?

The Witness: Yes, I could add them as between yard tracks and private siding tracks.

Mr. Kaylor: Approximately how many are there?

The Witness: Yes, I will do that.

Mr. Kaylor: You gave the number of cars and the capacity of the tracks, didn't you?

The Witness: 14 at Oakley Avenue; 23 at Leavitt Street; which makes 37, and the Claremont Yard has five, which makes 42, and 22 side tracks, which makes 64.

Mr. Day: He will have described every track in each zone when he gets through.

Mr. Kaylor: I was wondering how many of all of those tracks you have to converge down to only four crossing there at Ashland Avenue?

The Witness: 331 tracks in zone 2.

Mr. Kaylor: That converge into the Ashland Avenue [fol. 310] section with the number of tracks there?

Exam. Diamondson: They do not all converge into the Ashland Avenue tracks. He has tracks down below there unless you want to call that converging.

Mr. Kaylor: Will you describe the Ashland Avenue district crossing?

Exam. Diamondson: Let us not get the record confused now. We want the number of tracks in the so-called Ashland Avenue Yard, whether you call it the north, south, or Damen Yard.

Mr. Day: He has stated those.

Exam. Diamondson: But that is not the actual number of tracks that he just stated were in zone 2.

Mr. Day: He has given all of that. That is what he understood Mr. Kaylor wanted, all of the tracks.

Exam. Diamondson: Yes.

Mr. Day: But he has listed separately all of the various tracks.

Exam. Diamondson: I would like to have the witness explain how he gets from the Ashland Avenue yard over into zone 3, the number of tracks, etc.

The Witness: To get from Ashland Avenue into zone 3 as a rule we use what is known as the auxiliary track called No. 5 lead. It joins the most southerly of the three running tracks which is No. 4. Beginning on the north your running tracks are number 2, 3 and 4. This auxiliary track known as No. 5 extends parallel with track No. 4 [fol. 311] in an easterly direction until it reaches Packers Avenue.

Exam. Diamondson: I understood you to say there were seven tracks across the viaduct at Ashland Avenue?

The Witness: There are seven tracks on the bridge itself, that is true, sir, and they converge shortly after they get east of the bridge into these four tracks.

Exam. Diamondson: The four tracks which you have been describing?

The Witness: That is right.

Mr. Kaylor: Are they still on the viaduct?

The Witness: No, they are east of the viaduct. I don't know if I have a map that is more explicit than this that can bring that out.

Exam. Diamondson: Off the record.

(Whereupon, the then following discussion was off the record.)

Exam. Diamondson: On the record.

The Witness: Livestock approaching from the west comes through the center of our three running tracks known as No. 3. The track to the north of it is No. 2, which is west bound and No. 3 is the east bound artery; No. 4, the third track on the south, is also a west bound track.

Exam. Diamondson: That is in the Ashland Yard?

The Witness: That is correct. Trains coming eastward to enter either our yard or continuing through to the [fol. 312] unloading facilities of the stockyard company in zone 3 run eastward on No. 3 running track over Ashland Avenue and continue on No. 3 eastward and if they are destined for the middle division they continue on 3; if they are destined to the south division they diverge onto

another track to get into this section or if they are going on the northern section, they will diverge onto track 2 and move in that direction.

Exam. Diamondson: Mr. Day, will you keep us straight on "this and that" direction? It is clear enough when he is pointing to the map, but it is not very clear on the record.

Mr. Day: Yes, I will do that.

By Mr. Day:

Q. The trend of the movement is almost directly east, all the way along the line from the time it enters Ashland Avenue Yard until it gets over to the unloading pen?

A. That is right, eastward.

Q. The direction is eastward?

A. That is right.

By Mr. Smith:

Q. Will you indicate where the Rock Island and the eastern lines of the Illinois Central come in there?

A. The Rock Island enters our tracks at approximately 40th and Wentworth Avenue in zone 4.

By Mr. Day:

Q. Toward the east end of zone 4?

A. Yes. The Illinois Central enters our track at Lake Park Avenue at the extreme end of zone 4.

[fol. 313] Q. Near Lake Michigan?

A. That is right.

By Mr. Smith:

Q. The Illinois Central, with reference to that part of its movement and the Rock Island, comes in from the east?

A. Yes, and the Illinois Central south, the southern division.

Q. May I ask another question there? You refer to these tracks that lead from zone 2 to zone 3. I think there are four tracks there that you refer to?

A. From zone 2 to zone 3?

Q. Yes.

A. Yes.

Q. And the map here, Exhibit 13, indicates that there is some structure immediately south of those tracks?

A. The plant of Wilson & Company.

Q. The plant of Wilson & Company?

A. Yes.

Q. It abuts those tracks, does it?

A. Yes.

Q. It abuts the south track?

A. Yes.

Q. Will you indicate your answers for the record?

A. There are other tracks coming in from the southwesterly direction.

[fol. 314] Q. No, I don't think you understood me. That building you referred to of Wilson & Company, which is immediately south of the four tracks,—that building abuts and is adjacent to the tracks?

A. That is right.

Q. And there appears to be some trackage immediately north of these connecting tracks? Is there some sort of a depot up there? North of the connecting tracks, what is the property up north here?

A. In this particular space there is a fill that is used by the City of Chicago in disposing of rubbish.

Q. That area is built up then through which these four connecting tracks run?

A. Oh, yes. There is just a small stretch there before we strike the Hermitage Avenue Yard which serves the north section of zone 2.

Mr. Kaylor: I think you should describe it as zone 2.

Mr. Smith: I agree with you on that and if I were derelict on that I will try to mend my ways hereafter.

Mr. Kaylor: I don't think you were clear.

Mr. Smith: Is it clear to the Examiner? I want the record to be clear if it is not clear.

Exam. Diamondson: It is clear to me. You may continue.

By Mr. Day:

Q. You were about to describe the second auxiliary track extending from Ashland to Loomis.

[fol. 315] A. A second auxiliary tract extends from Ashland Avenue to Loomis Street only, here, that starts almost at the eastern end of zone 2 and travels in an easterly direction into zone 3 to the first set of branch tracks that move to the south at Loomis Street. There are five double track branches described earlier in my testimony and the packinghouse properties of Armour & Company, Miller & Hart, Peer Packing Company, Reliable Packing Company, Roberts & Oake, Swift & Company and the establishments of Anglo-American Provision Company, Darling & Company, G. H. Hammond & Company, Libby, McNeill & Libby, also the Amour Car-lines Repair Yard, the General American Transportation System Repair Yard, the ten livestock chutes of the Union Stock Yard & Transit Company, served by 222 private side tracks; also the Junction's Loomis Street Yard with 25 tracks, capacity 550 cars, the Junction's 47th Street Yard with five tracks and 200 car capacity. That is on the other side of Racine Avenue.

By Mr. Day:

Q. Just east of the Loomis Street Yard?

A. Yes. And various other tracks assigned for the storage of empty stock cars for loading, together with several privately owned car storage yards. Armour has a private yard in here in which they store their cars.

Q. The west end?

A. All in zone 3. Swift has some storage tracks in zone 3 and then we have the Armour car shop.

[fol. 316] Exam. Diamondson: Describe it more definitely. Give the names of the streets. Where is the proposed plant that is under construction at the present time as stated by the complainant? Where is that located with reference to zone 3?

The Witness: The location, I can not say as to it being under construction. I have not seen any construction activity there, but its location is immediately east of Ashland Avenue in zone 3 and immediately south of our running tracks that lead from zone 2 into zone 3.

By Mr. Day:

Q. The photograph Exhibit No. 4 would indicated that it was just 100 or 200 feet from Ashland Avenue, wouldn't it?

A. That is right. It is shown on this map in this group of tracks here.

By Mr. Smith:

Q. Is there any visible evidence of that construction?

A. I have not noticed any, Mr. Smith, other than probably several months ago they were putting in a storage line along 41st Street. I don't know if that was for use in connection with this proposed facility or not.

Q. The Junction yard and storage track facilities in this zone also use it as a base for serving other industries?

A. They are used as a base from which to serve four industries with 26 private sidings which are located between the south line of 27th Street and the north line of 49th between Morgan and Halsted Streets. That is in the [fol. 317] extreme southeast corner of zone 3. Morgan Street on the west and Halsted and 47th and 49th Street here.

By Mr. Day:

Q. Will you define zone 4?

A. Zone 4 extends from Halsted Street on the west to Lake Park Avenue on the east, 39th Street on the north and Root Street on the south. Within this area are the three main running tracks extending from Zone 3 and 38 industries, including five meat packing plants with 67 private sidings, two Junction team tracks with five sidings, the Junction's freight station No. 3 with three sidings and the connections with the various railroads previously outlined in my testimony.

Q. Will you describe zone 5?

A. Zone 5 extends from Pershing Road, or 39th Street on the south to 31st Street on the north, Ashland Avenue on the west and Halsted Street on the east. That is pretty well defined.

Q. It is shown in brown on your Exhibit 13?

A. That is right. It is bisected by the south fork or the south branch of the Chicago River.

Q. How many industries are in this zone?

A. There are 102 industries with 103 private sidings, two Junction team tracks and three junction base yards with a capacity of 250 cars.

[fol. 318] The base yards are located approximately at 38th and Iron Street.

Q. Toward the south end of zone 5?

A. The second one at 31st and Cox Street.

Q. Near the north end of zone 5?

A. Yes, and the third one at 37th Street and Aberdeen, which is to the east.

Q. In the southeast quarter of zone 5?

A. That is right.

Q. Now, zones 1 to 5 are Chicago Junction Railroad zones?

A. That is right.

Q. What are the zones on the River Road?

A. Zone 6. This district lies west of the Pan Handle Railroad tracks and east of California Avenue and between the tracks of the Atchison, Topeka & Santa Fe Railway on the north and 35th Street on the south and in which are located six industries with 18 private sidings. The River Road uses the tracks of the Pan Handle Railroad, under a trackage agreement, to reach this district and the Pan Handle and River Road have joint switching rights therein.

Q. Proceed with the description of zone 7.

A. Zone 7. Kenwood Industrial District. This district extends from Western Avenue on the east to Central Park Avenue on the west——

Q. That is shown in the lower left hand corner of Exhibit 15?

[fol. 319] A. That is right. 47th Street on the north and 49th Street on the south, and located therein are 51 industries with 60 private sidings. The Indiana Harbor Belt Railroad has joint switching rights in this territory but the River Road performs the switching for the Indiana Harbor Belt Railroad Company.

South of the Grand Trunk Railway System tracks, from 49th Street to 51st Street, and from California Avenue to

Kedzie Avenue, there is an Indiana Harbor Belt Railroad Company industrial district containing 10 industries and one team track in which the River Road has joint rights but the Indiana Harbor Belt Railroad Company performs the switching for the River Road.

Q. That is the actual switching of the industries?

A. That is right.

Q. Describe zone 8.

A. Zone 8. The LeMoyne District. This district is located between Pulaski Road on the east and the Belt Railway of Chicago tracks on the west.

Q. That may be referred to as 48th Avenue? No, it is shown as Pulaski Road.

A. Pulaski Road on the east and the Belt Railway of Chicago tracks on the west, 38th Street on the north and 47th Street on the south, and at present has 12 industries with 12 sidings.

[fol. 320] The Indiana Harbor Belt Railroad Company also has joint switching rights in this district but the switching is performed by the River Road.

Q. Describe zone 9.

A. Zone 9. Elevator District. There are two industries in this zone, a grain elevator and a barge terminal having seven private sidings and a River Road supporting yard of five tracks. The River Road does the switching in this area and uses trackage rights over the Junction and the Atchison, Topeka and Santa Fe rails to reach this district.

The interchange yard facilities provided for the receipt and delivery of loaded and empty cars, other than livestock, from and to connecting lines, are: Receiving Yards: Ashland Avenue South Yard, 9 receiving tracks, capacity 420 cars.

Q. This Ashland Avenue yard is the south yard and it is shown in your Exhibit No. 14?

A. Yes.

Q. Will you describe Exhibit No. 14 showing the location of the Ashland Avenue south yard and the three main tracks through it?

A. The tracks marked 1102, 1103, and 1104 are the three main running tracks. The track marked 1105 is the auxiliary track that runs from Western Avenue to Packers

Avenue. The receiving tracks in this area are numbered consecutively one to nine.

[fol. 321] Q. These tracks numbered 1 to 9 are the receiving tracks in the Ashland Avenue south yard?

A. That is right.

Q. What are the other tracks shown adjoining the one you just described?

A. Tracks numbered from 10 to 29 inclusive and also tracks marked 1030, 1031, 1032, and 1033 are the classification tracks that adjoin the receiving yards.

By Mr. Smith:

Q. Those running tracks, is one of them for east bound and one for west bound or how is that as between directions?

A. The tracks marked 1102 and 1104 are for westward movements. The track marked 1103 is for eastward movement.

By Mr. Day:

Q. They are the tracks you referred to previously in your testimony as 2, 3 and 4?

A. That is right.

Q. Now, all of the tracks that you have just described, other than the three main tracks are part of the Ashland Avenue south yard?

A. Yes.

Q. Are there any other tracks in that yard in addition to those you mentioned?

A. Not in that yard, no, sir.

Q. Will you describe the location of the Ashland Avenue north yard?

[fol. 322] A. Well, this is going to run somewhat in reverse order, but commencing with 1101, followed by No. 148, 149, 150, 151, 152, 153, 154, 155, 156, and 157 and tracks R-145-A, 145-B, 145-C, 145-D, 145-E, 145-F, 145G, 145-H, 145-I, and 145-J are the tracks which comprise what we know as our Ashland Avenue north yard.

Q. How many of those are delivery tracks, that is tracks where you deliver freight to other railroads?

A. There are 23 tracks in the yard.

Q. 20 in the north yard?

A. Three receiving and 20 are for classification. All of those 20 are not necessarily or customarily used for delivery to connecting lines. We have some of our own, that is some that is handled through that yard. We also have two switching lines that we deliver to. The Indiana Harbor Belt and B. & O. C. & T. We also use it for delivery of empty equipment of the New York Central.

Q. But you do actually make delivery of cars there to certain western lines as well as to these switching lines you mentioned?

A. That is right, we do.

Q. Is the Loomis Street yard also shown on your map, Exhibit 14?

A. No, it is not.

Q. Is what you know as the Damen Avenue Yard indi-
[fol. 323] cated on Exhibit 14?

A. It is.

Q. Will you describe its location on the map and state what tracks are used for what purpose?

A. Immediately south of track 1033, which is the most southerly track in the Ashland Avenue Yard, tracks 30 to 42, inclusive. Those are known as the Damen Avenue Yard tracks. That yard is used considerably by Swift & Company or we use it, I might say, for the storage or standing of Swift & Company business or the General American Transportation Company and we make use of some of the northerly tracks on which to store cars, principally to relieve the Ashland Avenue classification yard.

By Mr. Smith:

Q. Mr. Kinsella, so the record will be straight on that, there has been a good many references here to Ashland Avenue yard. Is that entire yard consisting of what you technically refer to as the Damen Avenue Yard and the Ashland Avenue Yard and the North Yard all frequently referred to in the aggregate as the Ashland Avenue Yard?

A. Not in our business it is not.

Q. Not by you?

A. No, it is just as distinct as though it were A, B, C, and D.

Q. But as a physical matter, the North Avenue yard which consists of these 23 tracks is simply that part of this [fol. 324] whole layout that lies north of the running tracks?

A. Correct.

Q. And the Damen Avenue Yard consists of those tracks on the opposite side of the yard?

A. Opposite side of the Ashland Avenue South Yard.

Q. That is right?

A. Yes.

Mr. Kaylor: What period of time has that yard grown from to the present traffic?

A. I will have to quote somebody else up to a certain point. This Ashland Avenue facility was opened in about 1902, I understand, and that was before I came here. However, I have a track code record issued in 1909 and the Ashland Avenue Yard, both the receiving and classification and the Damen Avenue Yard are the same now as they were then.

Mr. Kaylor: In other words, the tracks are the same since 1902?

The Witness: They opened the yard in 1902. I can not say because I was not here, but our track code record issued in 1909 shows the same track numbers assigned and the same number of tracks as we have today.

Mr. Kaylor: They acquired these different names by reason of the street locations, is that it?

The Witness: It is convenient sometimes to distinguish yards by a different name as an indication for your crews. I might say to man, "Take that car to Ashland Avenue [fol. 325] Yard." He would be in a quandary which one I meant. If I told him Ashland Avenue South Yard he would know definitely where to go, or to Damen Avenue he would know where to go, and the same thing for Ashland Avenue North Yard.

By Mr. Day:

Q. Now, I don't know whether you described the tracks in the Ashland Avenue South Yard which are used for classification?

A. Starting with No. 10 and continuing in order down to track 29 and including from 1030 to 1033.

Q. Which tracks in the Ashland Avenue North Yard are used for classification purposes?

A. From 150 to 157 and from R-145 to R-145-J.

Q. Where is the Leavitt Street Yard with relation to the Ashland Avenue Yard?

A. It lies in a southwesterly direction.

Q. Will you point it out on Exhibit 14?

A. It is not complete.

Q. It is not shown completely in 14?

A. No, except the leads to it.

Q. The leads to it are shown at the lower left hand side of Exhibit 14, is that right?

A. That is right.

Q. What is the Leavitt Street Yard used for?

A. For the interchange of less carload freight.

[fol. 326] Q. How many tracks are there?

A. 23.

Q. How many of them are classification tracks?

A. 19.

Q. Four receiving?

A. Four receiving.

Q. What is their capacity?

A. Receiving tracks have a capacity of 150 cars and the classification tracks have a capacity of 500 cars.

Q. You say there are 19 classification tracks?

A. Yes.

Q. And they are assigned exclusively for the interchange of less carload freight?

A. That is the purpose, yes.

Q. As I understand it, all cars for handling by the Junction or the River Road crews to industries, team tracks or freight houses on those lines are cars to be moved in intermediate service from one railroad to another and it must be handled in the Ashland Avenue Yard?

A. That is right.

Mr. Smith: What is meant, Mr. Day, by the Ashland Avenue Yard as you and the witness are using it in that connection? The South Yard?

Mr. Day: The south Yard and the North Yard, is that right?

[fol. 327] The Witness: No, any freight received from our connections for the Junction or River industries or cars moving in intermediate service with the exception of less carload merchandise that I have just described is handled at Leavitt Street.

By Mr. Day:

Q. I was taking in both directions.

A. It must be delivered to us in the nine tracks in the Ashland Avenue South Yard marked Nos. 1 to 9.

By Mr. Smith:

Q. That is all of the inbound stuff of this entire area has to funnel through the nine tracks?

A. Yes.

Q. Which strictly constitutes the south yard?

A. Yes.

Mr. Rynder: Would you mind explaining why right there?

Mr. Day: Will you explain why the traffic must be handled, the inbound traffic must be handled through the South bound yard?

The Witness: It was to avoid a strike on the part of our employees in January of 1946. That was one of the conditions they insisted upon and that we agreed to.

By Mr. Day:

Q. Did you——

Mr. Rynder: I don't want to interrupt too long, but to say "because of a strike" does not explain very much.

Mr. Day: It was a matter of an agreement between the Chicago Junction and the River Road and its employees. Under that agreement the traffic from connecting lines must [fol. 328] be delivered to the Chicago Junction and the River Road in the Ashland Avenue South Yard and nowhere else. Is that correct?

The Witness: Yes.

Mr. Rynder: That is because the employees requested that?

Mr. Day: They made it a lot stronger than a request. They were on the verge of going out on a strike.

Mr. Rynder: I don't want to interrupt any farther at the moment. Pardon me.

By Mr. Day:

Q. The strike was imminent, wasn't it?

A. Yes.

Q. A matter of hours?

A. I got there about an hour and a half before the deadline at 9 o'clock and it was due to go at 10:30 and we got the word from La Salle Street at 10:05 p. m. that the strike had been called off.

Q. Now, Mr. Kinsella, Mr. Smith asked you about the handling of inbound. Is it also true that the outbound traffic must likewise be handled in the Ashland Avenue North Yard?

A. We are confined to the handling of outbound business in either what is known as the east bound yard, Loomis Street——

Q. That is near 47th and Loomis?

A. Yes, or in the Ashland Avenue North Yard that I have just described. In other words, any car we have to [fol. 329] return empty to a connection or a load must be interchanged in those particular yards and no place else.

Q. As I understand it, the Loomis Street Yard is used for delivery to eastern and southern lines?

A. Yes, generally, but there is one southern line in there, the Santa Fe.

Q. How many tracks in the Loomis Street Yard?

A. A total of 23. However, there are only 20 of them that are used for the handling of connecting line business and there are three tracks in that group that are for industrial business for industries in that section.

Q. What is the capacity of those 20 tracks?

A. 420 cars.

Q. Is there a classification performed there too?

A. We make I believe 16 separations there for the different roads. We also have some of our own business that

funnels through and is classified in that yard. For example, the business destined to western roads that take delivery in the Ashland Avenue North Yard facility moves down from the packinghouse territory and moves in there with the other cars and after they are separated and grouped on 108 track, they are hauled back into this Ashland Avenue North Yard for delivery to the Western lines.

Q. Approximately how many cars a year are handled by the Chicago Junction and the River Road of their own business?

[fol. 330] Mr. Rynder: Excuse me, Mr. Day, but you say of their own business?

Mr. Day: Yes, I want to make a distinction between their business and other business.

The Witness: The average for 1945, in the years 1945, '49 and '47, was 726,144 cars per year.

Mr. Kaylor: What year?

The Witness: 1945, '46 and '47.

By Mr. Day:

Q. I think you stated there are 24 classification tracks in the Ashland Avenue South Yard?

A. There are 24 tracks in the classification group, but we make——.

By Mr. Hamilton:

Q. Is that loads or loads and empties?

A. Total cars.

Q. Loads and empties?

A. Yes.

By Mr. Day:

Q. What is the capacity of the 24 classification tracks in the Ashland Avenue South Yard?

A. 680 cars.

Q. What is done with the cars after they are received on these receiving tracks in the South Ashland Avenue Yard?

A. After the delivery of cars in the receiving section of the South Yard has been made by connecting line crews

they are given an interchange inspection by car inspectors. After which yard clerks check the train and record the seal protection on loaded cars and apply side carding to all [fol. 331] cars in accordance with the data shown on a train consist furnished by the delivering line. This side carding gives the name and address of the consignee and is the sole guide of train crews in the subsequent handling of the cars to destination. Trains are then switched by break-up crews onto the adjoining classification tracks where eighteen groupings are made; 13 for Junction operating districts, three groupings for movement to the delivery yards, viz., Loomis Street Yard, Leavitt Street Yard and Ashland Avenue North Yard, one grouping for Oakley Avenue Yard (River Road industrial cars), and one grouping for cars destined to Illinois Northern Railroad.

By Mr. Day:

Q. Proceed.

A. At frequent intervals trains are hauled from these classification tracks into the various operating districts and other yards, and upon arrival in the base yards, in these several operating districts, they are reclassified for convenient handling to the industries to whom consigned, for example, in the Halsted Street Yard, shown on the map as zone 4, ten separations are made and at the State Line District, shown on the map as zone 5, ten separations are made. Likewise, River Road industrial cars are moved to Oakley Avenue Yard where eight separations are made.

Q. What is the situation in the reverse direction?

A. In the reverse movement cars are removed from industries or team tracks and assembled for movement to [fol. 332] the delivering yards and reclassified on tracks that have been assigned to each of the trunk lines or switching lines with whom we have connections.

Q. How many locomotives or Diesels are operated by the Junction and the River Road?

A. The Junction and River Road operate 47 locomotives; 35 steam and 12 Diesel electric. Of the steam locomotives ten are 6 wheel switchers weighing seventy-four tons. 14 are six wheel switchers weighing 82 tons. 11 are eight

wheel switchers weighing 100 tons, and 12 Diesel electrics weighing 100 tons.

I differentiate between the steam power, the steam engines for the reason that 11 are eight wheel switch eneinges weighing 110 tons. Those are our large type of switch engines that do not lend themselves readily to doing industrial work. They are too heavy in many instances for light rails and they are 15 feet wheel base engines and that is too great for certain curvatures of the track. Further, they overhang on the front end and will not clear side obstructions in some of the industrial tracks and so we use those generally for hauling trains between our own yards where we know they can operate safely.

Q. Will you describe the stockyard district?

A. The stockyards district is a very congested area; it is closely built up and a highly developed industrial terri- [fol. 333] tory. This concentration is best portrayed by stating that in zones 2 and 3, an area of two square miles, are located our four receiving and delivery yards, that is the Loomis Street Yard foreign traffic; our Ashland Avenue South Yard for receipt of cars; our Ashland Avenue North Yard in zone 2 for western business; and our Leavitt Street Yard also in zone 2 for l. c. l. freight. Also nine of the 13 base yards maintained in the various districts for the handling of business or putting it another way, approximately 95 per cent of our total yard car capacity is in those two zones, with the exception of three small ones in zone 5.

Q. In other words, about 95 per cent of your total yard capacity is in zones 2 and 3?

A. That is right.

I know of no other place where we find so many foreign crews moving over the tracks of any other company. In a test period December 1, to December 7, 1947, inclusive, there were 1,171 foreign crews moving on our tracks, or an average of 167 crews per day and the average time spent on our rails during this period was three hours and 12 minutes per crew. There are no restrictions by the Junction and River Road in any way limiting or fixing the time at which connecting lines may deliver freight in the receiving yard facilities and they are privileged to inter-

change cars as best fits their operation or to meet service
[fol. 334] requirements—so that there are movements at all hours of the day or night by foreign crews over these properties in the delivery of freight to our receiving yards, or livestock to the unloading platforms of the Union Stock Yard & Transit Company, or the use of our tracks as a bridge for movement of cars between the lines in the Chicago Terminal.

I want to further say, of course, that we reserve the right and privilege and sometimes do under certain conditions, limit the delivery of freight by our connections:

We may suffer a tie-up or slowdown because of storms or weather interference and we generally try to get them to confine their deliveries as far as possible under those conditions to perishable livestock. I know of no case in the time that I have been in the operating department have we ever notified any road that it could not deliver livestock. We may call a man and say that we heard he had so many cars and tell him that we were going to be delayed four or five hours and if he can utilize those four or five hours to advantage, he could start at 2 p. m., instead of, say, 10 a. m. However, there are no written instructions prohibiting them from coming on our right-of-way at any time that they elect.

Q. Are these foreign crew movements spread out evenly through the day?

A. They are not. These foreign crew movements are not spread evenly through a 24 hour period and presum-
[fol. 335] ably due to similarity in their schedules on business moving into Chicago, it was found that in the test period the deliveries to our receiving yards and to the unloading platforms of the Union Stock Yard & Transit Company totaled 565, of which 172 or 30.4 per cent were made between 3 a. m. and 9 a. m. and 94 deliveries, or 16.6 per cent between the hours of 9:01 a. m. and 11:59 a. m. so that one 9 hour period accounted for 47 per cent of these movements, further, foreign crews moved 454 trains from the three delivering yards; viz., 273 trains from Loomis Street, 113 trains from Ashland Avenue North Yard and 68 trains from Leavitt Street Yard.

Q. Will you explain how livestock is handled today in the stockyards?

A. I will explain how livestock is handled today in the stockyards and how it would have to be handled if cars were to be afforded private track delivery. Today, the trains are hauled by the engines of the trunk lines direct to the unloading platforms of the Union Stock Yards & Transit Company; the crews and engines remain with the trains, and after the cars are unloaded they are moved empty to the trunk line terminals and our receiving and delivery yards are not burdened with this traffic. That method has been in existence ever since the Stock Yards were constructed, in 1865 or 1866—about 82 years. If the proposed method were employed it would mean conditions [fol. 336] I will have to visualize, it never actually having occurred. It would mean, no doubt, the separation, the switching out, of these particular cars of livestock, from other livestock, in the Chicago terminals of the trunk line carriers, and their grouping with other freight in a convenient place in the train for set-off at the Ashland Avenue South Yard, whereas, no separation is now required on live stock destined for delivery to the unloading platforms of the Union Stock Yard & Transit Company.

At present, the majority of these stock runs handle nothing but livestock and move directly into the unloading facilities as rapidly as traffic conditions permit and this makes for a much more prompt delivery than if required to stop at the Ashland Avenue South Yard to make the set-off. So that following set-offs by the various railroads, if they contained livestock, immediate inspection and car carding would have to be given and engines and crews would have to be available to move into any or several of the receiving tracks, pull out the deliveries and segregate the livestock.

This would be a somewhat slow process because livestock is not shunted, by that I mean cars are not uncoupled while in motion but are pushed to the desired point and then uncoupled from the balance of the cars. After the livestock has been segregated the other freight would be returned to the receiving yard for subsequent handling by break-up crews, of course, while Junction engines would [fol. 337] be using the receiving yard leads to accomplish this, there could be no use made of them by other foreign

line crews waiting to make a set-off and this would be fruitful of delay because when a train stops on one of our main tracks necessarily, any following trains would also have to stop and further these movements would interrupt our classification of other freight and tend to create chaotic conditions that could only impair the service now given it.

After segregating live stock from other freight, it would be necessary to further block the cars for the various consignees and presumably in some instances a further blocking by species as I foresee a division of the facilities for the handling of hogs and sheep on one hand and cattle and calves on the other.

After all of the preparatory handling, as hereinbefore described, the delivery of this live stock to the various consignees would require special engine assignments to move it through the various districts to the plants and by removing such cars as may interfere, place the car or cars at the unloading platform or chute designated for that species of stock, if there were more cars than the facility would accom-odate at one time, the engine would have to remain there and make such switches as were necessary and then remove the empties and haul them to the delivery yard so as to free the unloading track for later [fol. 338] arrivals, as well as free the locality of these empty cars to avoid congestion.

With the delivery of livestock at all hours from so many roads, for any or all consignees it would be very difficult to handle livestock in the special movements just described, and very expensive as well.

Q. Now, if the Chicago Junction were required to perform a delivery of livestock they would also have to take care of the handling of the empties in the reverse direction and see to it that it got to the interchange with the western lines?

A. Right. It would either have to move to the Ashland Avenue Northward for the majority of the western lines or to the Loomis Street Yard for the Santa Fe plus the eastern and southern lines.

Q. After a car is now placed at the unloading chutes of the Union Stock Yards & Transit Company, how long does it take to unload a car?

A. I would say on an average of four to five minutes. By that I mean you might have one car that will take 30 minutes, but you might have 10 cars that you might get through in an average of three minutes. However, on the whole I would say about four or five minutes per car.

Q. The empty cars are then immediately taken away by the western railroads that bring the stock into the unloading chutes of the Union Stock Yards Company?

[fol. 339] A. Yes, after the foreign line crew has pulled into one of these unloading platforms and spotted the cars where they are needed for unloading, it is their practice to cut off the engine and run around the train and couple onto the other end so that when they are unloaded, they can reverse their movement over the route they enter.

Q. So that that assures immediate return of the empties to points of loading?

A. That is right.

Q. Did you make a study to determine during the period from December 1 to 7, 1947, the actual time taken by the Chicago Junction in which to make deliveries of perishable freight?

A. I did.

Q. How long did it take from the time that perishables were received from connecting carriers to delivery at industries on the Chicago Junction?

A. The elapsed time from the receipt in the Ashland Avenue Yard to the actual or constructive place was 23 hours and 30 minutes on 511 cars.

Q. What was the average time consumed for delivery of dead freight?

A. 31 hours and 48 minutes.

Mr. Knudson: Does your *firm* "perishable freight" include livestock?

Mr. Day: No, sir. Mr. Knudson, the Chicago Junction does not handle livestock and it has never held itself out [fol. 340] to handle livestock. When we refer to perishables, we refer to meats and butter, eggs and poultry.

By Mr. Smith:

Q. Is that the same freight that was referred to yesterday by Mr. Tally?

A. A part of it.

Q. He referred to their efforts to get very rapid delivery on fresh meats and perishable traffic of that kind. Is that the traffic during this test period that took you 23 hours and something to deliver?

A. A part of it, and there were other perishables as we classify it, such as fruits and vegetables and things of that kind.

Q. All of the fresh meat that came in that week was in that grouping?

A. Yes, in that grouping.

By Mr. Day:

Q. Mr. Kinsella, the time consumed for handling perishables and dead freight which you gave does not take into account the time that it took for release of the cars by the industries?

A. No, it does not.

Q. Nor, the movement of the empties to the line haul railroad?

A. No, sir, nor did it include the time spent in placing the cars at the industry siding after a constructive place-[fol. 341] ment notice had been given.

Mr. Day: I would like to offer into evidence at this time Exhibits 13 and 14.

Exam. Diamondson: Any objection?

Mr. Rynder: No.

Exam. Diamondson: They will be received in evidence.

(Exhibits Nos. 13 and 14, Witness Kinsella, received in evidence.)

Mr. Kaylor: They will be received in evidence by the Illinois Commerce Commission too.

Exam. Diamondson: We will adjourn at this time until tomorrow morning at 9:30 o'clock, a. m.

(Whereupon, at 5:00 o'clock, p. m., an adjournment was taken until 9:30 a. m., Thursday, February 26, 1948.)

[fols. 342-343] Thursday February 26, 1948

Met, pursuant to adjournment, at 9:30 o'clock A. M.

APPEARANCES:

Same as hereinbefore noted and the following additiona appearance:

J. E. FLANSBURG, 400 West Madison Street, Chicago Illinois, appearing for Chicago & Northwestern Railwa System.

[fol. 344] PROCEEDINGS

Exam. Diamondson: The hearing will please come t order.

[fol. 345] JAMES J. KINSELLA resumed the stand and te tified further as follows:

Direct examination (continued).

Mr. Day: I have just one other map I want to cover wit the witness. I wonder if we may have this photograp marked for identification. It will be dealt with in deta by a later witness, but I would like to have Mr. Kinsel refer to it to point out certain operations.

Exam. Diamondson: The aerial photograph will be ide tified as exhibit No. 15.

(Exhibit No. 15, Witness Kinsella, marked for identi cation.)

Exam. Diamondson: You may proceed, Mr. Day.

By Mr. Day:

Q. Mr. Kinsella, on the photograph identified as exhi 15 will you trace the course of a car of livestock comi from some typical western road. Say, take the North We ern Railroad, for example, and show how that would handled from the time it comes onto the Chicago Juncti [fol. 346] rails.

A. At present, of course, this photograph does not sh where the Northwestern enters on our rails, but that approximately 14th Street. So they move due south.

Q. But on the photograph the stock would come in at the extreme upper right hand corner?

A. That is right.

Q. And proceed in a southerly direction?

A. Southerly direction until it reached 39th Street or Pershing Road.

Q. Approximately two blocks. That is, so far as the photograph is concerned that indicates about a two block movement.

A. Two block movement, from 37th to 39th. We would then proceed eastward on Number 3 main and continue eastward on to Ashland Avenue.

Exam. Diamondson: What rails would it pass over in the Ashland Avenue yard?

The Witness: Number 3 main. That is our eastward running track. We use that track from the connection at 39th Street to Ashland Avenue.

By Mr. Day:

Q. This is North Western power all the way from 14th Street?

A. That is right. It moves directly east on Number 3 main through and across Ashland Avenue, thence in an easterly direction and then is assigned to enter either one [fol. 347] of these chute divisions.

Q. As shown in the lower center part?

A. In the lower center portion. And after the car is unloaded the same North Western engine makes a reverse movement, retraces the same general route except that it would be on Number 2 or Number 4 main running track there westward and proceed in the reverse movement back to its own line at 14th Street.

Q. With the cars made empty on the load movement?

A. That is right. They are unloaded in this unloading section.

Q. That is the unloading chutes?

A. That is right.

Q. The North Western engine and crew would wait right at the chutes until the car is unloaded and then pull the empty back?

A. That is correct.

Mr. Day: Is that clear?

Exam. Diamondson: The line-haul engine, of course, would unhook at the unloading chutes and pass the train and hook onto the other end and pull the train of empties out, is that correct?

The Witness: That is right. It makes what is termed a runaround movement.

By Mr. Day:

Q. At these unloading chutes at the stock yards,—and there are quite a number of them,—you say the North [fol. 348] Western crew is assigned a certain spot or place at those unloading chutes that it can use?

A. Correct, certain chutes. These chutes are numbered.

Q. Do they vary from crew to crew?

A. Oh, entirely at the direction of the Yards Company as to where they are best able to handle the livestock at one of these unloading platforms.

Q. For the record will you identify by number each one of these chutes, unloading chutes?

A. The chute on the north is Number 1. The one to the east is Number 2.

Q. That is, they adjoin, is that right?

A. That is right, there are track connections and they are arranged so that you can entire either one of the chutes or the other.

Q. There is Number 2 on the north side?

A. Yes. In the central section the most easterly platform is known as Number 4 and the westerly platform is Number 3. Due south of our 3 running tracks the first chute to the west is Number 5, the one lying immediately east of it is Number 6 and then we move into what we call the south division. The westerly one is chute Number 7, the easterly one is Number 8. To the south there is another set of chutes. The westerly one is Number 9 and the easterly one is Number 10.

Q. And you have stated the car capacity of all those [fol. 349] chutes, have you not?

A. 350 cars is what we rate them for.

Q. And as I understand it a car of livestock from the North Western might be placed at any one of those chutes?

A. Correct.

Q. And if it happened to be a car of livestock from the Milwaukee it would be treated the same way?

A. All livestock is handled into the different platforms or chutes in accordance with the instructions received by the train director from the Stock Yards Company.

Q. Now, will you follow the course of a car of dead freight coming from the North Western consigned to an industry on the Chicago Junction.

Exam. Diamondson: Consigned to Swift & Company.

Mr. Day: Consigned to Swift & Company. Swift's beef house, would that be a good one?

A. There isn't much change there.

Q. Take a typical delivery point at Swift.

A. The North Western engine handling the car of dead freight would travel over the same route that I have just described in connection with the handling of the stock car.

Q. With North Western power?

A. With North Western power. They would move on Number 3 running track to approximately Ashland Avenue.

Q. That is the east end?

[fol. 350] A. That is the east end.

Q. East end of the Ashland Avenue yards?

A. East end of the Ashland Avenue yards, correct. And then make a back-up movement and put that car in on one of the nine receiving tracks. Subsequently it would be classified.

Q. Now, wait a minute. Does the North Western engine and crew leave the car there?

A. Right. They deliver it there and go on their way.

Q. Then what happens to the car?

A. In the due course of time our crews will classify that car onto a classification track in the Ashland Avenue south yard or track Number 19, which is assigned for the classification of loaded cars consigned to Swift & Company. Later, or when required, an engine assigned to handle the Swift & Company business in what is known as the Damen Avenue yards will remove that car from track 19 and put it on one of the Damen Avenue yard tracks. Later when it is desired that the car be set at a given house——

Exam. Diamondson: You mean that car is held there until instructions are received from Swift & Company where to set it in?

The Witness: Yes, sir. Later they will make up a cut of cars for the particular section that this car is destined to and after they have done that it will be moved on yard tracks in a general easterly direction until it gets to a set of branch tracks.

[fol. 351] Q. East of Ashland Avenue?

A. East of Ashland Avenue and then moves on these branch tracks.

Q. To the south?

A. To the south to reach the plant building at which it is to be placed.

Q. Now, it depends on which plant of Swift & Company it is as to which track it turns south on, does it not?

A. That is true.

Q. It might be the first track east of Ashland or it might be the second?

A. Or the second set or the third set, depending on where in their plant the car is destined to be spotted.

Q. Mr. Kinsella, of course the dead freight would have, presumably, forty-eight hours free time after the first 7 A. M.?

A. That is my understanding.

Q. And the car would finally be made empty on the industry track anyway?

A. Yes.

Q. What happens then?

A. After the car has been loaded it would be removed and sent in a southerly direction in the vicinity or into the Loomis Street yard.

Q. That is shown at the west end of the photograph, pretty much to the center?

A. In the center.

[fol. 352] Q. And it is near 47th Street?

A. That is right. If the car were of eastern line ownership it would be delivered onto a track in this particular yard.

Q. In the Locmis Street yard?

A. In the Loomis Street yard. If it were delivered to

a western line it would have to be grouped in this Loomis Street yard with other cars for Western lines and then hauled eastwardly to about Peoria Street and circle back through this same route.

Q. What is the northerly route that you have been referring to?

A. That is commonly known as the "Back-Way", which lies just immediately east of Racine Avenue. We move them in a northerly direction then until we come to the junction with the tracks leading westward, proceed westward on one of these tracks, cross the running tracks 2, 3 and 4 and enter into what is known as the Ashland Avenue north yard and subsequently it would be switched onto the classification track assigned to the owner of the car.

Q. That is, the Chicago Junction would classify it?

A. We would classify it, yes, sir.

Q. And place it on the track where the western line will take delivery of it?

A. Subsequently at stated intervals or agreed intervals the North Western engine will come into this Ashland Avenue north yard and remove such cars as have been [fol. 353] classified for that line and then retrace the same route that was used in reaching the stock yards.

Q. That is, leaving the portion of the Chicago Junction track shown on the photograph at the extreme upper right hand corner?

A. Yes.

Q. I see.

Exam. Diamondson: Now, that is all based on the assumption that the car made empty is not sent out loaded.

Mr. Day: Yes, that is true.

Exam. Diamondson: I just what to ask the question. All that switching after the car is made empty is hauled by Chicago Junction power?

The Witness: Yes, sir.

Exam. Diamondson: Now, can you give us an illustration, Mr. Day, draw out an illustration as to the movement from Loomis Street yard?

Mr. Day: Of livestock?

Exam. Diamondson: Of livestock.

Mr. Day: That is, outbound livestock.

Exam. Diamondson: There is no inbound livestock through the Loomis Street yard.

Mr. Day: No. That is placed by the eastern lines or by the Rock Island, is that right?

[fol. 354] Mr. Smith: You might trace the handling of empties through the Loomis yard.

Mr. Day: May I first explain or have Mr. Kinsella explain if the Rock Island and the eastern lines come in from a different direction?

A. Absolutely.

Q. And the Illinois Central?

A. And the Illinois Central south.

Q. South, yes. Now, just so far as the photograph will permit describe how that stock would come into the area shown on the photograph.

A. The Illinois Central south would enter onto our tracks at 40th Street and Lake Park Avenue and move on one of the running tracks in a generally westerly direction. Upon reaching a point called Union Avenue, which is two blocks east of Halsted Street, instructions would be given by the train director to switchtenders as to which of these three unloading divisions this stock was to be unloaded at and he would route it either into this north division, let it continue to the central division, or divert it into the south division.

After the car or cars have been unloaded, the Illinois Central engine would detach himself and run around this train of cars and couple the engine to the east end of the train and then retrace his route eastwardly to the connection with his own railroad at 40th Street and Lake Park [fol. 355] Avenue.

Q. The street farthest east shown on this map would be about Halsted Street, wouldn't it?

A. Halsted Street, that is correct.

Mr. Day: Racine Avenue was mentioned a few minutes ago, Mr. Examiner. It might be well to say that it is midway between Ashland and Halsted, a half a mile in between.

The Witness: Yes.

Q. Now, the Rock Island also would operate in the same manner as the Illinois Central, so far as this photograph is concerned?

A. That is correct.

Exam. Diamondson: Do they have trackage rights over the Illinois Central? Who owns those tracks?

Mr. Day: The Chicago Junction.

Exam. Diamondson: You mean the Chicago Junction owns the track shown below?

Mr. Day: Yes, and for several miles east of there.

The Witness: Yes.

Mr. Day: They own it all the way east to the lake front. That is where it joins the Illinois Central. The Illinois Central, as you know, runs along the lake out of Chicago.

Would anybody like to have a car of dead freight traced from the Rock Island or Illinois Central?

Mr. Smith: Yes.

[fol. 356] By Mr. Day:

Q. Would you explain how a car of dead freight would be handled from the Rock Island to Swift & Company, or from the Illinois Central to Swift & Company?

A. Which shall I take now? Do you want the Rock Island or the I. C.?

Q. The only difference is that you get the Illinois Central a little farther east?

A. Correct.

Q. All right, take the Rock Island.

A. The Rock Island would enter on our tracks at approximately 40th Street and Wentworth Avenue and move in a westerly direction through the middle division operating on running track Number 4, proceed in a generally westerly direction on Number 4 running track to the west end of the Ashland Avenue south yard and then dispose of its cut of cars by pushing them in along the nine receiving tracks in that yard. Subsequently our break-up engine would classify that car under this same track Number 19 in the Ashland Avenue classification yard.

Q. And from that point on the handling would be identical?

A. Identical with that of the car received from the North Western.

Q. Will you explain how a car would be handled under the arrangement proposed by the complainant here? Take a car from the North Western, a car of livestock from the North Western going to the proposed facility of Swift &
[fol. 357] Company.

A. The North Western would follow the same route as has been previously described in the handling of livestock to the Yards Company facilities, until he reached the east end of the Ashland Avenue yard at about Ashland Avenue. The car would then be pushed into one of the nine receiving tracks. Subsequently that would be pulled eastward out of this yard, or possibly out of the classification yard that adjoins it, and move in a generally——

Q. Now, wait a minute. You have got into the Ashland Avenue south yard with North Western power.

A. Right. Up to that point we haven't handled it.

Q. Then they cut off and leave the car there?

A. Then they cut off and leave the car there.

Q. And you take over from there, do you?

A. Yes, sir.

Q. And what do you do with it?

A. Well, then we couple an engine to it and move it in a generally eastward direction to a point east of Ashland Avenue.

Q. Don't you classify it first?

A. Well, I say it would be moved to the classification.

Q. The North Western, as I understand it, have placed it on the delivery track.

A. That is true.

[fol. 358] Q. Don't you do something with it?

A. The train would be classified, that is true, and put into this classification yard on some unknown track. We have none assigned to that at present. Then one of the Junction engines would couple to it and move it in a generally eastwardly direction.

Q. Let me understand you. This Junction engine would also have made the classification?

A. We must classify all cars. Nobody is allowed to work in that yard but our crews.

Mr. Smith: I would like to inquire whether that explanation is on the assumption this is the only car in the Ashland Avenue yard or on the assumption there might be another car in the yard at the time?

The Witness: The question was to trace a movement of stock. That is what I was trying to do.

Exam. Diamondson: Go ahead.

The Witness: It could be one or several. We would move in an easterly direction on one of the adjoining auxiliary tracks, that is, adjoining the main running tracks, and at about Loomis Street cut off the engine, reverse the engine movement light past this car and by means of a switch get in on the west end of it. We would then pull westward across certain lead tracks until we got over a switch just on top of the Ashland Avenue viaduct at 40th Street and then it would be pushed into this location just south of our [fol. 359] tracks, where I understand is the proposed location of the livestock facility.

By Mr. Day:

Q. Mr. Kinsella, I wonder if you haven't been too brief in your explanation of this service in the south Ashland Avenue yard. As I understand, you get the car from the North Western Railroad and then you classify it. Now, what does that involve,—just changing it from the delivery track to another track or is there more to it than that?

A. Well, on livestock I would say there would be. We can't shunt livestock in the same manner as we would dead freight or empties. By that I mean we would not uncouple it while in motion. It would have to be pushed to a spot at rest and then subsequently handled by an engine to this facility. The other cars——

Q. Wouldn't that involve placing it on another track?

A. Oh, yes. I couldn't mix it with our regular classification, at least I wouldn't intend to, because I don't believe it is good practice to mix up livestock with dead freight.

Q. If there were cars for Armour and Russell and Agar and Wilson and some others there, would that require the use of more than one classification track?

A. Oh, certainly so. The different packing plants are located in seven operating districts and we have five of the smaller packers in the Halsted Street district, which [fol. 360] I believe on the map was Zone 4.

I would in a break-up, if I had livestock for two or more of the small packers, group it for each consignee somewhere in this vicinity where it is received, so that when the crew moved to the unloading district or to the Halsted Street district a set of cars for unloading I wouldn't have to go through the switching process again to separate cars for one consignee from those for another.

By Exam. Diamondson:

Q. None of these line haul trains coming into the Ashland Avenue yard with livestock make a direct delivery to any packer in that section except to the Union Stock Yards, is that right?

A. Right.

Q. And the Chicago Junction does not handle any livestock at all?

A. None inbound, no, sir.

Q. Inbound. Now, where do these other packers have to take their delivery under those circumstances of livestock?

A. At these unloading facilities of the Stock Yards Company.

By Mr. Day:

Q. Have you given any consideration to the amount of time the Chicago Junction would require to perform the handling of livestock from your South Ashland Avenue yard for delivery to industries on your railroad?

A. Never having had to do it before I have given considerable thought to the method that we would have to employ in its handling and the different districts through [fol. 361] which we would have to operate to reach those facilities. Also involved in there would be the factor of the size of the facility furnished by the consignee. By that I mean that if some small industry had a two car spot for unloading livestock and six cars were received in one or more trains, six cars total in one or more trains in the

Ashland Avenue yard, I would naturally expect that we would have to handle that in that six car cut to the industry unloading facility.

Q. Well, you have given consideration to all of the possibilities that arise by virtue of having the handling of this livestock thrust on you?

A. Yes.

Q. And what amount of time do you estimate that you would require to perform that service?

A. My best judgment is we would within an eight hour free time.

Q. Bearing in mind the provisions of the 28 hour law and all other considerations?

A. Yes, sir.

Q. In your opinion, in the event such a movement were required would it result in delay to the handling of stock for the Union Stock Yard & Transit Company unloading facilities?

A. Yes, to the extent that the trains,—and I think they have been referred to as consolidated trains,—would have livestock set off at our Ashland Avenue south yard and [fol. 362] also have in that same train livestock for the Yard Company's facilities, it certainly would add to the congestion at Ashland Avenue and delay us in making the set out and following that the movement into the Stock Yards Company platforms or chutes.

Q. Would you say that if this additional service were thrust on the Chicago Junction it would increase the congestion on the Chicago Junction?

A. Very much.

Q. Are your yards and facilities taxed to capacity at the present time?

A. They are running bank full. We just have all we can do to master what we have to handle now.

Exam. Diamondson: How many running tracks would you use across that viaduct in order to make the delivery to the proposed point?

Mr. Day: That is, at Ashland Avenue?

Exam. Diamondson: Yes.

The Witness: None of the main running tracks. The route of movement would generally be through one of these

auxiliary tracks known as Number 5 lead on the eastward movement. In the reverse movement the light engine would have to make what we call the Number 6 route.

Exam. Diamondson: Would that interfere with the line-haul carrier's bringing in their trainloads of livestock [fol. 363] to the stock yards?

The Witness: In some instances, sir, it would. Trains going into what we call the south division of the Yards Company cannot reach the chutes called Numbers 9 and 10 without using this Number 5 lead.

Exam. Diamondson: So you both have to use the same lead?

The Witness: Yes, sir.

Mr. Day: There may be some more in the nature of direct. Do you have some questions?

Mr. Smith: I have some questions, yes.

By Mr. Smith:

Q. Mr. Kinsella, you testified that in the period studied by you 63 per cent of all the trains coming into the Ashland Avenue yard with livestock made direct deliveries of that livestock to the yard because those trains, the 63 per cent, consisted only of livestock, is that correct?

A. Yes, sir.

Q. And 37 per cent were consolidated trains that carried both livestock for the Yards and some dead or perishable freight for Ashland Avenue?

A. That is true.

Q. In your judgment was that a representative period so that it fairly depicts the situation that you have down at the yard in that regard?

A. I believe it is.

[fol. 364] Q. Now, you have pointed out to the Examiner what the operation would be on the North Western, for example, bringing in livestock to the chutes and sidings of the Union Stock Yards. Let us refer first to one of the 37 per cent of the trains that would handle both dead freight or perishable to the Ashland Avenue yard and some livestock. I think you stated that the North Western would come in from the west into the Ashland Avenue yard. Is that correct?

A. Correct.

Q. And you stated that before setting out in Ashland Avenue that North Western train would go clear through the Ashland Avenue yard. Is that correct?

A. It would go adjoining the Ashland Avenue yard, on the three running tracks.

Q. Well, you call it adjoining the Ashland Avenue yard. It would proceed east on one of those running tracks which separate what you call Ashland Avenue yard, or the south yard from the north yard?

A. Yes, sir.

Q. To the layman who would look at that yard it is just a lot of tracks, but you call it by these different names, is that it?

A. That is true.

Q. The north and south yard are separated by how many running tracks?

[fol. 365] A. Three.

Exam. Diamondson: What are they designated?

The Witness: Number 2 is the most northerly track, assigned to westbound movements. Number 3 the center track, assigned for eastward movements; and Number 4, the most southerly, is for westbound movements.

Mr. Day: Mr. Examiner, so there won't be any confusion about it, you recall yesterday when the witness was testifying to exhibit 14 he described those same tracks by the numbers shown on the chart, which was 1102, 1103 and 1104, was it not?

The Witness: 1102 is Number 2 main track; 1103 is Number 3 main track; and 1104 is Number 4 main track.

By Mr. Smith:

Q. All right. You just have one eastbound running track through Ashland Avenue?

A. Yes, sir.

Q. Or, if you please, separating what is technically known as the Ashland Avenue track from the north track.

A. Yes, sir.

Q. And every train that comes in from the west going east operates over that single track which you call running track Number 3?

A. Yes, sir.

Q. Now I am talking about a train that has some dead freight or perishables for the Ashland Avenue yard and which under the new arrangement, or under the existing [fol. 366] arrangement, because you say some of them have livestock,—a train which carries both dead freight and livestock. Now, you have testified that that North Western train will run straight through on this running track Number 3 until it has got to a point east of the Ashland Avenue yard.

A. Yes, sir.

Q. Now, if that train has some dead freight then for Ashland Avenue, where is that placed in the train with reference to the location of the engine?

A. On the head end, behind the engine.

Q. And where would these stock cars be?

A. On the rear end, ahead of the caboose.

Q. Now, does the crew cut off the engine and the dead freight from the livestock?

A. Yes, sir.

Q. That is, it separate the train which is back of the dead freight and which is in front of the livestock?

A. That is correct.

Q. And where is the train at that moment?

A. On Number 3 main track.

Q. Can any other train from the west get through that yard at that time?

A. No, sir.

Q. There are other roads which bring in traffic from the [fol. 367] west, are there not?

A. Any number of them.

Q. Well, how many of them approximately? Well, you have testified to that, I think.

A. Eight, I think.

Q. About eight?

A. Yes.

Q. So that so long as that train has stopped there your running tracks are choked as far as any further eastbound movement is concerned?

A. That is true.

Q. Why is it that that train when it wants to make a

delivery into Ashland Avenue has to pull clear through Ashland Avenue,—and I am using that term in a broad sense now,—has pulled clear through Ashland Avenue and stops on the east side of it?

A. That is the logical and natural way to handle it.

Exam. Diamondson: Does the length of the train have anything to do with it?

The Witness: In some instances but not in a consolidated train it would not.

By Mr. Smith:

Q. They handle them all that way, do they?

A. The only time that a train arriving from the west might come into the Ashland Avenue receiving yard section is when they had what we term a heavy train or a full track of cars and it would be advantageous and prac-
[fol. 368] tical then to divert him into the yard proper.

Q. What is the operation, will you state that, please?

A. 99 per cent is all set out from the east end of the yard.

Q. What happens to this livestock that is destined for the Union Stock Yards while this North Western crew moves that dead freight into Ashland Avenue?

A. It remains standing on the running track.

Q. It blocks the only eastbound entrance to the yard, does it?

A. That is right.

Q. Well, now, if it were necessary to deliver all direct shipments to the packers and to handle them through the Ashland Avenue yard instead of 37 per cent of the trains setting out cars at Ashland Avenue is it your opinion that they would all be setting out cars at Ashland Avenue?

A. Practically so.

Q. Well, now, after this North Western crew has set that cut of cars that go into Ashland Avenue in on one of those receiving tracks, then what does he do?

A. He reverses his movement; comes off on the lead, back on through some switches onto this Number 3 main and proceeds to back up and couple on to the livestock cut that he has left standing on the main track.

Q. So the livestock waits there while the delivery is being made in there into Ashland Avenue, does it?
[fol. 369] A. Yes, sir.
Q. Well, now, let us follow a train that comes from the other direction.

Exam. Diamondson: Before you get into that, Mr. Smith, I would like to ask a question.
Mr. Smith: Yes, sir.

By Exam. Diamondson:

Q. While the livestock is standing on that Number 3 track can the Chicago Junction handle any dead freight over into the packing house section there?
A. Yes, we can get out of the classification part of the lead.
Q. That cut of cars is not blocking your switching?
A. No, not at all.

Mr. Kayler: Right in connection with that, too, you have no weighing or feeding facilities there?
The Witness: None whatsoever.

By Mr. Smith:

Q. What that cut of livestock cars on the eastbound track is blocking is every single further movement of dead or perishable traffic into the Ashland Avenue yard from any of the eight or ten lines which come in from the west, is that right?
A. That is true.
Q. Now, let us take a consolidated train that comes in from the east, and what roads would that be? The Illinois Central South Lines, the Rock Island and what else?
[fol. 370] A. Oh, it could be the C. & E. I., Monon, Wabash, Erie, Grand Trunk, Nickel Plate.
Q. Now, you have explained to the Examiner how those trains operate and I think you said that they operate just like the North Western in the sense that your Rock Island man, he would also pull clear through to the other end of the Ashland Avenue yard.
A. That is where he would have to make his delivery, at the west end of the yard, yes, sir.

Q. Well, let us assume that one of these trains is a consolidated train that has some livestock for the yard, let us take one of these consolidated trains which is in the 37 per cent category on your study now and would be in the hundred per cent category if this relief were granted, and see what would happen to that Rock Island train. It would be handled the same as the Illinois Central or any other train from that area, would it not?

A. Yes, sir.

Q. Now, the Rock Island crew would have that dead freight and livestock placed how in its train?

A. Well, that is a hard one to answer. Not having done it I don't know, nor do they know, just how they would handle a consolidated train.

Q. Well, doesn't the Rock Island now bring in trains which set off some dead freight in the Ashland Avenue [fol. 371] yard and have some livestock for the Union Stock Yards?

A. Not that I have seen or know of.

Q. In other words, you think that, so far as you know, the Rock Island's trains that come in are straight livestock trains?

A. Yes, sir, that is my experience.

Q. They bring livestock straight into the Union Stock Yards?

A. Yes, sir.

Q. And they bring dead freight straight into Ashland Avenue?

A. Yes, sir.

Q. And you don't know whether they ever have a train of the type we have been talking about that would combine both livestock and dead freight?

A. Not to my recollection that I have seen because it would be too awkward.

Q. I have got a Rock Island witness here and I won't proceed any further with that. What about the Illinois Central?

A. The same thing would apply to them.

Q. And any road from the east?

A. Yes, sir.

Q. Well, now, let us take these trains that come in from

the west that you have discussed. Do you assign tracks to those roads, or do you know what that means?

A. No, I really don't understand that question.

Q. You don't know what it means to assign a track in [fol. 372] the interchange yard to a particular road?

A. I didn't know what track you were referring to. Oh, yes, the yardmaster assigns them a track according to the room.

Q. That is not exactly what I meant. Do they have specifically assigned tracks which day in and day out they use?

A. Oh, no. The tracks are used as the occasion requires.

Q. What you meant was when they do come in with a train that your yardmaster tell them what track they can get in on, is that it?

A. That is right.

Q. And that is the first they know of what track they are going to use, is that it?

A. That is it.

Q. Let us say the North Western brings in a consolidated train and handles it the way you have indicated. They push in some dead freight and then they come back and take their livestock down to the yard?

A. That is true.

Q. Now, let us assume for the moment that the new system were in operation. You would then have on that train three categories, would you not? You would have dead freight and perishable, you would have livestock destined to the Union Stock Yards and you would have some direct shipments?

A. That is true.

Q. That is, I am assuming a train of that type.

[fol. 373] A. That is true.

Q. You might have some trains, an occasional train that would still go to the yard.

A. That is true.

Q. But you would expect that most of them would have these three categories in them, except it might be necessary to make special runs down to the Ashland Avenue yard because of short time.

A. That is true.

Q. All right. Let us take a train that comes in with the three categories of freight under this new proposal, the dead freight, the direct shipments for Ashland Avenue and the market stock. Now, the North Western train would proceed down through the Ashland Avenue yard, east through the Ashland Avenue yard, on running track 3, would it?

A. Yes, sir.

Q. And the directs and the dead freight would be next to the engine?

A. That would be the proper place for them and I would say they would be there.

Q. And they would stop on this track 3 and follow that track or occupy that track?

A. That is right.

Q. And then their job would be to put in the dead freight and perishable and these direct shipments on any [fol. 374] track that might be available, if one were available?

A. That is correct.

Q. And do you know whether that livestock would be segregated as between packers or whether it would just be all mixed in together?

A. Well, I would assume that——

Mr. Rynder: Wouldn't that be conjecture, Mr. Examiner?

Exam. Diamondson: It is conjecture in the sense that they do not make that kind of movement or delivery now, but we are assuming that such a movement was required.

Mr. Rynder: Maybe if this actually happened his road would tell the line-haul road to separate them before they brought them in.

Mr. Smith: Let me clear that up if there is any question about it, Mr. Rynder.

By Mr. Smith:

Q. Can you say from your experience whether as between connecting lines and interchange lines the delivering line does the classification for the receiving line or do you take the position that the receiving line must do its own classifying?

A. They take the latter. They say that is what they pay us for.

Q. They do pay you for that, don't they?

A. They do.

Q. May we understand that the livestock for all these [fol. 375] packers would just be mixed in together in this train?

A. I believe it would.

Q. Yes. And they would undertake to shove that livestock and dead freight in on some track that would hold it?

A. Correct.

Q. And if there were a running track that would hold all of it, the entire cut, would you require that it be separated or would they stand there and wait until they could put it all on one track?

A. We can require roads to make what we call a split delivery, using two tracks to accommodate their trains, if at the time they arrive there is no track or tracks that will accommodate that cut of cars in one continuous movement.

Q. In other words, you would fit the livestock in and the dead freight into these tracks as the circumstances might permit at that moment?

A. Correct.

Q. Then that crew would go out and after placing that stuff on the Ashland Avenue track would take down the livestock to the Union Stock Yards, is that right?

A. Yes, sir.

Q. And then it would wait for the empties which would accrue from those loads and take them back to their own road, is that right?

A. Yes, sir.

[fol. 376] Q. Am I correct in my understanding that the Chicago Junction never touches a loaded car of livestock or an empty car of livestock used in the handling of ordinary livestock inbound into this yard?

A. That is right.

Q. And that crew would wait and take the empties immediately out then?

A. Yes, sir.

Q. Now, while that livestock was standing in that Num-

ber 3 track does it sometimes happen now that there is a train waiting to get in behind them?

A. Oh, very frequently.

Q. More frequently than not?

A. Right.

Q. So that there might be more than one train in at that time, might there not?

A. I have known as high as four to be there.

Q. Four trains waiting to go into that yard?

A. That is right.

Q. With one eastbound track?

A. That is right.

Q. Then after this train is out of the way, the cars have been taken down to the yards and the empties taken back, then the next train in line comes in, does it?

A. Yes.

[fol. 377] Q. And it fits its cars into that Ashland Avenue yard as best it can, does it not?

A. Yes, sir.

Q. And the previous train only moved that stock in there to the clearance point, did it not?

A. Yes, sir, that is the present practice.

Q. That is the rule, isn't it, the interchange rule?

A. No, it is not. It is really a labor requirement. That is, they have sanction from the National Mediation Board that that is what we were required to do to effect a delivery.

Exam. Diamondson: It is an operating practice.

The Witness: That is right.

By Mr. Smith:

Q. In other words, to make that clear, all that North Western crew did in fitting that stuff into Ashland Avenue either on one track or several was to just take it to the clearance point?

A. Correct.

Q. In order to make that track available for any other deliveries you have to go in there and move those cars down the track?

A. Correct.

Q. Do you go in there from that end or the other end?

A. Well, it could be either way depending on the availability of the engine.

Q. So that there isn't any space available on those [fol. 378] tracks, at least, that were used by this first train I have referred to, until you have been in there and pulled that track to the extent of taking that stuff beyond the clearance point?

A. Made room in there.

Q. Now, the next train comes in and going through the same process it fits cars in as best it can?

A. That is right.

Q. And if there are trains following that, then that process continues?

A. It is repeated, yes, sir.

Q. And when all that is done do you have on these Ashland Avenue tracks, starting from west to east, do you have dead freight, livestock, dead freight, livestock, and would that be the situation under this same arrangement?

A. I don't know how it could be otherwise.

Q. You would have to put the cars in where you could classify it, so you would be putting dead freight in on a livestock track?

A. The only way you could avoid that, in case you stopped the ordinary procedure and attempted to segregate the livestock from this dead freight or perishable and I think that would take care of these set-outs more than any other way.

Q. That is, while this inbound train was standing on the Number 3 eastbound running track, which is the only one, you might try to classify this livestock and put it on some [fol. 379] other tracks, is that what you meant?

A. No. I mean that in the receiving yard there is one track that leads into the nine receiving tracks. This business comes in mixed, as we term it in trade language. If I had to get the livestock away from the dead freight and other freight, I would have to work up and down this receiving yard track so that while I was doing that another engine, either of foreign line trying to make a set-off, or one of our own, could come in through that.

Exam. Diamondson: In other words, only one switch engine could use that lead at a time?

The Witness: That is right, sir.

By Mr. Smith:

Q. Do you think you would ever get any livestock into the Union Stock Yards for those producers who might want to send it there on that basis?

A. I wouldn't want to be waiting down there for it if it were mine.

Q. So that the only alternative to that arrangement is to do as you have indicated?

A. Yes.

Q. To just mix dead freight and livestock through that Ashland Avenue yard?

A. That is right.

Q. Now, however, because of the requirements of the 28 hour or 36 hour law, how much time will there be for you to get this stock to the chutes for unloading? If that [fol. 380] time were such that you had to give precedence to livestock, then it would be a matter of picking this livestock out of this Ashland Avenue yard mixed in with this dead freight?

A. Yes, sir.

Exam. Diamondson: I think we have enough of that, Mr. Smith. But you have been talking about the minority, so to speak, but as I understand it 63 per cent actually moves in in solid trainloads of livestock.

Mr. Smith: Yes.

Exam. Diamondson: Suppose you ask him some questions as to how that could be handled to the proposed facility of Swift & Company.

Mr. Smith: Well, your Honor, this 63 per cent which moves now down to the yard carries, of course, all of the livestock to the yard and something like 40 per cent of that livestock are direct shipments, and the witness has indicated that he would assume that on every train of livestock coming down to the yard which now goes straight through in this 63 per cent, and it stands to reason that there would be some direct shipments on all of them because they constitute 40 per cent of the stock delivered

at the yard without the Omaha's stock, so that on the hypothesis that I have been proceeding under here, namely, the granting of the complaint, that 63 per cent bringing trains down to the yard would disappear, there wouldn't be any. They would all be trains which would have to stop [fol. 381] at Ashland Avenue and dump some direct into the yard.

Mr. Kaylor: I am not clear on this. He has spoken about foreign crews. Does that service end there at Ashland Avenue? He says as far as foreign crews are concerned.

The Witness: As far as that particular delivery of cars, yes, sir. That is the interchange point.

Mr. Kaylor: A foreign crew ends when it is delivered to you in any yard, be it Loomis or Ashland or wherever it is?

The Witness: Does the foreign crew end?

By Mr. Smith:

Q. Does the service of the foreign crew end? That is all he is asking.

A. Insofar as that particular delivery is concerned, yes, sir. He may have other things to do after he has made that delivery.

Q. It ends as far as the particular delivery of this property to you is concerned.

A. As far as the C. J. is concerned it ends there.

Q. Now, you spoke about the handling of these empties. Of course, you don't now handle any cars made empty of livestock that come into the Union Stock Yards?

A. That is right.

Q. But you do have certain empties for delivery back to the line-haul carriers that are not loaded on your property?

A. That is right.

[fol. 382] Q. And you deliver some to the various carriers in the Loomis Street yard and some at the north Ashland yard, is that correct?

A. That is right.

Q. Any other yards?

A. No. That is the two main interchange yards.

Q. And I think you explained to the Examiner that so far as the lines coming in from the west are concerned you put the empties in the north Ashland Avenue yard, is that correct?

A. That is right.

Q. And you said you perform some classification service of those?

A. Yes, sir.

Q. That would be necessary so that the individual lines could get them, would it?

A. That is right.

Q. And where do you perform that classification service?

A. From the west end of the Ashland Avenue north yard.

Exam. Diamondson: Well, you perform it in the Ashland Avenue yard.

The Witness: In the Ashland Avenue north yard, yes, sir.

By Mr. Smith:

Q. Now, you pull in a large number of empties into the Loomis Street yard, I mean presently?

A. Yes, sir.

Q. And what lines get their empties at the Loomis Street yard?

[fol. 383] A. Well, any line that may be the owner of the car, or it may be an empty tank car or refrigerator car.

Q. As a matter of fact doesn't the Santa Fe usually get its empties——

A. Yes; the Santa Fe is one of the western lines.

Q. Does the North Western get empties in the Loomis Street yard?

A. No. The North Western gets empties at Ashland Avenue.

Q. So there is a difference between the two lines?

A. Yes, sir.

Q. What lines get their empties in the Loomis Street yard?

A. The Santa Fe is the only western line.

Q. What eastern line?

A. Wabash, B. & O. Nickel Plate, Pennsylvania and others.

Q. Is the Loomis Street yard a congested yard?

A. Very much so.

Q. Do you think you could handle six or seven thousand additional empties in that yard?

A. In what given period of time?

Q. In a year. I am sorry.

Exam. Diamondson: In a year.

The Witness: The capacity of that yard, I might add, is dependent entirely on how fast those roads leave the tracks with those cars and any more you would put in there would congest it.

[fol. 384] Exam. Diamondson: There is also an outbound movement of livestock out of that yard, isn't there?

The Witness: Very little.

By Mr. Smith:

Q. Is this Ashland Avenue yard presently operated to capacity?

A. It is running bank full, sir.

Q. You gave some time on the deliveries of dead freight and perishable that moves through Ashland Avenue and my recollection is you said that on the perishable freight you took about 23 hours during that test period.

A. 23 hours and 30 minutes, I believe.

Q. That was during December, wasn't it?

A. December 1st to December 7th, inclusive.

Q. Might you handle that a little bit faster during the summer months?

A. That is entirely possible.

Q. Can you give the Examiner an indication of about how fast you might handle it during the summer?

A. We might cut three to four hours off of that in some cases.

Q. And take a period like January and February, if the weather were bad might you add something to that time?

A. It is entirely possible we would. We probably would.

Q. The perishable freight is the fastest freight that you handle through that yard now, isn't it?

[fol. 385] A. Yes, sir.

Q. And I think you said to Mr. Day that it would require substantially more time to handle that traffic if you tried to handle livestock through the Ashland Avenue yard.

A. Oh, yes. You could only handle a certain number of cars in a given time and if you have spent that time handling livestock, why, something else would have to go by the board and wait.

Q. Now, you said that you tagged and inspected all these trains that come in and do some paper work on the cars that come into Ashland Avenue. Why do you do that?

A. Well, the inspection is required under the Federal Safety Appliance and we also want to know whether there are any damaged cars that would injure freight, such as a door off, a brake off of the skids.

Q. What does that carding consist of?

A. It is oblong.

Q. I don't care how big it is. What does it consist of and what does it show?

A. It shows the name of the consignee and location and it is a guide not only to the crews that classify cars into the classification track but it is a guide for the various crews that work in the operating districts and handle cars to the consignee.

Q. Let me see whether the record is clear on this. You [fol. 386] card it and inspect it and what else?

A. And classify it.

Q. I am not talking about the physical handling of it. I am talking about these services that you perform on the car when it comes in in order to satisfy either your interest to know where it is going or some federal law.

A. We do handle the business and then we have the carding of the car and the recording of the seals on the loaded cars.

Q. Do you do that on every car delivered to you at Ashland Avenue?

A. Yes, sir.

Q. Would you have to do it on any livestock that was delivered to you over there?

A. We would, yes.

Q. Would that be an additional performance of that

ritual as against the situation now where the livestock is handled directly to the chutes by the inbound carrier?

A. Oh, yes.

Exam. Diamondson: Where would you get your information from?

The Witness: The delivering line's representative hands us what we call a train consist, showing the number and initial of the car, loaded or empty, the consignee of the specific train, or location of that consignee.

Mr. Kaylor: Has that method of operation been in use [fol. 387] continuously since you were first employed in the operating department?

The Witness: Yes, sir.

Mr. Kaylor: For how many years to your personal knowledge?

The Witness: Verging on twenty.

By Mr. Smith:

Q. Have the industries in that area increased during that period?

A. Yes. Oh, indeed.

Q. There has been a constant growth down there, has there?

A. Oh, indeed there has.

Mr. Smith: That is all I have, Mr. Examiner. I am handing Mr. Rynder the tabulation that I referred to a moment ago which I received from the Union Stock Yards & Transit Company. It is the only copy that we have available, but after Mr. Rynder has had a chance to examine it, if he will hand it back to me we will make some duplicates of it.

I might hand out these maps and, if you please, I would like to put in these maps through this witness.

By Mr. Smith:

Q. Mr. Kinsella, have you examined, or will you examine in sufficient detail this aerial photograph that has been identified as defendants' exhibit 15 and state to the Exam-

iner whether it fairly depicts the situation down there, the location which it purports to show?

A. Oh, that is very fine.

[fol. 388] Exam. Diamondson: At the present time?

Mr. Smith: At the present time?

The Witness: Yes, sir.

Mr. Smith: I offer exhibit 15. I have some copies here.

Exam. Diamondson: Exhibit No. 15 will be received in evidence.

Mr. Kaylor: Show it as being received for the Illinois Commission, too.

(Exhibit No. 15, Witness Kinsella, received in evidence.)

By Mr. Smith:

Q. Mr. Kinsella, I don't suppose you undertake to say whether the cars that appear in Ashland Avenue yard represent the cars that are in that yard at any particular time of the day.

A. No, sir.

Q. You are not making any representation so far as the picture shows certain cars located there?

A. No. I referred simply to the lay-out of the tracks and the yards.

Q. And the buildings and streets and viaducts, is that correct?

A. That is right.

Exam. Diamondson: We will take a short recess at this time.

(Whereupon a short recess was had.)

[fol. 389] Exam. Diamondson: Are we ready to proceed? Come to order, please.

Mr. Belnap: My other suggestion is this: I think it would be very helpful to the Examiner and to the parties if we had an opportunity to inspect some of the physical layout about which the complainant's witnesses and the defendants' witnesses have been talking. I understand it is possible for us to get an engine and a car out there some day and make a little run over the line. We could well combine that with a hearing. The Exchange Building

out there has a very large room which would accommodate [fol. 390] a hearing which would be had that day after the inspection trip had taken place.

I would suggest Monday would be a good day and I suggest, if it is agreeable with everybody, that we do that; start the inspection trip early, 8 or 8:30 in the morning and then we would be able to have a hearing starting about 11 o'clock. We would lost very little time and still see the sights.

Exam. Diamondson: I would like to get Mr. Rynder's views on that.

Mr. Rynder: I have no objection to the inspection trip but as a result of the testimony I have just heard I am afraid it might put the C. J. out of commission for that day.

Exam. Diamondson: We will take a chance on that and, Mr. Belnap, we will do as you suggest here. We will take an inspection trip at 8 or 8:30, whichever is preferable. Let us make the inspection trip at 8:30 and immediately upon its conclusion we will have a hearing in the Exchange Building.

Mr. Belnap: All right.

Exam. Diamondson: We will have the hearing Monday morning, March 1st, 1948, in the Exchange Building in the Union Stock Yards immediately after the inspection trip beginning at 8:30.

Mr. Smith, were you all through with your direct?

Mr. Smith: Yes.

[fol. 391] Exam. Diamondson: You may cross examine.

Cross-examination.

By Mr. Rynder:

Q. Mr. Kinsella, a good many of the operations that you have been describing within the last half hour of your testimony in connection with the delivery of freight in the terminal district are of a nature that would have to be performed somewhere whether it were a line haul carrier bringing in the freight for delivery on another line haul carrier or freight for delivery on its own rails, would they not?

A. I assume that would be correct. I am not familiar with other lines' operations there.

Q. No, but you know what some of the necessities are?

A. Generally speaking some lines would do that.

Q. Well, assume, for instance, that the North Western comes in with a train that has a couple of cars of livestock to be delivered at the Omaha plant on the Burlington and a few cars of livestock to be delivered at the Union Stock Yards and five or six cars of dead freight, or any number you want to assume, for delivery on other connecting lines in Chicago: At some place the livestock for the Omaha plant and the Stock Yards would have to be separated, would they not?

A. Yes, I would say that would be a normal operation to do that.

Q. It would have to be done.

[fol. 392] Mr. Smith: I am going to have a Burlington witness, if it will help you any, Mr. Rynder.

Mr. Rynder: It won't help me just now.

By Mr. Rynder:

Q. And at some point the dead freight would have to be classified or divided up so that it would reach the industries on the North Western or other Chicago lines for which it was consigned?

A. I would say that is reasonable, yes.

Q. And from your knowledge of operating conditions that probably involves inspection of cars for the purposes you have named?

A. I would say so, yes, sir.

Q. And carding or other designation so that the car can reach its proper point of delivery.

A. That I cannot answer. I don't know what their practice is.

Q. Well, in some way it would have to be indicated.

A. Well, they may let the billing accompany the car, the waybill. Many of them do.

Q. But there must be some designation so that the switching crew will know where to put it.

A. I am not qualified to answer that about any other

line than our own. I know some roads do not card cars at all.

Q. Now, you have spoken of 63 per cent of the livestock trains reaching the stock yards as containing livestock only. A great many of those so-called livestock trains [fol. 393] consist of a very small number of cars, do they not?

A. Oh, they run any amount.

Q. Many of them run two, three, four or five cars?

A. That is true.

Q. And that is classified as a livestock train?

A. That is right.

Q. If it does not happen to have a car of dead freight on it?

A. Right.

Q. If that train were coming down with two or three or four cars of livestock for the Union Stock Yards and let us say two cars for the new Swift location, I take it that until you get to your yards the movement from any given line haul carrier would be exactly the same, would it not, in extent?

A. That is right.

Q. And over the same tracks?

A. That is right.

Q. And if those couple of additional cars were on there the cost to the delivering line of its engine and crew, and so forth, would be pro ratable over a greater proportion or number of cars than if it came down with two cars or three for the Stock Yards?

A. I don't know what their accounting method is, Mr. Rynder.

Q. I know, but let us say that it cost something for an engine crew, and there are four cars on the train and you divide the one into the other and you get a certain result. [fol. 394] That is true, isn't it?

A. That is right.

Q. And if there are two cars on the train you divide two cars into that cost and you get twice as much?

A. That is true.

Q. Now, if you were delivering livestock to the new Swift location would the empty livestock car going back to

a western line follow the route that you have mentioned through Loomis Street in order to get back to that line or would it go back to Ashland Avenue?

A. Depending on the ownership of the car or the line that brought it to us. If it were a car that we received from a line that took it in to us at Loomis Street it would have to go that way.

Q. There is only one western line that does that, isn't there, the Santa Fe?

A. Yes, but we get stock from many eastern lines as well.

Q. Yes, but the big stock movement is from the west, isn't it?

A. I would say principally so, yes, sir.

Q. And most of the western lines bring those cars back at Ashland Avenue?

A. In the Ashland Avenue north yard, yes, sir.

Q. Yes. Isn't that where they get their box cars and dead freight cars back also?

[fol. 395] A. The same yard, yes, sir.

Q. Now, the proposed movement in distance to the Swift location would not be as great, would it, as to any other location within the Stock Yards area, such as the Armour plant that you have described?

A. No. Of course, I have no information as yet where Armour might have a facility.

Q. No, but you know where their plant is?

A. Where their plant is at?

Q. Yes.

A. No, sir, I don't.

Q. You don't know where their plant is?

A. Oh, yes, I do. I thought you said their "plan".

Q. The movement to the proposed new Swift facility would not be as great in distance as to the Armour plant?

A. That is true as it is presently located.

Q. Do you know of any industrial delivery in the Stock Yards area that would involve a shorter delivery than to this new Swift location?

A. By rail movement I would say Wilson were closer.

Q. You mean because it is just south of the Ashland Avenue yard?

A. And the handling that you would have to give it.

Q. Are you sure that the movement to any point of the Wilson plant would be less than the movement to the pro-
[fol. 396] posed Swift location? I mean in distance.

A. Well, that depends on how you define "distance". As the crow flies, no, but in rail movement, the movement that the engine would have to make, I would say yours would be greater.

Q. Than to a point on the Wilson plant?

A. Yes, sir.

Q. The movement to the proposed Swift location would be less measured in feet, yards, and so forth, than to the Union Stock Yards unloading chutes?

A. Oh, very much so.

Q. When you say "very much so", how much distance do you mean in feet?

A. Oh, approximately a thousand to fifteen hundred feet.

Q. And the movement would also be shorter than to any other plant, would it not, packing plant within the Stock Yards area bounded by Ashland on the west, 39th on the north, Halsted on the east and 47th on the south?

A. That is true.

Mr. Day: What was that last question, please? Would you read it?

(Question and answer read.)

Mr. Day: That is as to those packing plants within that particular area?

Mr. Rynder: That is right.

By Mr. Rynder:

Q. I believe you said that the line-haul carriers pay the
[fol. 397] Chicago Junction for classification of cars on its line, is that right?

A. It is my understanding. I am not a tariff man, but it is my understanding we receive some allowance for taking the car from the point at which they set it in our yard and moving it to the consignee and the return movement of the empties when that occurs.

Q. Do you know of any reason why you should not re-

ceive the same compensation in connection with the delivery of livestock if you should be required to do it?

A. I know of none, no, sir. I would expect we should.

Q. In a part of your testimony in connection with exhibit 15, I believe the earlier part, you gave Mr. Day a description of a movement of a dead freight car coming into the Ashland Avenue yards and destined for a plant in what I call the Stock Yards area which I have just described, and its final disposition. Would the movement of the livestock car in any event be greater than that or for a greater distance going to the Swift location?

A. No, I would say not, generally speaking. It might exceed it in some instances and be the equivalent in others.

Q. Now, I believe the point was stressed that the only eastbound track or running track, as you call it, through the Ashland Avenue yards is track Number 3, am I right in that?

A. That is correct.

[fol. 398] Q. And that is used by all the line-haul carriers going to the unloading chutes of the Stock Yards as well as by the line-haul carriers who are there delivering dead freight for the Chicago Junction, is that right?

A. I think I qualified that as lines arriving from the west.

Q. Lines arriving from the west?

A. That is true.

Q. Has that been found adequate up to date for that purpose?

A. It is in the same condition it has been in for years back. It is just the amount of traffic.

Q. Mr. Smith drew a picture of four or five or eight or nine or ten trains piling up behind each other there and each waiting for the otheer to go. Are there long delays on account of that?

A. I made a limitation to that. From my own knowledge I have known of four. I don't think I went above the four figure.

Q. Do you know how long the delays were that were occasioned by those four, one waiting for another?

A. I have known it to run as high as three hours on that account.

Q. Just because the first fellow did not get out of the way?

A. Well, the yard was congested so that we couldn't get them in.

Exam. Diamondson: A three hour delay before the next [fol. 399] train could come in?

The Witness: That is true.

By Mr. Rynder:

Q. Would that be unusual to have that long a delay for that purpose on that track?

A. I would say it was rather exceptional rather than the general rule. At least for my peace of mind I hope we can do better than that.

Q. Can you express an idea as to how long they are usually there?

A. That is hard to answer for this reason, Mr. Rynder. At certain times in the day your traffic lightens and then at certain hours of the morning and the evening all of these lines with practically, I would say, the same schedule seem to arrive there about one and the same time and when that occurs there is a delay. It is our aim I might say, however, to take them in as frequently as we can and we hope and pray that we can take them in without more than a nominal delay, but conditions govern that entirely.

Exam. Diamondson: Can you give us some idea of how much delay actually occurs when there is a train in there on that running track and another one waiting to come in there?

The Witness: I would say that it would take you from twenty to thirty minutes for a train after he received his permission to enter, to get in the yard and make his delivery and cut off and probably another five or ten minutes [fol. 400] to get back out on the track and shove back and get into his caboose for the rest of his train.

Mr. Smith: What about the time up until the point when he gets the permission to enter?

The Witness: That will depend entirely on the track condition. I think I should probably best explain some

of the operating procedures and practices that govern whether you can effect an immediate delivery of freight in there or must wait until another means has been provided.

By Exam. Diamondson:

Q. Have you ever made a test check for any definite period to discover how much delay takes place there?

A. Yes, I took a test check for this same period, December 1st to 7th.

Q. Does that show the actual amount of delay that occurs on these main tracks?

A. I disregarded anything below thirty minutes, considering that normal, and the delay ran anywhere from thirty minutes to three hours.

Mr. Kaylor: Was that 1947?

The Witness: Yes, sir.

Mr. Kaylor: Did you make any other test period prior to that time?

The Witness: No. We don't as a rule make such records as that.

[fol. 401] Mr. Kaylor: What is your experience with reference to anything prior to this test check on delays?

The Witness: Well, I would say this was probably a little greater than you might say would be normal. Weather conditions and things of that kind have quite an effect on this. The better the weather, why, you don't have the same delay that you do when the weather is bad.

Mr. Kaylor: Of course, this was in May, wasn't it?

The Witness: No.

Mr. Kaylor: This test period?

The Witness: December 1st to December 7th.

Mr. Kaylor: You made no comparison beyond that for the same period of time?

The Witness: No, sir.

Exam. Diamondson: Proceed, Mr. Rynder.

By Mr. Rynder:

Q. Mr. Kinsella, did you keep a record of the weather conditions during this period December 1 to 7, 1947?

A. Nothing specific other than it is my recollection that it was fairly decent weather for that season of the year. I know of no excessive cold temperatures or snow.

Exam. Diamondson: Of course, you are not leaving the impression on the record, Mr. Kinsella, that there is always a train waiting for the track to be cleared, are you?

The Witness: Oh, no, sir, I don't mean to infer that at [fol. 402] all. It would depend entirely on the condition of the weather,—or it would depend entirely on the conditions, whether at the particular day or hour of the day different trains arrive.

By Mr. Rynder:

Q. And according to that test period the ordinary receiver of perishable freight has to wait approximately one full day, or twenty-three and one-half hours, from the time you receive the car until it is placed at his plant, is that it?

A. I don't believe that truly portrays what the study——

Q. Excuse me if I didn't get it right. I made a note and I thought that is what you said, that twenty-three and a half hours was the average for the delivery of perishables.

A. I believe my statement was this,—I think the question was asked and I answered that counting from the time of receipt until the car was actually or constructively placed the average was twenty-three hours and thirty minutes.

Q. Well, then, it comes to what I said, doesn't it, that it was approximately twenty-four hours or one-half hour less from the time you receive the car of perishable until the industry within that area had it on its track for unloading.

A. Yes, sir.

Q. Or a constructive placement had been made.

A. That is true.

Q. And the same statement would apply to the 31 hours [fol. 403] and 45 minutes for dead freight?

A. Yes, sir.

Q. This was December 1 to 7th, inclusive?

A. Yes, sir.

Q. Does that mean eight days or seven days?

A. Seven days.

Q. Seven days. I didn't get the total number of cars there. I got it for the perishable freight but not for the dead freight during this test period. I have 511 for perishable. What was the dead freight?

A. 1570.

Q. Mr. Kinsella, I am getting myself wound up in some business here which maybe I am not competent to handle. As I see it that would have been a total of about 300 cars a day handled by you during that period and from my meager mathematics it seemed to me that that would bring up the total at that yard to nearly the number that you had mentioned of seven hundred and some thousand per year, is that right?

A. Yes, seven hundred and some thousand per year.

Mr. Smith: Of course, those were loads and empties, Mr. Rynder.

The Witness: Those were loads, empties, intermediate cars, local switch cars, and, incidentally, may I inform you that that refers only to the Junction business. The Chicago River & Indiana have their separate setup. I could [fol. 404] give you that figure if you think that will help you any.

Mr. Rynder: No, I was just confused in trying to adjust the one to the other.

Q. Now, Mr. Kinsella, I wonder if you have described the operation that takes place on the Junction when the North Western or another road comes down with what I will call a mixed train of livestock and dead freight in any proportion you please. I mean a given number of livestock cars, five, six, eight, ten, twenty, and any probable number of dead freight cars for delivery in the Stock Yards area. Just what does the North Western do when it gets into the Ashland Avenue yard with a train composed of that combination of cars?

A. They will move——

Q. To make it simple take one car of each for that matter.

A. It is the same train.

Q. The same thing.

A. As I have stated they will proceed from the junction at 14th Street and Ogden Avenue and move southward to approximately 39th Street and Western Avenue and run in an easterly direction on this Number 3 running track to the east end of the Ashland Avenue yard. I am assuming that the set-off is on the head end of the train. It will stop. The trainman will walk back, shut off the angle cocks between the two cars that are going to be separated and then move up over the switches and be put on a route that will lead him into the receiving yard [fol. 405] portion of the Ashland Avenue south yard.

Q. That has been done so far by the North Western, hasn't it?

A. Entirely so.

Q. Yes.

A. Does that answer your question?

Q. Well, I may not know the technical operation schedule, but what you have said is that the North Western engine has separated the livestock car and the dead freight car and put the dead freight car on some track designated by you?

A. That is correct.

Q. Then I take it he hooks on again to the livestock car, is that correct?

A. That is right.

Q. And then hauls it to the U. S. Y. & T. unloading chutes?

A. Yes, sir.

Q. Now, with perhaps the lack of knowledge of the track numbers and so on that was substantially what Mr. Tally said the first day here, wasn't it?

Mr. Smith: I object to that as no proper foundation laid and not asking for any statement of fact not already disclosed by the record.

Exam. Diamondson: He is merely asking if he corroborates that general statement as to the manner in which that line haul engine handles a mixed train of freight.

Mr. Smith: I happen to recall that Mr. Tally had the [fol. 406] livestock in the wrong place, and so forth, and finally said he didn't know how it was handled, so it seems to me the question is entirely incompetent.

Exam. Diamondson: I don't think Mr. Rynder is questioning the witness' accuracy of the statement as to the manner in which it is handled. Are you?

Mr. Rynder: No. We will concede that the line haul engine in some manner or other does that work and then goes on to the chutes.

Mr. Smith: I might say in elaboration of that, Mr. Examiner, Mr. Tally thought at first that the engine went down and left the livestock at the Union Stock Yards first and then came back and left the rest at the Ashland Avenue yards.

Mr. Rynder: No, no, he didn't say anything of that kind.

Mr. Smith: That was my interpretation of what he said.

Mr. Rynder: No, he didn't say anything of that kind. Except perhaps for knowing the track numbers and things of that kind his story was exactly the same as Mr. Kinsella is giving.

Exam. Diamondson: You are not questioning Mr. Kinsella's statement about the operation to that effect?

Mr. Rynder: No. I simply call attention to the fact that it coincided with Mr. Tally's testimony, although Mr. Tally was said by Mr. Smith to be an ignoramus and things of that kind.

[fol. 407] Mr. Smith: That language is yours and not mine. I never inferred anything of the kind.

Exam. Diamondson: Let's stop that. Proceed with the cross-examination.

By Mr. Rynder:

Q. Now, Mr. Kinsella, in the testimony that you have been giving you have been assuming that all of the livestock now moving direct to the U. S. Y. & T. pens would have to be delivered at one or another location to be selected or prepared or designated by one of the packers. That is correct, isn't it?

A. I don't recall what the first opening words were.

Q. Well, in dealing with the estimated number of cars you would have to handle I understood that you were assuming that all of the livestock now moving direct and what are known in the U. S. Y. & T. records as directs

would have to be delivered by you to some other location on your line.

A. I don't recall that I made such a statement, Mr. Rynder. I have no definite knowledge as to how many might or might not.

Q. Is that your statement now that you have no definite knowledge as to how many might or might not desire that delivery?

A. That is true, I haven't any definite information.

Mr. Day: Mr. Rynder's question would have you assume that the Stock Yards Company was going out of business. [fol. 408] The Witness: Oh, I don't mean to give that impression, but for me to say definitely how many of these the Stock Yards—or, rather, how many of these concerns are going to ask for this service or how many cars it is going to be, I could only guess at that and I don't intend to do any guessing.

By Mr. Rynder:

Q. Well, it is sufficient to say that you haven't interviewed or received information from Agar, Armour, Brennan, Miller & Hart, Hygrade and Roberts & Oake and the others you mentioned as to whether or not they would desire to establish such a delivery at their plants or would prefer to continue to take the traffic through the Stock Yards?

A. I have had no notice from them in any manner.

Exam. Diamondson: Have these other plants that Mr. Rynder referred to indicated any dissatisfaction with the present delivery in the Yards?

The Witness: Not to me. They wouldn't indicate that to me.

Exam. Diamondson: I am just asking if you have any personal knowledge.

The Witness: No, I haven't.

By Mr. Rynder:

Q. Mr. Kinsella, yesterday afternoon you referred to some change, I believe, in connection with the delivery of line haul traffic in the Ashland Avenue yards made at the

insistence of certain unions and to prevent a strike. I did [fol. 409] not want to interrupt further at the time. I would like to know what that change in physical operations was that was made?

A. Prior to this settlement, Mr. Rynder, the roads had made it a practice, and there was no objection on our part, to make a delivery of cars to several yards on the property. For example, the eastern lines as a group, they delivered maybe Armour refrigerators direct on the receiving yard tracks or in the Armour car shop repair facility at about 43rd and Peoria Streets. We did not handle them into the receiving yard or out of there. All our crew did was to pick them up from this receiving track adjacent to the Armour yard and put them on the tracks they requested them on to wash or clean or repair. Likewise, practically all lines arriving from the east and south made delivery of industrial business or intermediate business to the Chicago River & Indiana Railroad in what is known as the Oakley Avenue yard that lies immediately west of the Ashland Avenue yard. The Wabash and Rock Island and C. & E. I. and Pere Marquette having perishable or high-class freight for either eastern or western lines would carry those right down to the eastern yard at Loomis Street or to the western yard, the north yard at Ashland Avenue. None of those cars went through the Ashland Avenue receiving or classification facilities at all.

Likewise, the empty double deck stock cars for loading [fol. 410] hogs and sheep, the eastern lines' train when they brought them in there, or any single deck cars to load in chutes for outbound movement, they would have those double deck cars in a convenient block either on the head end or the hind end of their train and they would deliver them over in what we call our north division tracks, which lie immediately north of the chutes 1 and 2 in that division. Those did not come through the railroad company facility. They didn't even bother to receive them in the classification yard. Now all this business I have described must under this contract be received in the Ashland Avenue south yard.

Q. Well, what was the reason for the insistence upon that by the employes? Was it your employes or the line haul employes or what?

A. I can't hear you.

Exam. Diamondson: Read the question.

(Question read.)

The Witness: It was our employes that brought the matter to a head because decisions rendered by the Mediation Board handling railroad affairs had ruled in some cases that a one hour delivery was all that could be required of a foreign crew. Our men would process these claims on the basis that when the deliveries I mentioned had been made away from Ashland Avenue that that deprived them of work on our rails that belonged to them under their contract. They had the privilege, they said, as employes [fol. 411] to do any switching or transferring of interchange cars from the Ashland Avenue south yard to these various other points where the connecting lines had previously delivered.

Exam. Diamondson: I think this would be a good point to stop and we will adjourn until two o'clock.

(Whereupon, at 12:35 o'clock P. M., a recess was taken, to reconvene at 2:00 o'clock P. M.)

[fol. 412] 2:00 P. M.

AFTERNOON SESSION

Exam. Diamondson: The hearing will come to order.

Mr. Smith: I have something that I would like to put on the record. What is your name?

Mr. Fuller: Eugene W. Fuller.

Mr. Smith: You are with the Chicago Aerial Survey?

Mr. Fuller: Yes.

Mr. Smith: Calling your attention to an aerial photograph which has been identified here as Defendant's Exhibit 15, I will ask you to state if that photograph was taken by your company?

Mr. Fuller: Yes, it was.

Mr. Smith: Have you examined the records to determine on what date it was taken?

Mr. Fuller: Yes.

Mr. Smith: What date was it taken?

Mr. Fuller: May 30, 1939.

Mr. Smith: That was Memorial Day?

Mr. Fuller: Yes.

Mr. Smith: What time of the day was it taken, approximately?

Mr. Fuller: Between 11 in the morning and 2 in the afternoon.

Mr. Smith: Thank you.

Exam. Diamondson: The witness has not been sworn. If you want that testimony you had better have the witness sworn.

[fol. 413] Eugene Fuller was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. Do you consider that the statement you just made in connection with the aerial map to be a true and correct statement?

A. Yes.

Mr. Smith: That is all.

Exam. Diamondson: The witness is excused.

(Witness excused.)

Exam. Diamondson: Mr. Rynder, you may proceed.

James T. Kinsella resumed his testimony as follows:

Cross-examination—continued

By Mr. Rynder:

Q. Mr. Kinsella, when lunch hour came on we were speaking of this change in operation, that of throwing more traffic into the Ashland Avenue Yard due to the insistence of the union in its threat of a strike?

A. Yes.

Q. I want to ask one more question on that. Did that change in operation add to the efficiency or to the economy

of the Chicago Junction Railway or was it quite the opposite?

A. It added, I believe, to our expenses and efficient operation of the property. I think I might best explain that by saying that for the year 1945 which was the last full [fol. 414] year under which we operated under the old conditions, compared with the record for 1947, there were some 3800 more crews in the year 1947 than in 1945, with slightly or very little difference in the total number of cars handled.

Q. Then the answer to that would be that it did not add to the efficiency or economy?

A. It did not.

Q. Mr. Kinsella, I have been advised that in a switching operation you are required to have a crew of three members in addition to the engineer and fireman, is that correct?

A. That is true.

Q. Will the crew operate if one of the members happen to be absent or late or something of that kind?

A. Very few will. The majority will not.

Q. That means that in such instances the switching operations by that engine is delayed until the third man arrives?

A. Yes.

Q. Does that happen rather frequently?

A. I don't know as I can give you any definite figures on that, Mr. Rynder. Certain days of the week like Saturday or Sunday it may occur with much more frequency than the other days of the week.

Q. Mr. Kinsella, does the Indiana Harbor Belt ever deliver—well, let me put it this way: Does the Indiana Harbor Belt deliver its traffic to your Ashland Avenue Yard?

[fol. 415] A. For Junction industries, yes.

Q. For Junction industries?

A. Yes.

Q. Does it ever deliver stock at that point?

A. It has in several cases in the past; in the case of an odd straight car. I think a year or two ago when Calumet was congested they ran some straights right into the fa-

cilities of the Union Stock Yards & Transit Company with their own crews.

Q. Then in these occasional operations does the Junction take the car of livestock into the Ashland Avenue Yard and move it to the unloading chutes?

A. Yes.

Q. Does that happen occasionally also in connection with the Michigan Central?

A. It has not since the Michigan Central reverted to switch crews to handle them against road crews. That was also stopped at the time of the strike settlement in January 23, '46.

Q. So it would happen then occasionally that the Chicago Junction does place a car of livestock at the unloading chutes of the Union Stock Yards?

A. Oh, yes. We may do that as a result of an emergency condition. Just a few short weeks ago the Burlington had a derailment of two cars on our line north somewhere near 26th Street and rather than delay the rest of the train, the Burlington crew proceeded with the cars that [fol. 416] were in condition to move and we had a steam wrecker pick up the two that were off the track and we had our crew take them to chutes and unload them.

Q. Mr. Kinsella, you mentioned for some certain day, I believe, there were 167 through trains from foreign roads that operated over your lines, is that right?

A. 167 crews.

Q. 167 crews?

A. That was an average, yes.

Q. Would that be different from the number of trains?

A. No, these might not all be trains. It might be a light engine coming in to take a train out or it might be an engine delivering a train and then moving out light.

Q. Then it would be 167 foreign line movements of one kind or another?

A. I am trying to qualify that answer. There were 167 crews moving on the railroads. One crew might make, for what we would term in railroad parlance, four movements. He might set off at Ashland Avenue and set out at Leavitt Street and then go north and deliver to Chicago Produce Terminal or the North Western Potato Terminal. He might make what we would term four moves.

Q. That would be counted as four?

A. No, I only counted that as one crew. What they did in between the time they entered the property and the [fol. 417] time they left I made no computation.

Q. Are such movements under trackage arrangements by which the foreign railroad is allowed to operate over your rails?

A. They have that privilege, yes.

Q. That is the way those movements do occur?

A. If they moved under what we term a trackage arrangement in delivering cars to the junction at Ashland Avenue, or to the River at Leavitt Street, that is not trackage. In other words, we do not receive any trackage revenue on any cars on which we receive a switching revenue.

A through movement, for example, going to Chicago Produce Terminal, they handle those with their own power under a trackage arrangement.

Q. Does the Pere Marquette and the B. & O. operate through your property to reach certain destinations?

A. P. M. and Baltimore & Ohio?

Q. Yes.

A. To reach our facilities the B. & O. C. T. tracks join our tracks to the west from 47th Street North as far as we go. So there is no occasion for the B. & O. or the B. & O. C. T. to use our facilities. They can reach everything we can reach off their own railroad.

Q. In getting this total of 167, are there included in there the foreign line engines that bring livestock to the [fol. 418] chutes of the Stock Yards Company?

A. Yes.

Q. Do you know what time the other terminal railroads require from their connections for the delivery of livestock to a point on their line?

A. No, I know nothing about their schedules.

Q. I am referring to the Burlington.

A. No.

Mr. Day: There will be a Burlington man who will testify later.

Mr. Rynder: Well, I would like to ask that question later then.

Q. I believe you reached the conclusion the time required by you would average eight hours?

A. That would be the maximum time I should say we would have.

Q. The maximum time?

A. Yes, that is what we call free time.

Q. Have you any ideas as to what would be the minimum time if you were going to the proposed Swift location?

A. No, I think that would depend largely upon conditions that prevailed at the time we attempted to make a move. I might be able, if all other traffic was free and there was no interference, to do it in 45 minutes and again we might try to make the same movement a half hour later and the time would be double.

[fol. 419] Q. Do you know whether it is customary for terminal delivery lines to make a minimum time requirement for the delivery of livestock from their connections?

A. No, I have no knowledge of that.

Q. Mr. Kinsella, I want to ask one question to see if my notes are correct. I believe you said that in the Ashland Avenue Yard north you had 24 tracks with a car capacity of 700, is that correct?

A. The Ashland Avenue North Yard I said had 20 tracks capacity with 550 cars. Now just before you change that, I will guess what I think you are referring to.

Q. What was that?

A. The 20 tracks with 550 cars.

Q. That is just what?

A. That is just for classification purposes.

Q. In what yard?

A. That is the Ashland Avenue North Yard.

Q. Yes.

A. The total yard is 24 tracks.

Q. 24 tracks.

A. Yes, with 700 car capacity. That includes the receiving as well as the classification.

Q. I believe you stated another figure for the Ashland Avenue South, is that correct?

A. Yes, the Ashland Avenue South Yard, total yard has [fol. 420] 33 tracks with a capacity of 1,125 cars.

Q. Then you listed Damen Avenue separately?

A. 15 tracks with a capacity of 550 cars.

Q. That is the same as the first figure for Ashland Avenue North?

A. Ashland Avenue North——

Mr. Day: I can't hear you, will you please speak up?

Mr. Rynder: As I understood the answers, there are 20 tracks in Ashland Avenue North used for certain purposes that have a car capacity of 550 or a total of 24 tracks with a total car capacity of 700.

The Witness: That is correct.

By Mr. Rynder:

Q. 33 tracks in the Ashland Avenue South Yard with a total car capacity of 1,125?

A. That is right.

Q. And 15 tracks in the Damen Avenue Yard with a total capacity of 550?

A. That is right.

Q. Is Damen Avenue separated by any substantial distance from the Ashland Avenue Yard?

A. No, the Damen Avenue yard adjoins the Ashland Avenue Yard South.

Q. A person not acquainted with the situation might assume that they are a continuous row of tracks?

A. Unless he was experienced enough to see the lead [fol. 421] tracks by which it enters the respective yards, that is true.

Q. Mr. Kinsella, did I understand you to say that you have the same tracks at present in the Ashland Avenue Yard that you had in 1909 and perhaps earlier?

A. That is true.

Q. Has there been a substantial increase in the number of industries or in the total business conducted by those industries served through that yard since 1909?

A. I have no information that far back, Mr. Rynder.

Q. You have been on the property for how long?

A. I have been an employee for 42 years.

Q. Have not a great many of the industries in the central manufacturing district immediately north of 39th Street commenced operations within that period?

A. Commenced?

Q. Yes.

A. That is true, I would say. That development I think started along about 1906. There seemed to be quite an activity in there at that time as I remember it.

Q. I believe you stated that you had a total of 47 locomotives of which 35 were steam and 12 Diesel?

A. That is right.

Q. Do you find the Diesels more efficient in operation on your property than the steam locomotives?

A. For industrial work I would say on the whole they are [fol. 422] better fitted, but not for lead work in classifying and switching cars.

Q. Just what is the distinction that you are making there?

A. Well, in classifying for switching cars you are generally working in a yard where you will pick up anywhere from 15 to 20 cars and proceed to classify them. Industrial work as a rule is where you will take four or five cars and spread them through a territory and you may only have two or three cars to handle at one time into one place.

There is quite a difference in operation as between classification in the yard and industrial switching. One is much, much faster.

Q. Which is faster?

A. Classification is much faster.

Q. And you think the Diesel is more efficient in the industrial places?

A. I think so, yes. I think it has better lateral activity and it can get around shorter turns and side clearances.

Q. Have you sufficient Diesels to take care of all of the industrial placements of cars?

A. No, sir, no, sir, we have not.

Q. I believe you stated you had about 11 steam locomotives and that by reason of their construction they were not suited to make industrial placements, is that correct?

A. They are not generally used in that as I explained [fol. 423] because of their weight, the track conditions and the curvature at the industries and the lateral motion on them, on account of their long, rigid wheelbase.

Q. Would the operation be more convenient and efficient if those 11 also were fitted for performing industrial placements?

A. It might ease the general situation at times if those engines could be used indiscriminately between industrial and yard work.

Q. Are your 12 diesels of comparatively recent age?

A. We got the first seven in the fall of 1936 and the remaining five in 1940. I think we were the guinea pig on the Diesel power in Chicago.

Q. How about the 35 steam locomotives? How old are they?

A. I think I can give you that right from the written record that I have. No, I have not got the date, but I will endeavor to give you the best answer I can give.

Q. All right.

A. The first six of the large type engines, and incidentally those are U. E. D.; we purchased those approximately in 1924 and '25. Another five of a similar type known as the U-3-E came a year and a half or two years later. We have 14 engines designated as B-62. Those were received during World War One.

Q. That would be when?

[fol. 424] A. I would say '18. I was in military service, so I can't say.

Q. Not later than '18?

A. I would say not later than '18. They are what we call a Government engine, that is, when we were under Federal control.

The remaining engines other than the Diesel are what we know as type B-61. Those I believe came here and I don't know if we have any of the old ones that came in in 1914, but they preceded the B-62 that we got in 1918.

Q. How many of them?

A. 10.

Q. That completes the list?

A. That is the 47 engines.

Q. Have you additional motor power on order at the present time?

A. I can not answer on whether or not it is on order, but I know we have been trying to get some additional

Diesel equipment. We want at least five of them if we can get them.

Q. Five additional Diesels?

A. Yes.

Q. You have been describing a very congested condition on your railroad. Would you say it is primarily due to inadequate motive power or inadequate trackage?

A. I would say the later probably more than the former.

[fol. 425] Exam. Diamondson: It might also be caused by increased traffic?

The Witness: That is one of the factors, yes.

By Mr. Rynder:

Q. What is that?

A. Increased traffic that has to come through the Ashland Avenue facilities. That will cause congestion of it too.

Q. Due to that union adjustment?

A. Yes.

Q. But granting that that is true the inability to handle it as promptly as you might desire would be due either to lack of motive power or lack of tracks or both?

A. I don't quite understand your question. We are handling it now.

Q. Do you have all of the employees in the operating department that are needed?

A. Well, the market on trainmen is not good, I would say, both in quantity and quality.

Mr. Rynder: I believe that that is all, Mr. Examiner.

Exam. Diamondston: Do you have any further questions?

Mr. Day: Yes.

Redirect examination.

By Mr. Day:

Q. I have a few questions, Mr. Kinsella. You were asked if as few as five or six cars of livestock were not placed by foreign lines at the chutes of the Union Stock Yards & Transit Company?

[fol. 426] A. Yes, sir.

Q. Isn't it a fact that that—that those cuts come in with as few as one car on it?

A. About all they would deliver would be the stock to us. The Indiana Harbor Belt has a run of merchandise into this Leavitt Street facilities——

Q. No, I am calling your attention to the cars coming in on foreign railroads going to the Union Stock Yards unloading facilities; the cars of livestock.

A. Foreign trains with just a few cars?

Q. Yes. Don't they come over with just one car at a time?

A. Yes.

Q. One car of livestock at a time?

A. That is true in many instances.

Q. And others with two cars?

A. That is right.

Q. Or three?

A. Yes.

Q. That is a common thing, isn't it?

A. Yes.

Q. Now I don't know whether it has been made clear on the record, but if it is not I want you to clear it up. Does any foreign line have the right to deliver freight at industries on the Chicago Junction?

A. No, sir.

[fol. 427] Q. Or the Chicago River and Indiana?

A. No, sir.

Q. During the test period that you described between December 1 and December 7, 1947, will you state what the minimum and the maximum temperatures on each of those days were?

A. On December 1st, 1 a. m., 20 degrees above zero. That temperature continued until 7 a. m. The same figure up until then. The maximum was 37 degrees above zero and that obtained by a recording taken at 3, 4 and 5 p. m. On December 2nd——

Q. December 2nd?

A. Yes, December 2nd, the low was 36 degrees above zero and that temperature obtained from 3 a. m. to 7 a. m. The high was 42 degrees. That same temperature continued from 2 p. m. until 12 midnight.

December 3rd the minimum temperature on that day was 34 degrees above zero at 4 p. m. and the maximum was 51 degrees above zero.

Q. At what hour?

A. At 4 a. m.

Q. You did not take 4 a. m. for both the maximum and the minimum, did you?

A. No, that was the maximum at 4 a. m.

Q. What hour for the minimum?

A. 4 p. m. December 4th, minimum of 32 degrees and [fol. 428] that obtained until 9, 10 and 11 a. m., and the maximum was 37 degrees at 12 midnight.

December 5th minimum was 30 degrees above zero at midnight and the high was 40 degrees at 1 a. m. and 2 a. m.

December 6th, minimum 27 degrees obtained from 4, 5, 6, 7 and 8 a. m. and the high was 37 degrees at 6 and 7 p. m.

December 7th, 36 degrees minimum at midnight and a high of 54 degrees at 7 and 8 p. m.

Q. Does that conclude it?

A. Yes.

Q. Since that time have there been a number of days in Chicago on which the temperature has been below zero?

A. There has.

Q. Do you regard the temperatures you stated, or the range of temperatures for that period between December 1st and December 7th as being rather mild for that time of the year?

A. Very favorable for that season I would say.

Mr. Day: That is all.

Mr. Smith: I have a question or two.

Exam: Diamondson: You may proceed.

Recross-examination.

By Mr. Smith:

Q. In picking this livestock out of this Ashland Avenue Yard in the event this new program were put in action, you testified you would have to pick it out of the dead

freight that happened to be in that yard on those various [fol. 429] tracks?

A. That is correct.

Q. In the process of taking that livestock out of that yard, would that create any interference to trains of line haul carriers that were attempting to place livestock and dead freight into that yard?

A. Oh, certainly. While our crews were using that lead to perform the segregation of livestock there could not be any further use of it.

Q. Would that be a congestion and an interference which does not presently exist?

A. It would.

Q. I may have misunderstood you or you may have misunderstood Mr. Rynder's question, but I thought you said the only interference to these line haul carriers would be created by their own trains that were attempting to set out this increased number of cars at Ashland Avenue? You did not mean that, then, if the record so shows?

A. No, I thought he was referring entirely to the delay that would cause a following foreign crew train from proceeding to make the set out. I did not think it was necessary to talk about our crews working in that division, —in that district.

Q. But the fact is, is it not, if the line haul carriers had to bring more trains in for delivery to our Ashland Avenue Yard and you had to take the livestock out, that congestion and interference would be compounded in those [fol. 430] two respects?

A. Very much so.

Exam. Diamondson: Is it your position it would be compounded to such an extent that you could not operate?

The Witness: I would say from my own observation that about the second day we were doing it, I don't know what we would do with the dead freight that we did not yet handle because we were trying to segregate and handle the livestock.

Exam. Diamondson: In other words, it is your position, based on the present track facilities, you just could not do it?

The Witness: That is correct, we would have to sacrifice the other freight for the livestock.

By Mr. Smith:

Q. Mr. Rynder developed that on one occasion there had been a wreck or a derailment of the Burlington cars and you sent a wrecker out and took a couple of cars into the chutes of the Union Stock Yards?

A. Yes.

Q. Did you set them out on Ashland Avenue or did you take them directly to the chute?

A. We took them right to the chute.

Q. And then he testified I think that sometimes one or more cars would come in over the Indiana Harbor Belt of inbound ordinary livestock. Will you explain that a little clearer?

A. I will say formerly the stock received, because I have [fol. 431] no knowledge of handling any for the past two years, but as I understand it, the stock that is stopped at Calumet Park by the Indiana Harbor Belt and then diverted into the Stock Yards for the Union Stock Yard & Transit facilities.

Q. Prior to the time that that was discontinued, about two years ago, did that stock move in any volume?

A. Just a scattering car now and then.

Q. Mr. Rynder undertook to develop from you what it might cost to handle the various cars and went through some arithmetical computations with you as to how you divide the number of cars into the total expense. Are you a cost accountant?

A. No, sir.

Q. Do you know anything about arriving at——

Mr. Rynder: May I offer an objection? There was no figure mentioned. I merely said if the total expense of the engine crew were divided by four, it would be less than if you divided it by two. That is as far as the mathematical computation went.

Mr. Smith: Then you asked him the further question and I may have misunderstood it as to whether or not this livestock were handled through the Ashland Avenue

Yard if he knew of any reason why the cost per car would be any higher than the cost on dead freight?

Mr. Rynder: I did not.

Mr. Smith: You did not ask him such a question?

[fol. 432] The Witness: I don't recall it.

Mr. Rynder: I did not.

Mr. Smith: You did not intend to elicit any such information of this witness?

Mr. Rynder: At least I asked him nothing of that kind.

By Mr. Smith:

Q. Do you happen to know why it is that these line haul carriers bring in with a train crew an engine and as few as one, two or three cars of livestock for the Union Stock Yards?

A. I don't know of my own knowledge, although I have understood in talking with several of the terminal superintendents it is to avoid overconfinement of livestock.

Q. Well, does that impress you as being reasonable from your knowledge of railroading?

A. I would say it would be a good thing to not have it overconfined.

Mr. Smith: That is all.

Exam. Diamondson: Any further questions?

Mr. Rynder: I have just one more or two.

Exam. Diamondson: Go ahead.

By Mr. Rynder:

Q. What will be the next exhibit number?

Exam. Diamondson: 16.

Mr. Rynder: I should like to have marked for identification at this time Plaintiff's Exhibit 16 which shows certain train consists furnished us by Mr. Smith.

[fol. 433] Exam. Diamondson: It will be so marked.

(The document referred to was marked as Complainant's Exhibit No. 16, Witness Rynder, for identification.)

By Mr. Rynder:

Q. Mr. Kinsella, you referred to the movement of straight livestock trains to Union Stock Yards unloading

chutes as being predominant, 63 per cent as against 37 per cent?

A. Over this test period, yes.

Q. I call your attention to Exhibit No. 16 which is a consist furnished to us by the railroads upon our request, based upon your experience, would you say that the average movement of livestock cars by the foreign lines to the pens of Union Stock Yards Company averaged less than 10 per train?

A. Cars handled to chutes averaged less than 10?

Q. Yes.

A. I would say by trains it probably would.

Q. Mr. Kinsella, do you at the present time restrict the selection of any class of traffic to your industries because of the nature of the traffic, because it is perishable or because on the other hand it might be coal or salt or something of that kind?

A. Not on those commodities. So far as I know, and have reason to believe, I think high explosives are about the only thing we have a ban on. However, the ordinary run of freight, no.

[fol. 434] Q. You take everything that comes?

A. That is right.

Mr. Smith: I think Mr. Rynder will agree with me that he furnished us the designations of certain specific trains which he has selected and asked us to furnish him with the consists of those trains and we did that, and that is embraced in Exhibit 16. Mr. Rynder does not suggest or assert, I am sure, that those are all of the trains that moved during that period. He has simply selected these because they are trains that were consolidated and did set out some traffic at Ashland Avenue. That is true, isn't it, Mr. Rynder?

Mr. Rynder: I think the North Western—well, as I glance at it some of the trains contained dead freight, perishable and some did not.

Mr. Smith: You did not make any effort to ask us to furnish the consists of all trains moving down there during that period?

Mr. Rynder: No, we did not because we thought that would be too burdensome.

By Mr. Smith:

Q. Mr. Kinsella, if as Mr. Rynder has developed from you many of these trains which today are permitted to run directly to the Union Stock Yards with livestock, if the average train has a few, as an average of 10 cars, how can you explain that relatively costly handling down there except on the grounds that even now these roads are so short on time in delivering this stock that they have to [fol. 435] operate that relatively inefficient train of some ten cars?

A. I don't know as I am qualified to talk about what expense that puts them to.

Mr. Smith: That is all.

Exam. Diamondson: Any further questions?

Mr. Day: I have a few more questions.

Redirect examination.

By Mr. Day:

Q. Mr. Kinsella, what line brings the most livestock into Chicago?

A. I would say the North Western.

Q. And certain trains of the North Western are shown on Exhibit 16?

A. Yes.

Q. I call your attention to train 1581 on April 17, 1947. How many cars were in that train?

A. This shows 18 livestock.

Q. I beg your pardon, April 17, engine No. 1581, arriving at Damen after 7:55 a. m. It is the third train listed.

A. One car of livestock.

Q. Anything else in the train?

A. Not according to this, no, sir.

Q. Are there several instances in the North Western tabulation where there was nothing more than two cars of livestock in the train?

[fol. 436] A. Yes.

Q. I call your attention to May 2nd and May 3rd.

A. Yes, on those days this record shows two cars of

livestock handled by engine 2157 and delivery on May 3rd, two cars of livestock by engine 1633.

Q. Is there a case on April 19th of an engine with three cars of livestock and nothing else in the train?

A. There is.

Q. There are several other instances where there are as many as five cars of livestock in the train and nothing else?

A. There are two cases like that.

Q. How about April 17th for one?

A. That was a single car and you mentioned that before.

Q. No, the second item, Mr. Kinsella, April 17th.

A. Yes, engine 2633, five cars of stock only.

Q. How about engine 1627 on May 6th?

A. That had five cars of stock only.

Q. And engine 1568 on May 10th?

A. That had five cars of livestock only.

Mr. Day: That is all.

Exam. Diamondson: Any further questions?

Mr. Kaylor: With reference to the test period that was made and the weather conditions, you stated those were favorable weather conditions?

A. Yes, sir.

[fol. 437] Q. Did you mean that that was as favorable a weather condition operation as you could have throughout the year?

The Witness: Favorable for that season of the year. I thought I said that.

Mr. Kaylor: Was it more favorable than if it had been very warm?

The Witness: No, I would say not.

Mr. Kaylor: But you would call it better than the average from an operating standpoint?

The Witness: I would say it was close to average good operating weather. There was no snow or bad footing.

Mr. Kaylor: That is all.

Exam. Diamondson: Exhibit 16 will be received in evidence.

(Complainant's Exhibit No. 16, Witness Rynder, was received in evidence.)

Mr. Rynder: Mr. Day, since I happen to have the documents here might I at this time introduce the additional exhibits so that they will be in order?

Mr. Day: Yes, certainly.

Mr. Rynder: Mr. Examiner, I should like to have marked for identification as Exhibit No. 17 the statement showing the deliveries of livestock on team tracks furnished by Mr. Smith.

Exam. Diamondson: It will be so marked.

(The document referred to was marked Complainant's [fol. 438] Exhibit No. 17, Witness Rynder, for identification.)

Mr. Rynder: As I stated yesterday, these requests by us for train consists were sent months ago to the respective railroads. I believe the situation was that we were later advised that those requests had been turned over to you for handling?

Mr. Smith: Yes.

Mr. Rynder: With the exception of the Nickel Plate which sent back the statement which I am now holding. I don't know anything about it except that they transmitted it to us in response to that request.

Mr. Smith: Mr. Rynder, let us agree that you handed me a copy of that and we will check it with the Nickel Plate and either before this hearing or within ten days thereafter you and I will agree a correct statement from Nickel Plate will be submitted, which will probably be this one and it will go into the record.

Will that be satisfactory?

Exam. Diamondson: Do you want to file a late filed exhibit?

Mr. Smith: Yes, if we can not do it before we close the record.

Exam. Diamondson: Suppose you make that request just before we close the record?

[fol. 439] Mr. Smith: That is satisfactory.

Mr. Rynder: Could I not have it marked now for identification subject to later checkup?

Mr. Smith: I think that is all right.

Mr. Rynder: I would like to have the exhibit marked for

identification as Complainant's Exhibit No. 18, but go no farther with it at this time.

Exam. Diamondson: And the Examiner will be advised before the conclusion of the hearing as to whether any corrections are necessary in the document?

Mr. Rynder: Whatever comes in that line will come from Mr. Smith. I ask that Exhibits 16 and 17 be received in evidence.

Exam. Diamondson: Exhibit 16 has already been received in evidence. Exhibit 17 will now be received in evidence.

(Complainant's Exhibit No. 17, Witness Rynder, was received in evidence.)

Mr. Kaylor: Exhibits 16 and 17 will be received in evidence by the Illinois Commerce Commission.

Mr. Day: Mr. Sorenson.

J. L. Sorenson was sworn and testified as follows:

Direct examination.

Mr. Day: May we have the photographs marked for identification at this time?

[fol. 440] Exam. Diamondson: In what order?

Mr. Day: I would like the narrow one given the next number.

Exam. Diamondson: That will be 19.

Mr. Day: The one marked on the back 28,000 P. M. No. 20 and the one marked on the back 28,000 C. M. will be No. 21.

(The documents referred to were marked as defendant's Exhibits Nos. 19, 20 and 21, Witness Sorenson, for identification.)

By Mr. Day:

Q. Will you state your name and occupation?

A. Joseph L. Sorensen, assistant superintendent of the Chicago Junction Railway.

Q. How long have you held your present position?

A. For 15 months approximately.

Q. State what your experience was prior to that time?

A. I have been in the railroad business approximately 20 years, employed as terminal trainmaster for the New York Terminal Railroad before coming with the Chicago Junction Railway. I have served in various capacities in the Chicago Terminal District and have spent considerable time in the Union Stock Yards in connection with the movement of New York Central trains through that district.

Q. That is prior to the time you took your present position?

A. That is prior to my coming with the Chicago Junction Railway, yes.

Q. Since that time, of course, your work has been ex-
[fol. 441] clusively in the stockyards area?

A. Since December 1, 1946, I have been exclusively employed on the Chicago Junction Railroad in the stockyards district.

Q. Does Swift & Company have any present facilities for unloading direct shipments of livestock?

A. They have no facilities for unloading direct shipments of livestock received by rail to my knowledge.

Q. Will you state what the situation would be if the Chicago Junction was required to handle direct shipments of livestock to a private siding of Swift & Company?

A. In my opinion a condition will be created in the operation of the Chicago Junction Railway——

Mr. Rynder: Just a moment. Mr. Examiner, I think I may reasonably object to any opinion evidence being offered at this stage of the witness' testimony. He should be stating facts if he knows any.

Mr. Day: Of course, your Honor, you can not have facts until you have an operation. This is so far just in everybody's imagination because we have never performed this service. All the witness can do is state what the situation would be if we had to perform it.

Mr. Rynder: If it may be stipulated that the witness is talking entirely from conjecture and imagination, that is all right.

Mr. Day: The witness——

[fol. 442] Exam. Diamondson: The witness can express his opinion as to what the circumstances would be under certain conditions, of course.

Mr. Day: Yes, based on his knowledge of operating conditions on the Chicago Junction and the Chicago River and Indiana.

The Witness: That is correct. That is my testimony. That will be based on my operating experience in the terminal yards in the Chicago district and in the Union Stock Yards.

By Mr. Day:

Q. Just proceed, Mr. Sorenson, and state what a service of that kind, if required, would do to the operation of the Chicago Junction?

A. A condition will be created in the operation of the Chicago Junction Railway which would ultimately result in the complete disruption of service which it is presently affording all trunk line carriers using our rails as well as for the more than 600 industries served by our railroads.

In order to fully understand the present operation of our railroad, I will describe briefly the physical layout of our property and the method in which cars are presently handled. Our main inbound receiving and classification yard is located at what is known as 40th and Ashland Avenue, and is known as the Ashland Avenue South Yard. This yard contains nine receiving tracks and 21 classification tracks. The nine receiving tracks have a total capacity of approximately 420 cars, and at the present time [fol. 443] we are receiving in this yard an average of 1,000 to 1,100 cars daily.

Q. Mr. Sorenson, at the appropriate place you may refer to the photographic exhibits that have been identified here.

A. Please refer to Exhibit No. 20. In the central right hand section of this photograph looking in an easterly direction you will note there is a collection of objects which are boxcars of various types.

Q. By boxcars you are also including refrigerator cars?

A. Freight cars of various types, I should say. These

cars are located in the receiving yard and in the classification yard of our Ashland Avenue South Yard.

By contractual agreement with the labor organization representing trainmen employed by the Chicago Junction Railway, we are obligated to receive all cars destined for industries on our rails or for interchange movement to other railroads on these nine tracks which comprise our receiving yard. Foreign line crews bring cars consigned to industries on our rails direct to this receiving yard and set them out, and after these cars have been inspected and carded, cars are switched to the various classification tracks by crews of the Chicago Junction Railway. Engines are worked at both ends of this yard in doing this classification. The switching operation is known as flat switching, and is not gravity switching which is performed in so-called hump yards. At the present time our Ashland [fol. 444] Avenue South Yard is being worked to capacity, and despite our efforts, foreign line crews are delayed waiting to set cars out in our receiving yard due to our inability to classify them quickly enough to avoid these delays.

At the present time any direct shipment of livestock consigned to packers is handled direct to the open chutes of the Union Stock Yards and Transit Company by engines belonging to the road haul carrier handling the inbound shipment. These cars are unloaded by Union Stock Yards and Transit Company employees, and the empty equipment is handled back to the outer yard of the road haul carrier by their own crews. Engines of the Chicago Junction Railway do not handle the stock or are they involved in the operation in any manner. The Chicago Junction Railway only provides a train director to assign unloading tracks at the facilities of the Union Stock Yards and Transit Company to the various trains.

If we were forced to handle shipments of livestock consigned direct to the packers, it would mean the foreign line haul carrier bringing these cars into Chicago would have to set out these cars on one of the nine receiving tracks contained in our Ashland Avenue South Yard. The bills would have to be checked by clerical force, the cars would have to be side-carded to destination, mechanical in-

spection would have to be made by our car inspectors, and cars would have to be classified and taken to the proposed [fol. 445] unloading site by Chicago Junction Railway engines.

I might add at this point that the process of mechanically inspecting, checking bills, checking the interchange, checking credit references of the consignees and side-carding and bleeding cars to enable us to classify them is a process that may take from a minimum of 20 minutes to two hours, depending upon the availability of our clerical and mechanical force to do this work. That is after the car is initially set out by the road haul carrier.

Q. Will you define what you mean by bleeding cars?

A. When a car is handled over the lines of a railroad in main line movement and it is contained in a train, the air hoses are all coupled between the cars which is also connected to the engine and air is forced from the engine through these cars and through various mechanical devices on the cars which enables the braking equipment on the freight cars to be controlled from the engine.

When this car is set out for classification, before it can be moved the brakes must be released necessarily. This is accomplished by pulling a small rod on the side of the car which releases the air contained in the cylinder and releases the brake. Is that clear, Mr. Examiner?

Exam. Diamondson: Yes.

By Mr. Day:

Q. Now, if the Chicago Junction were required to handle [fol. 446] livestock from a point of interchange with other railroads to industries on its rails, how many slaughter houses would have to be served in that manner?

A. There are 13 slaughter houses, that is 13 packers on the rails of the Chicago Junction who slaughter livestock and it is reasonable to assume that if Swift & Company are granted the right to receive direct shipments of livestock to their private siding, all other packers located on our rails would be given the same results, or the same rights.

Q. Are these 13 packers located in different places on your railroad?

A. These 13 packers are located in different sections of our railroad and in all sections of our railroad.

Based on average direct shipments of livestock received at the chutes of the Union Stock Yards and Transit Company and at the chutes of the Omaha Packing Company on the Chicago, Burlington & Quincy Railroad in 1947, an additional average of 130 cars per day would have to be handled in our already badly congested receiving yard of the Ashland Avenue South Yard.

At this point I would like to call your attention to Exhibit No. 19 which is an aerial photograph looking from the south to the north and directed toward our Ashland Avenue South Yard and North Yard taken on February 17, 1948, at approximately 2:30 p. m.

[fol. 447] Q. The picture was taken north generally?

A. Facing north generally, yes. You will note from this picture it evidences considerable congestion in our yard at that time and date.

Mr. Kaylor: What do you call this?

The Witness: This is the Ashland Avenue South and North Yard. This photograph takes in both of them.

By Mr. Day:

Q. It might be well to state what that area is in the left central part of the picture?

A. The vacant area indicated in the left central portion of this picture is the side of the McKinley Park which is a small Park in the City of Chicago. It is not any part of the property of the Chicago Junction Railroad.

By Mr. Smith:

Q. That figure that you gave, what was it, 140?

A. 130 cars per day.

Q. Loaded or empty?

A. Loaded cars only, inbound. Multiplying that by two it would necessarily follow that it would indicate we would have to handle 260 cars additional per day because we would necessarily have to handle the empty cars in return movement to the owning railroad.

By Mr. Day:

Q. And all of those cars would have to be classified, would they?

A. The 130 cars received in our receiving yard of the Ashland Avenue South Yard would necessarily have to [fol. 448] be classified because they would be consigned to one or more of the 13 different packing companies located on our rails.

Livestock may be confined in stock cars——

Q. And the same would be true of the handling of the empties in reverse movement?

A. The empty cars would have to be pulled from the private siding of the consignee and taken to our outbound departure yards where they would be classified for delivery to the owning roads.

Q. What have you to say as to the operation of the 28 hour law on the Chicago Junction operation?

A. Livestock may be confined in stock cars for only 28 hours unless shipper grants release, which extends the time to 36 hours. In practically all cases stock contained in cars arriving at the Union Stock Yards have only a limited time before this stock is due to be unloaded from the stock cars in order to avoid violation of the confinement law. At the present time these shipments, as I stated before, are handled directly to adequate facilities for unloading, which are provided by the Union Stock Yards and Transit Company, but if we were forced to handle these shipments direct to packing companies' unloading facilities, many of which no doubt would have limited chute room, and by that I mean we do not know nor have we any manner of knowing how much available track space would be present at any of these packing [fol. 449] companies.

Q. You mean how much would be provided by each industry?

A. That is correct, by any industry. It would result in our expending from one to eight hours before cars could be set for unloading. This, of course, would result in our requiring line haul carriers to see that cars containing livestock tendered to us for placement at private siding of the packing companies, would have at least eight hours

free time before stock contained in these cars would have to be unloaded in order to avoid violation of the confinement law. This again would result in line haul carriers, in most cases, having to unload these shipments of livestock somewhere on their railroad for rest and feed, which presently is not necessary.

At the present time stock is handled into the Union Stock Yards by practically all of the 22 trunk line carriers delivering to the Chicago Junction Railway and if we were forced to handle these direct shipments, it would mean that all of these trunk line carriers would be required to set them out at our Ashland Avenue South Yard, which would increase the number of delays to the engines of these trunk line carriers above that which they are receiving today.

Trains arriving from western lines with cars for our Ashland Avenue South Yard generally move on one of our main tracks from Brighton Park to Ashland Avenue, and cars are set out at the east end of that yard.

[fol. 450] In a survey made December 1st to December 7th, 1947, inclusive, 37 per cent of trains containing livestock for the Union Stock Yards and Transit Company also contained cars of other than livestock, which were set out by the line haul carrier at the Ashland Avenue South Yard. 63 per cent of trains containing livestock moved directly to the unloading facilities of the Union Stock Yards and Transit Company and made no set-out at Ashland Avenue. If all shipments of direct livestock contained in the 63 per cent of trains which moved directly to the facilities of the Union Stock Yards and Transit Company during this period would have had to set these cars out at Ashland Avenue rather than the Union Stock Yards, it would have multiplied our present congestion and added to the delay to line haul carriers.

Shipments of livestock contained in stock cars cannot be handled the same as other freight. Shipments of livestock cannot be kicked such as other shipments can be, but must be handled separately and pulled or shoved to rest.

In order to clear up the term "kicked" it is a railroad parlance which designates an engine rapidly pushing a string of cars, stopping suddenly and through an opera-

tion called uncoupling, permits one car or several cars to run freely down a switching lead and into a classification track for further handling.

By Mr. Smith:

Q. May I ask there if that is the method that you are [fol. 451] now using in switching at the Asland Avenue Yard?

A. That is the method which we now use in switching the cars at Ashland Avenue South Yard.

However, if we were to do this with livestock it would result in the animals being knocked down, knocked up against the ends or sides of the cars which would result in serious damage to the animals and also would result in heavy claims. This would result in our having to assign separate tracks for the classification of livestock consigned to the 13 packing companies located on our rails. My reason for this statement is this: Even if we were to shove cars of livestock onto our existing classification tracks there would be other cars of dead freight ultimately kicked against these stock cars causing a heavy impact to be placed upon the car of livestock and have the same result on the animals contained therein as it would if the cars were kicked by itself.

By Mr. Smith:

Q. May I ask there where you would get those separate classification tracks for livestock that you have spoken about?

A. We have no available space that I know of to assign 13 different classification tracks to the handling of this livestock.

We do not have such available tracks; nor do I know where such tracks could be constructed. The receipt of livestock at the Union Stock Yards is practically continuous throughout the 24 hour period, and so it can be [fol. 452] visualized what it would mean to the operation of the Chicago Junction Railway in our endeavoring to handle this traffic. We would have to go in on various of the nine receiving tracks contained in our Ashland Avenue South Yard, pull the deliveries containing cars of

livestock out, which may be located in various positions on any of the various receiving tracks, shove the car or cars of livestock to rest, set the cars of dead freight back in the receiving yard, during which time the lead track serving this receiving yard would be blocked with Chicago Junction Railway engines, resulting in foreign line crews being unable to complete their set-outs; also resulting in our being unable to switch cars of dead freight consigned to industries on our railroad because of our switching leads being tied up in the handling of this livestock.

In order to further illustrate this statement I would like to refer to Exhibit 15 which is a larger scale photograph. This photograph was made in 1939 and the trains arriving from the west would have cars of livestock and cars of dead freight and cars of livestock for direct shipment.

By Mr. Day:

Q. You are talking about present day operations though?

A. Sir?

Q. You are now describing present day operations?

A. No, I am trying to describe—may we be off the record?

[fol. 453] Exam. Diamondson: Off the record.

(Discussion off the record.)

Exam. Diamondson: On the record.

The Witness: Now if you refer to Exhibit No. 15, the trains from the west would arrive at Ashland Avenue South Yard on No. 3 main track and would effect their setout in our receiving yard on one of the nine tracks. As I stated previously in my testimony 20 minutes to two hours time might elapse before this delivery would be inspected, bills checked, cars side-carded which would necessarily mean we could not handle the cars in this delivery until this work was done.

However, a following train would arrive with setouts. It is very possible and probably it would be done that the following train would be placed on the same track that the first setout was made. One of our engines having previously shoved this train into the clear sufficiently to hold the following deliveries. I can see and I know that it is

being done daily where as high as three and four deliveries will be on one receiving track, all of them containing livestock, and all of them containing dead freight with no ordered position in the track.

Eventually when the cars would be conditioned for further movement and by conditioned I mean carded and inspected, etc., we would have to go in on this track from either end with a switch engine of the Chicago Junction Railroad, pull out and shove the livestock to rest, set the [fol. 454] dead freight back, set the next cut of livestock out and so on until you had all of the livestock out of that track.

During this time, of course, your receiving yard lead would be tied up for foreign yard crews to use. They would not be able to use it.

This would also result in our being unable to switch cars of dead freight consigned to industries on our railroad because of our switching leads being tied up in the handling of this livestock. It would so seriously hamper our switching operations that in my opinion as an operating man, we could not keep our yard open for the receipt and classification of cars consigned to industries located on our rails. This would have the net result of seriously delaying shipments consigned to the more than 600 industries on our rails in order that livestock for 13 packing companies would be given preference.

In 1947 there were approximately 30,000 carloads of livestock unloaded at the facilities of the Union Stock Yards and Transit Company, which were consigned directly to slaughter houses located on our rails. There were approximately 6,000 or more carloads of livestock unloaded at the facilities of Omaha Packing Company located on C. B & Q. rails which were consigned to Swift & Company, and if we were required to handle these direct shipments with Chicago Junction Railway engines it would result in [fol. 455] an additional 36,000 loaded cars per year being handled through our Ashland Avenue South Yard, and an additional 36,000 empty cars are being handled through our Ashland Avenue North Yard or our Loomis Street yard, depending upon the road to which the cars belonged.

Based on a five day week, we would be forced to receive

approximately an additional 130 cars of livestock per day on the nine receiving tracks of our Ashland Avenue South Yard.

As I stated before we are presently handling between 1,000 and 1,100 cars per day through this yard, and the yard is being operated to capacity, and if the burden of handling this additional traffic was put upon us, our yard operation would break down in its entirety.

I might say that on several occasions during the past three months just handling the traffic which we were handling during that time and not handling any direct shipments of livestock, we were forced to delay foreign line crews waiting to set cars out at the Ashland Avenue South Yard of the Chicago Junction Railway as high as nine and ten hours before they could effect delivery of cars to our line, this being due to our badly congested yard and unable to handle the cars quickly enough to avoid such delay.

If we were required to handle this livestock—presuming now that we could receive it, classify it and deliver, it which I do not believe we could do, we would be required to [fol. 456] put on approximately six to eight engines per trick or a total of 18 to 24 engines over a 24 hour period just to handle this stock. We do not have these engines; nor do we have sufficient manpower to man them and I do not know where we could secure such engines and manpower. Assuming now that we have delivered these 130 cars of livestock to the siding of the individual slaughter houses, we must then handle the empty equipment from these sidings to our Ashland Avenue North Yard or to our Loomis Street Yard, which are the outbound yards from which the 22 trunk line carriers receive cars from the Chicago Junction Railway. The bulk of these cars would belong to five or six western trunk line carriers, who deliver the bulk of stock presently consigned to the Union Stock Yards, all of which but one receive cars from us at our Ashland Avenue North Yard. This yard comprises 24 tracks, three of which are used as receiving tracks, delivered to that yard by Chicago Junction engines only, 14 of which are used as interchange tracks for the delivery of cars to trunk line carriers, and the balance are used for the holding and classification of cars con-

signed to industries in our McKinley Park District and other adjacent points. At the present time we are handling from 600 to 800 cars per day outbound through this yard, and it is being worked to capacity. I do not see how we could crowd an additional 130 cars per day for five or six western trunk line carriers, onto their five or [fol. 457] six respective interchange tracks in this yard without seriously hampering its operations.

There is another feature involved in our having to handle the empty equipment back to the interchange track in the North Yard and that is the delay the empty stock equipment will encounter.

As I stated before at the present time stock is being handled by the Union Stock Yards and Transit Company by foreign line crews and it is unloaded and the empty equipment is then sent directly back to the outer yard by the foreign carrier crew that brought the loaded stock in. In many cases these empty stock cars are received in the outer yard of the line haul carrier and forwarded for movement back to the loading centers in the rural section for reloading within a 12 hour period after receipt under a load from a rural carrier.. Is that clear to you?

Exam. Diamondson: Yes.

The Witness: There is a serious shortage of stock cars at the present time, and the handling of this empty equipment in the manner which I described above in the North Yard. By that I mean the handling of the empty equipment as we would handle it if we were forced to handle this stock would result in at least a 24 hour delay in most cases to this equipment, which presently it is not receiving.

In my considered opinion, based on my 20 years experi- [fol. 458] ence in the operating end of the railroad industry, all of which time has been spent in terminal yards, if the Chicago Junction Railway was forced to handle direct shipments of livestock for delivery to private siding of the packing companies located on our rails, the net result would be the complete breakdown of the operation of the Chicago Junction Railway.

By Mr. Day:

Q. Mr. Sorensen, will you describe your Exhibit No. 21 and show what it portrays?

A. Exhibit 21 is a photograph made approximately directly overhead from our main track leading from the east end of the Ashland Avenue South and North Yards across Ashland Avenue in an easterly direction toward the unloading facilities of the Union Stock Yarus and Transit Company. It depicts how——

Q. Pardon me, will you be more explicit?

The Witness: Mr. Reporter, will you read back what I said?

(The answer was read.)

The Witness: It shows how the 75 tracks contained in the Ashland Avenue North Yard, the Ashland Avenue South Yard and the Seeley Avenue Yard funnels into seven tracks across Ashland Avenue, three of which are main running tracks, two auxiliary tracks and two more lead tracks.

Exam. Diamondson: Those seven tracks do not extend to the stockyards?

The Witness: No, sir, they do not.

Exam. Diamondson: What happens to them? Can you [fol. 459] tell us from Exhibit 21 where they merge?

The Witness: Calling your attention to Ashland Avenue, which is the street running in a diagonal direction from the lower center of the photograph to the upper right hand corner of the photograph, the farthest north track shown on this photograph is known as track No. 1 and is a lead track to our Ashland Avenue North Yard, and runs from a point approximately 300 feet east of Ashland Avenue in a westerly direction to what is known as C. R. & I. Junction, not shown in this photograph, it being beyond the upper left hand limits of the photograph.

The next track is track No. 2, which runs throughout the entire distance of our railroad, from the facilities of the Union Stock Yards Company in a westerly direction to the limits of our railroad.

The next track is main track No. 3 which runs the same

as No. 2. Next to this is No. 4, which runs from a point at Union Avenue in a westerly direction to Brighton Park.

The next track is known as 5 lead and it is an auxiliary track used as a switching lead by Chicago Junction engines at the east end of the Ashland Avenue South Yard and as a means of access to the Horn district, and the packing-town district of the Chicago Junction Railway as well as the south division of the Union Stock Yards and Transit Company.

The next is track No. 6 which is an auxiliary track which [fol. 460] runs from approximately 40th and Loomis Street in a westerly direction to a point approximately 500 feet east of Ashland Avenue where it leads into tracks proceeding in a southwesterly direction to 43rd and Damen Avenue.

The next is track No. 7 which runs from a point just at the eastern side of Ashland Avenue viaduct in a westerly direction with other series of tracks leading in a southwesterly direction to 43rd and Damen Avenue.

This latter track is the one which would have to be used in order to reach the proposed Swift & Company unloading facilities for direct shipments of livestock.

By Mr. Day:

Q. Do the photographs identified as Exhibits 19, 20 and 21 fairly depict the conditions as they exist, the conditions and traffic as they exist today on that portion of the Chicago Junction Railway that is shown in these photographs?

A. The conditions existing in the South Yard of the Ashland Avenue Yard is fairly representative. The conditions shown in the North Yard of the Ashland Avenue Yard are not representative, and by that I mean the tracks are not as fully occupied with the cars as they normally have been during the past several months since I have been with the Chicago Junction Railway.

Q. Are you familiar with the location of the proposed facilities of Swift & Company that have been referred to [fol. 461] here by their witness?

A. Yes, I am.

Q. Will you state whether any curves or grades would

be encountered in the Chicago Junction operating into such facility?

A. Yes, there would be. In my opinion it would be harder than the usual facilities to switch, and by that I mean it would be necessary, granting that we have now classified the cars for this facility at some point that I don't know where, we would have to pull out of this point, down either tracks 5 or 6 as I described previously until the rear car of the cut of cars destined for this facility would clear the entrance switch to the facility.

We would then have to cut our locomotive off and run around the train. By that I mean proceed to the opposite end from which it was being pulled, recouple to the train and pull back over the entrance switch to the facility and shove the cars downgrade and around a curve to the unloading chutes.

This operation in leaving the cars on either track 5 or track 6, while this move was being made, would cause us to handle these cars with air. By that I mean the air hoses on the cars would have to be coupled and the automatic air brake be cut in operation because if this were not done when we cut off from the cars standing on this track 5 or 6 to run around the cars, they would roll downgrade. This portion of our railroad is on an incline, de-
[fol. 462] scending from the east to Ashland Avenue.

Exam. Diamondson: You mean descending from the viaduct?

The Witness: From the viaduct, yes. It descends sufficiently to allow the cars to roll if there were not some means of holding them there.

By Mr. Smith:

Q. To what extent do you operate that way now in Ashland Avenue?

A. What?

Q. To what extent do you operate that way now in Ashland Avenue?

A. We handle cars consigned now down to this district presently but they are generally pulled down to a point far enough to where air is not necessary and they are

pulled back and shoved into this same facility today the same way.

Q. Generally in your operations in this district, do you operate by the use of air or without it?

A. The only time we use air in this district is when we shove over road crossings which is to the right of the proposed facility as indicated in Exhibit No. 4.

The danger of cars breaking off in descending grades is always present but in the handling of empties and dead freight we do not become too alarmed where they might roll for a distance freely and strike standing cars, but while handling livestock this impact may result in the shipments being knocked down and damage being done to the animals. [fol. 463] Exam. Diamondson: You do not think it would be possible under the proposed construction for the engine to pull the train in and stand by while it is being unloaded?

The Witness: The facilities as shown by Exhibit No. 1 indicates that the unloading tracks are going to be sub-tracks.

Exam. Diamondson: Do you have any further questions?

Mr. Smith: Yes, I have some questions.

By Mr. Day:

Q. Does the photograph, Exhibit No. 4, indicate the curve on which the Chicago Junction would have to operate in serving this plant?

A. Yes, it does.

Q. What does it indicate?

A. It indicates that proceeding in an easterly direction from the west side of Ashland Avenue there would be a slight curve to the south and thence a curve to the north to reach one of the unloading pens as shown in Exhibit No. 1.

Exam. Diamondson: Could you estimate the degree of curvature according to that photograph?

The Witness: No, sir, I could not. I would have no idea of the amount of curvature. However, the curve leading down into what is known as Swift's West Yard is of a degree that it is unsafe to operate our big engines around this curve. We have done it, but sometimes we have gotten into trouble and sometimes we have not.

[fol. 464] By Mr. Day:

Q. What did that trouble consist of?

A. We became derailed. The engine became derailed due to the sharp curvature of the track. I am referring now to our U-3 type of engine.

Mr. Day: We offer into evidence Exhibits 19, 20 and 21.

Exam. Diamondson: Exhibits 19, 20 and 21 will be received in evidence.

(Exhibits 19, 20 and 21, Witness Sorensen, received in evidence.)

Exam. Kaylor: Exhibits 19, 20 and 21 will also be received by the Illinois Commerce Commission.

Exam. Diamondson: We will have a short recess at this time.

(Whereupon a short recess was here had.)

Exam. Diamondson: The hearing will please come to order.

Is the witness ready for cross-examination?

Mr. Day: Yes, he is.

Cross-examination.

By Mr. Rynder:

Q. Mr. Sorensen, have you consulted any other packer in the stockyards area than Swift to determine whether any one of them at the moment or presently may desire delivery of livestock to their plants?

A. No, sir, I have not.

Q. Mr. Sorensen, do you know whether or not the North Western Railway is presently unable to meet its require-

[fol. 465] ments for livestock cars?

A. I have been informed at various times——

Q. Just a moment, I asked if you know?

A. Yes, I do know.

Q. What is it?

A. The operating officials of the North Western have advised me that there is a shortage of stock cars for their loading.

Q. Have you also consulted the Milwaukee Railroad on that?

A. Yes, I have.

Q. Also every other western railroad?

A. No, I would qualify that. I have consulted the Rock Island, the St. Paul, the North Western, and the Burlington. All of the operating officials that I talked to informed me that there was a shortage of stock cars.

By Mr. Smith:

Q. Was or is?

A. That there is a shortage of stock cars.

By Mr. Rynder:

Q. Did you consult them as to whether there is a shortage of other types of cars?

A. No, sir, I did not.

Q. Just about the stock cars?

A. Yes.

Q. You don't know whether there is a shortage of other equipment, even ordinary boxcars? Did you inquire if they were as short as stock cars?

A. I have knowledge from talking to various of the superintendents that there is also a shortage of boxcars. In [fol. 466] my position as assistant superintendent I have had several of these officials of the various roads contact me by telephone and ask me if we can not spare some of our empty boxcars and give to them for loading.

Q. And that general shortage of cars is due to rather extraordinary conditions that exist at the present time, is it not?

A. I would not have any means of knowing that, Mr. Rynder. I don't know of any unusual conditions that exist other than that which is normal in the winter months.

Q. You don't know that during the war years and for some time thereafter the railroads were unable to obtain their normal requirements of new equipment in the way of cars and locomotives?

A. I have seen such statements made in the newspapers, yes.

Q. You do not believe them, I take it?

A. I have an open mind on it. I am not sufficiently aware of the official record to know whether or not there is any shortage.

Q. Your assumption is, I take it, that the railroads have been able to obtain their normal requirements of freight cars, locomotives, steel for rail, etc., during the war and since?

A. In so far as the Chicago Junction is concerned, we have had sufficient cars. Our locomotive supply has been [fol. 467] from time to time inadequate.

Q. You do not know the railroad's condition?

A. Sir?

Q. You don't know what the railroad's condition is generally?

A. No, I am not in a position to know that positively.

Q. Who told you to make this assumption of 130 cars a day for direct delivery to packers in the stockyards area?

A. That was my own computation, Mr. Rynder, based on 36,000 cars per year; on a five day week. I took that as a fairly representative period of the week due to the fact that livestock shipments on certain days of the week are heavier than on others. In fact, the major portion of the stock that comes into the U. S. Yards arrives on three or four days. On Saturdays there is very little stock and Friday afternoon, and evening, there is very little stock and early Sunday morning until noon there is very little stock arriving.

Q. You said assuming we have delivered this 130 cars of livestock to the sidings of the individual slaughter houses, etc.—I think that means loaded cars?

A. That is correct, sir.

Q. My mathematics are rather weak, but as I figure it out that comes to about 47,450 cars a year, is that about right?

A. I am basing it again on a five day week, Mr. Rynder. If I gave the impression that it was 130 cars over a seven day period, you got the wrong assumption. I meant on a [fol. 468] five day week.

Q. You were estimating a total of 36,000 loaded cars a year?

A. Roughly, yes.

Q. If I understand your divisional arrangement out there if you did handle them it would bring you about $720,000 gross revenue. Do you think that that might be of any assistance to your road?

A. I would not be qualified to pass an opinion on that, Mr. Rynder. I don't know how much we would receive for them. To start with, I am not a rate man.

Q. I am not asking you to be a rate man. I am asking you if $720,000 is such a small sum that you can not quite see it?

Mr. Smith: Are you inquiring about gross or net revenue, may I ask?

Mr. Rynder: Gross.

The Witness: I would say that $700,000 gross revenue would be a considerable item in so far as money is concerned, but I would hate to think of how much money we would have to put out to handle those stock cars.

By Mr. Rynder:

Q. I believe you said that the nine receiving tracks in the Ashland Avenue Yards have a capacity of 420 cars, is that right?

A. Approximately, yes.

Q. And at the present time you are receiving in this yard an average of 1,000 to 1,100 cars daily?

[fol. 469] A. That is correct.

Q. Does that mean the yard is cleared twice a day, or something of that kind?

A. It means that we must turn the yard over at least twice a day, yes.

Q. At least twice a day?

A. Yes. That does not necessarily mean that each track is turned over twice.

Q. I know, but on the average that must be the condition?

A. It has to be, yes.

Q. How can you do that if your average time for your delivery of dead freight cars from the time you receive them until you place them is 31 hours?

A. We classify our cars from our receiving yards into various of our classification tracks from which point they

are pulled by our engines and handled to other base yards for ultimate placement at an industry. The classification tracks in our Ashland Avenue South Yards are pulled some as high as six and seven times a day to clear them off so that they will be available for further classification of cars.

Q. Then those figures are entirely reconcilable, are they, that your yards there can be cleared twice a day, but it takes you on an average more than a day to deliver a car?

A. Yes, it is.

Q. What do you do with it after you get it out of the yards?

[fol. 470] A. As I said before, the car is pulled along with other cars for a certain distance.

Q. Then you hold it somewhere else so as to delay delivery, or what do you do?

A. No, no. I would like to explain that by citing an example if that is satisfactory to you. That is the only possible way I can clear it up in your mind, I think.

Q. I do not know if you can clear it up in my mind.

A. I will endeavor, Mr. Rynder, I mean. We will take a car consigned to an industry located in the eastern half of the central manufacturing district which is commonly known to us as the State Line district. The car is delivered to us by the Chicago North Western Railroad in our receiving yard. It is side-carded, inspected, checked, and various paper records made and ultimately classified by one of our engines and switched into track No. 14 in our classification yard.

When track 14 becomes filled and it accommodates some 40 odd cars, it is pulled, the entire track is pulled providing the engine that we have available to handle it can handle that many cars—it is pulled from the classification yard eastwardly across all of our main tracks to the State Line district which is located between Packers Avenue and Oral Street on the north side of the facilities of the Union Stock Yards and Transit Company.

At that point it is reclassified, and I am speaking now of [fol. 471] this entire track. In this train is a car consigned to this industry on the east side of central manu-

facturing district and that car is placed on a track in one of the tracks contained in a small base yard we have which is known as the new yard and a constructive placement notice is sent to the consignee. Perhaps the consignee knows that that car is on our rails before the notice is sent and perhaps he does not. It all depends on how badly he is in need of that particular car.

Now whether or not he knows it and whether or not he receives the construction placement he orders the car placed at his siding. The car is placed in a group of cars consigned to industries surrounding this particular industry and it is taken by another engine and ultimately placed at the man's siding for unloading and frequently this can consume 31 hours and possibly 48 hours. It might be done in five hours or it might be done in 12 hours, depending upon the circumstances.

Q. But you can deliver to industries on your line or rather you can handle in the Ashland Avenue yard twice as many cars as you can deliver to industries on your line daily, is that right?

A. No, I don't understand that question, Mr. Rynder.

Q. Then we will pass it. I think that is the testimony up to date.

Q. I would like to have you clear that up.

Q. If 500 cars accrue in your cars daily which have not [fol. 472] yet been delivered, it would only take a short time until you had 2,000 cars sitting around all over your yard, wouldn't it?

A. No, sir, we are not—we are constantly clearing out the classification yard and forwarding them to these other base yards which support the various districts. You might say those various yards will ultimately clog up.

Q. Do they accumulate there?

A. No, there is constantly possession of cars in reverse moving from the industries back to the base yards and from the base yards back to either one of our outer yards which is Loomis Street Yard or Ashland Avenue North Yard. It is a continuous process. If it were not so the railroad would cease to operate.

Q. Are you familiar with the study concerning which Mr. Kinsella testified and which I have been talking about before?

A. I have a fairly good idea of the work that he has been doing, yes.

Q. Did the cars that he studied there include all of the cars that went into the Ashland Avenue Yard during the seven days?

A. To the best of my knowledge they did. I don't know whether he exempted some of the empty equipment. I don't think that was taken into consideration. I believe it [fol. 473] was only the loaded cars that moved into the yards.

Q. Only the loaded?

A. Yes.

Q. You are pretty sure about that?

A. I am quite certain, yes.

Q. That would have given him about 300 cars a day?

A. That is about right, yes.

Q. Whereas, you say you are receiving 1,000 to 1,100 cars?

A. Yes.

Q. At the same place?

A. Yes.

Mr. Rynder: That is all, I think.

The Witness: I will amplify that statement by saying in addition to the 300 loaded cars received in this yard, those 300 cars were consigned solely to industries on the Chicago Junction Railway. In addition to that empty cars ordered for loading by industries located on our rails, all empty refrigerator cars consigned back to the packers located on our rails; all double deck stock cars for loading at the chutes of the Union Stock Yards and Transit Company come into this yard; all traffic consigned to industries on the Chicago River & Indiana Railroad come into this yard; and all traffic moving in intermediate switch service from one road to another in which the junction acts as an intermediate carrier moves through this yard, which will [fol. 474] add up to the 1,000 or 1,100 cars per day.

By Mr. Smith:

Q. Mr. Sorensen, referring back to this impression that Mr. Rynder got that because you clear your Ashland Avenue Yard twice a day there must be something wrong with

the time figures of 23½ and 30 hours respectively on perishables and dead freight. Do you have two switching operations down there from a classification standpoint, one a sort of a gross process in the Ashland Avenue yard in which you classify for various other yards and then secondly, a classification down in these various other yards on the basis of the particular industries to which the car is to go?

A. That is absolutely right. I have been trying to think of something that is synonymous.

Q. The 23½ hours on perishables, for example, that includes not only the time that the car is in the Ashland Avenue Yard, but also that it is in the other classification yard getting ready to go to the industry?

A. It includes that time and it also includes the time that is spent in moving the car from the base yard into the district direct to the siding in some cases, or to a constructive placement, if a constructive placement notice is given.

Q. So that the time per car that Mr. Ryder was talking about has not any real relationship at all to the fact that you clear your Ashland Avenue Yard twice a day?

A. No, sir, it has not.

[fol. 475] Q. Are you the man who has actual immediate direction and supervision of the operations in this Ashland Avenue Yard?

A. Yes, I am.

Q. Have you examined Exhibit 15, that aerial photograph?

A. Yes, I have.

Q. Did you hear the testimony that that was taken on Memorial Day?

A. Yes, I did.

Q. Is Memorial Day a holiday in this area?

A. Yes, it is.

Q. Does that affect the number of cars occupying tracks in Ashland Avenue Yard?

A. It would have a definite effect on it, yes.

Q. Why?

A. Sir?

Q. Why?

A. None of the packing plants or industries located on our rails perform service or work, I should say, on holidays normally and Memorial Day is one of the holidays that they normally are closed down.

Q. Does that affect the number of cars that come into and occupy tracks in your Ashland Avenue Yard on a day of that character?

A. On inbound cars we normally do not receive the same number of cars from connecting lines on holidays and Sun-
[fol. 476] days that we do through week days.

Q. Would you say then that the cars shown in that photograph, Exhibit 15, do or do not represent a normal condition of those yards?

A. In connection with the conditions existing in the yard as shown in that photograph today, they do not.

Q. By to day you mean currently?

A. Currently, during this period. I will further say that since the time I have been employed by the Chicago Junction Railroad in the last 15 months that that statement is true.

Q. I am not sure that it is clear on the record as to how direct shipments are delivered to these various packers presently. Armour and Wilson, to use two examples, receive directs at the yards, do they not?

A. To the best of my knowledge the cars consigned to Wilson and Armour are received at the open chutes of the Union Stock Yards & Transit Company.

Q. Now just to take Wilson as an example, will you indicate to the bench, please, how those direct shipments are delivered to Wilson from the chutes of the Union Stock Yards Company?

A. Through a series of overhead runways leading from the various holding pens of the Yards Company, cattle are driven in a westerly direction on a runway which adjoins the south side of our main running tracks from Packers Avenue westerly to the Wilson & Company plant. They are driven on the hoof.

[fol. 477] Q. I believe you testified that in visioning the situation that would exist here as best you could, you believe that there would be a delay of eight hours in handling this livestock after it was placed at the Ashland Avenue track?

A. Yes.

Q. Does that mean you would require what we speak of as eight hours free time in order to handle that livestock?

A. I would require eight hours time at least, that is the minimum time that we would require from the time that the car was tendered to us by the road haul carrier until the expiration of the confinement time that the stock may be kept in the cars. In other words, if the stock was due off on a 36 hour schedule we would have to receive the cars at least eight hours before that time limit was expired in all cases.

Q. On cross-examination I think you or Mr. Kinsella testified that you or he would not say that in every instance it would take eight hours for every car, but that you could not count on making a delivery on any car in less than eight hours. Let me ask you this: Assuming that there would be a car here or there, however number there might be, that as the thing worked out and it could be delivered actually in less than eight hours, if that should be a fact, could you advise the trunk lines in advance which car might be a favored car and could be delivered in less than eight hours or would you advise them that looking into the future each day as to every car you would have to have [fol. 478] eight hours free time?

A. I would say that we would have no way of advising the trunk line carrier as to how much time we would require in the placement of any individual car. There are too many factors involved. The trunk line carriers outer yards are generally situated a great distance from our rails. There are too many conditions that might come up enroute for us to tell them how long.

We would not know how long it would take them to get to our yard. We could not do anything but put a top figure of eight hours and that would have to be what we would get on all cars. It would necessarily have to be that.

Exam. Diamondson: From the time the line haul carrier delivered it into your yard?

The Witness: Into our yard, yes.

By Mr. Smith:

Q. Several times in your testimony you spoke about classifying this livestock on certain tracks, saying that you did not know where they were, but on whatever tracks you did make classification. Did you mean by that, that you have not designated yet the tracks on which such classification work of livestock would be done or did you mean there were not available in that yard any such tracks which could be used for that purpose?

A. We have no tracks available for that purpose nor I don't know where we would get them. There is no further [fol. 479] room to expand in the Ashland Avenue South Yard.

Q. You explained the handling at Ashland Avenue in the South Yard and you also testified that empties would be put on the interchange tracks for the line haul carriers at the Ashland Avenue North Yard, and at Loomis Street. I don't think you commented on the ability of your road to handle those empties through those two yards and I wish you would say something about that empty situation.

A. I touched in my testimony on the handling of empties in the north yard being confined mainly to five or six different roads. However, we received considerable stock from roads which take cars from us at our Loomis Street Yard.

I am referring now to the Santa Fe as being the largest; the Illinois Central, stock division, next; and down in varying degrees, the C. & E. I., that is the Chicago & Eastern Illinois; Wabash Railroad; the Monon; the Pennsylvania, the New York Central, the Chesapeake & Ohio; the Erie; the Baltimore & Ohio; the Nickel Plate; the Pere Marquette; and I may have skipped a few. There may be more.

Q. That is enough.

A. I would know if I think of them for a minute.

Q. That is representative in a large degree at least to the roads that would take the return of empties through Loomis Street?

A. That is right.

[fol. 480] Q. Will you comment on the ability of your line to handle the empties which would accrue from the

directs brought in by those roads through the Loomis Yard?

A. At the present time the Loomis Street Yard is being operated on Wednesday, Thursday, Friday and Saturday at its fullest capacity. We are putting as many cars through this yard as in my opinion can be forced through there.

We are working an engine at the westerly end of the yard where the bulk of the switching is done on a 24 hour basis. We are working engines at the east end of the yard as often as we can, considering traffic conditions.

Q. Then what would you do with these livestock empties?

A. I have no idea. We could not handle them in there if they were in any volume.

Q. You used a certain figure representative of direct shipments in Chicago. What was that figure? It was around 30,000?

A. 30,000 for the Union Stock Yards and 6,000 odd to the Omaha packing site.

Q. I think the records will show that the present directs are a thousand or more in excess of that, but passing that point, you divided that by 250 to reduce it to a per day basis?

A. I divided it by 265.

Q. By 265?

A. Yes.

Q. But you said the bulk of the movement would come in [fol. 481] not in five days, but in four?

A. That has been my experience, yes.

Q. Could we take the per day movement and divide it by 24 and get the number that would be coming in to you ever hour or does it come in that way?

A. No, the bulk of the stock comes in from a period from 3 a. m. until about 9 a. m. I believe I am correct, but I am not sure of my figures. Mr. Kinsella included that in his studies. If I am not mistaken, approximately 30 per cent comes in between 3 a. m. and 9 a. m. and about another 15 per cent between 9 a. m. and noon.

Q. Mr. Sorensen, perhaps I am in error, but I thought that that related to all cars of freight that came in during that week? Was that livestock?

A. I was under the impression that that was livestock, but I may be entirely wrong on that, but I thought it was livestock.

Mr. Day: Livestock.

By Mr. Smith:

Q. Livestock is peculiarly seasonal in respect to the 24 hour period? It comes in largely during the early morning hours?

A. That is right, but it does come in in small quantities throughout the 24 hours.

Q. There has been some testimony here about livestock being brought directly into the yards in trains consisting only of one or two or three or four cars. How does that [fol. 482] happen, if you know?

A. It has been my experience in the previous position that I had before coming into the Chicago Junction that frequently we have received cars from the road into our yard and I am referring now to the New York Central Yard at Englewood, Illinois, in which we would have only a limited amount of time under the confinement law to get this car to an unloading facility where it could be watered and rested.

Q. Then can we understand that whenever we find one of those trains coming in with those two or three cars that Mr. Rynder emphasized, those are short time cars?

A. I would assume they are. I have never checked the records of the western lines to find that out, but from an operating standpoint, if I were running their yard I certainly would not come in with one, two, or three cars and I would hold them and accumulate more if I had sufficient time. That would not be good railroading.

Q. If this new operation went into effect, would those short time cars for the yard as well as all others be further delayed?

A. They would be further delayed by reason of the amount of time we would have to handle them after we got hold of them.

Q. I am talking about those that go to the yards, would there be some delays on those?

A. There must be, because the line haul carrier would have to in his outer yard separate his direct shipments [fol. 483] of livestock from his market livestock which he is not doing today.

Q. What about the condition that he would encounter at Ashland Avenue with the additional traips of setting out cars at Ashland Avenue?

A. He would be additionally delayed due to the increase in the number of trains making setouts at that point.

Q. What about the effect of that operation of your attempting to pull this livestock out of the yard and classify it?

A. That would add greatly to the delay.

Mr. Smith: That is all.

Exam. Diamondson: Any further questions?

By Mr. Rynder:

Q. Did you ever examine the operation of the Burlington in making deliveries to the Omaha plant?

A. I have observed how they make their deliveries, but I never examined their records other than to check for about a week's time. I just don't recall the period now.

Q. Do you know how much time that they take for these connections?

A. I do not.

Mr. Day: I object to these questions on the grounds that they are not proper questions on cross-examination. Further than that, we will have a Burlington witness who will go into all of the details later on.

Exam. Diamondson: I understand that that is correct. [fol. 484] Mr. Smith: And he will do it voluntarily.

Exam. Diamondson: In any event, the witness said that he did not know.

Redirect examination.

By Mr. Day:

Q. There is this point I want to make. The aerial photograph marked Exhibit No. 15 which you have referred to in your testimony covered a date several months prior to

the date of the beginning of World War Two in Europe, didn't it, Memorial Day in 1939?

A. I am not aware when World War Two was declared in Europe, but I know it was in the fall of 1939.

Q. I think the Commission will take due notice of that.

A. Yes, sir.

Exam. Diamondson: Do you have any further questions?

Mr. Rynder: No, I have no further questions.

Exam. Diamondson: The witness is excused.

(Witness excused.)

Exam. Diamondson: We will adjourn at this time until 9:30 o'clock tomorrow morning.

(Whereupon, at 5:00 p. m., an adjournment was taken until 9:30 a. m., Friday, February 26, 1948.)

[fols. 485-486] Friday, February 27, 1948.

Met, pursuant to adjournment, at 9:30 o'clock A. M.

[fol. 487] PROCEEDINGS

Exam. Diamondson: The hearing will be resumed. Defendants may proceed.

Mr. Knudson: Mr. Examiner, if you please, defendants have kindly consented to step aside in order that I as a representative of the Secretary of Agriculture may present a witness this morning, if it is all right with you.

Exam. Diamondson: That will be all right.

STATEMENT BY MR. KNUDSON

Mr. Knudson: Mr. Examiner, I have a short statement of counsel to make before this witness is presented for examination.

This witness is submitted pursuant to an Act of Congress enacted in 1946, entitled, "Agricultural Marketing Act of 1946", Public Law 733—79th Congress, the pertinent parts of which read as follows,—and I might say,

parenthetically, that my reason for quoting from the law is that if I am not in this case at the brief and argument stages the Commission will have before it at least the justification for being in it at this stage.

The pertinent parts of this statutes are as follows:

"Sec. 202. The Congress hereby declares that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and [fol. 488] health of the Nation. It is further declared to be the policy of Congress to promote through research, study, experimentation, and through cooperation among Federal and State agencies, farm organizations, and private industry a scientific approach to the problems of marketing, transportation, and distribution of agricultural products similar to the scientific methods which have been utilized so successfully during the past eighty-four years in connection with the production of agricultural products so that such products capable of being produced in abundance may be marketed in an orderly manner and efficiently distributed. In order to attain these objectives, it is the intent of Congress to provide for (1) continuous research to improve the marketing, handling, storage, processing, transportation, and distribution of agricultural products; (2) cooperation among Federal and State agencies, producers, industry organizations, and others in the development and effectuation of research and marketing programs to improve the distribution processes; (3)"—and this is the one which I would call specifically to your attention—"an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products through research, market aids and services, and regulatory activities, to the end that marketing methods and facilities may be improved, that distribution costs may be reduced and the price spread between the producer [fol. 489] and consumer may be narrowed, that dietary and nutritional standards may be improved, that new and wider markets for American agricultural products may be developed, both in the United States and in other countries, with a view to making it possible for the full produc-

tion of American farms to be disposed of usefully, economically, profitably, and in an orderly manner."

Section 203 (j):

"To assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission, the Civil Aeronautics Board, or other Federal or State transportation regulatory body, with respect to rates, charges, tariffs, practices, and services, or by working directly with individual carriers or groups of carriers."

Section 207. When used in this title, the term 'agricultural products' includes agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof."

[fol. 490] That is the end of the quotation.

The United States Department of Agriculture administers the Packers and Stock Yards Act. We believe that it is one of the laws and regulatory activities aiding the distribution of agricultural products to which Congress had reference in the legislation I have cited.

Pursuant to the directive of this legislation this witness appears as a representative of the Secretary of Agriculture to invite the attention of the Commission to certain statistical facts relating to the Union Stock Yards in Chicago and other stock yards.

We submit this information for the reason that, as we view the complaint in this proceeding, an order of the Commission based thereon could conceivably have an effect upon the future operation of such yards. We believe the Commission is entitled to get the possible scope and effect of a report and order on this large, regulated business enterprise.

This witness appears for no other purpose. I shall object to any cross-examination that will lead this witness

to answer questions beyond the reasonable scope of his direct testimony.

It might be well to take a moment to distribute our exhibits at this time, if you please.

Exam. Diamondson: Yes.

[fol. 491] Mr. Knudson: I offer for identification at this time an exhibit to be marked Number 22, consisting of a cover page and four numbered inside pages, with certain statistical data relating to the stock yards.

Exam. Diamondson: That will be marked exhibit No. 22 for identification.

(Exhibit No. 22, Witness Zelinski, marked for identification.)

Mr. Knudson: I also present at this time an exhibit to be numbered 23, which is the tariff of the Union Stock Yard & Transit Company, including Supplement No. 5 to U. S. Y. & T. Company tariff No. 14.

(Exhibit No. 23, Witness Zelinski, marked for identification.)

Mr. Knudson: Now, Mr. Examiner, for the information of the Commission I should like to place in this record some livestock production data that are published in the form of government publications printed and issued by the United States Department of Agriculture and from which some of the statistics already in this record have been derived. If there is any question upon the part of anybody as to the propriety or the legality of my attempt to do this at the present time I would be glad to respond to any objections. Otherwise I propose to put in three such official publications, the first of which is the "Livestock on the Farms—January 1", a crop report issued by the Crop Reporting Board released on February 18, 1948 and which [fol. 492] is the latest information the Department has on the livestock production situation.

We believe this is pertinent because it will indicate to the Commission the amount of livestock backed up on the farms that could conceivably flow through the various installations that are involved in this proceeding.

Exam. Diamondson: That will be identified as exhibit 24.

(Exhibit No. 24, Witness Zelinski, marked for identification.)

Mr. Rynder: Mr. Knudson, may I inquire right now without looking through all this bulletin, is the information limited to what it purports to be, livestock on farms?

Mr. Knudson: That is right. Now, the second such pamphlet that we believe may be relevant is the driven-in receipts of livestock—1946, with certain charts that go back as far as 1917, indicating the amount of trucked in deliveries to the various terminal market places.

Exam. Diamondson: That will be identified as exhibit 25.

(Exhibit No. 25, Witness Zelinski, marked for identification.)

Mr. Knudson: And the last, which we will ask to be given Number 26 for purposes of identification, is a publication entitled, "Receipts and Disposition of Livestock at 66 Public Markets Calendar Year 1947"—including the Chicago market, of course.

(Exhibit No. 26, Witness Zelinski, marked for identification.)

[fol. 493] Mr. Knudson: Now, may I ask that exhibits 24, 25 and 26 be received in evidence at this time as government publications?

Exam. Diamondson: Do you want to have them received in evidence prior to the others? Suppose you offer them in evidence later, after the direct examination.

Mr. Knudson: I will do that, except this witness will not testify as to the three government publications. He will testify only as to the first two exhibits.

Exam. Diamondson: Exhibits 24, 25 and 26 will be received in evidence.

Mr. Kaylor: And they are also received for the Illinois Commerce Commission.

(Exhibits Nos. 24, 25 and 26, Witness Zelinski, received in evidence.)

JOHN A. ZELINSKI was sworn and testified as follows:

Direct examination.

By Mr. Knudson:

Q. Will you state your full name for the record, Mr. Zelinski?

A. John A. Zelinski.

Q. What is your business address?

A. Packers and Stock Yards, Division of the Livestock Branch Production and Marketing Administration, United States Department of Agriculture.

[fol. 494] Q. Washington, D. C.?

A. Washington, D. C.

Q. What is your present occupation?

A. I am chief of the rates and registration section and principal valuation engineer in the Packers and Stock Yards Division.

Q. Will you give a brief description of your duties in connection with that office?

A. I am in charge of the Division's work having to do with all rate matters, registration matters, bonding, and I also supervise the valuation work that has to be performed in connection with rate cases and the studies which are made under the research program that has been recently authorized under the Hope-Flanagan Act; that is to say, we are making research investigations of services and facilities at public stock yards with a view to making improvements and suggesting improvements.

Q. Can it be reasonably asserted that you are familiar with the physical lay-out and the rate and revenue situation of the Chicago Stock Yards and other stock yards which you will mention?

A. Yes, sir.

Q. Do you have any educational background in this connection that you can cite?

A. Well, I am a graduate engineer of the Ohio State [fol. 495] University in 1914 and subsequent to my graduation I have worked on construction and valuation work with the Interstate Commerce Commission and with the Department.

Q. Incidentally, you are a registered practitioner of the Interstate Commerce Commission, are you not?

A. I am.

Q. A Class B practitioner?

A. That is right.

Q. Will you refer, Mr. Zelinski, to your exhibit Number 22 and in your own way take the four pages of that exhibit and tell the Commission what it is and then I will ask you a couple or three questions about it when you are finished.

A. The first page of this exhibit is titled, "Livestock received at Union Stock Yards, Chicago", and the purpose of the exhibit is to disclose the relationship between the direct receipts of livestock and the total receipts at that stock yard.

For this purpose I took the five pre-war years 1937 to 1941, inclusive, and in the fore part of the exhibit under "Directs" tabulated the receipts by species for each of those five years which came to the stock yard as direct shipments.

Q. Why did you take those five years?

A. The purpose of taking those five years was to get back in a period when the situation as to marketing had not been disturbed by war conditions.

[fol. 496] Q. Proceed.

A. And from those five year tabulations I developed a pre-war average for each year or, rather, a yearly pre-war average, and underneath that I state the direct receipts for the calendar year 1947.

The same sort of a statement was prepared to show the total receipts, so that at the bottom of the page I calculated a ratio of the direct receipts to the total receipts both for the pre-war period and for the 1947 year, which is the latest full year of operations at the stock yard.

Now, on page 2 of the exhibit, which is titled "Comparison of yardage revenues obtainable from salable and direct receipts", I took the receipts of salable livestock and direct livestock which passed through the Union Stock Yard & Transit Company and applied the current tariff rates to determine the amount of revenue which had been

received from each type of shipment through the yard from the yardage charge.

You will observe on that exhibit that there is a different rate applicable to receipts by rail and those which come in by truck. In the earlier years for which the averages were computed on page 1 of direct receipts there was no breakdown available on the direct movement by truck. In 1947 and in one or two years prior to that the statistics were available, or the information was available in a little more detail so that I was able to apply the tariff rates to [fol. 497] those direct receipts which came by truck as well as those which came by rail.

You will observe on that exhibit that there is a relatively small volume of direct receipts which moved by other than rail in the cattle, calf and sheep species. The receipts of hogs other than by rail are relatively greater than that of the other species but even there they are not of any significance at the Union Stock Yard & Transit Company.

Q. There seems to be a smear in some of the copies on the figure in the last column, the first line of figures, 77,384. What is the first figure there?

A. That is 8. 877,384.

Q. Take page 3 if that is all on page 2.

A. Now, on page 3 is a tabulation of livestock received, exclusive of other shipments, at seven major terminal markets, which parallels the information on page 1 of the exhibit at Chicago for seven of the major terminal markets where there are substantial volumes of direct receipts moving. The seven markets listed are Omaha, National Stock Yards, Denver, South St. Paul, Fort Worth, South St. Joseph and Sioux City.

Under each market there is shown by species the total receipts of livestock on a yearly average basis covering the years 1937 to 1941, inclusive, also the volume of direct receipts on a yearly average basis for that period and the percentage which the directs are of the total receipts at [fol. 498] each of those markets.

Page 4 of this exhibit shows the livestock received, exclusive of other shipments, at the same seeven major terminal markets for the latest available period. Under the

reporting requirements of the Department the information which is filed with the Department for stated operating periods comes in approximately two and a half months after the termination of the accounting period of the particular company, so the dates for which the latest information is available for a particular yard vary on this exhibit.

Here again there is additional information available in the exhibit in that for the year 1946, as well as the 1947 period, information was available as to the number of direct receipts other than rail, so that I have set out the direct receipts in the two categories, rail directs and other directs, at each of the markets and I have calculated the percentage which the rail directs bear to the total receipts. Of course, it is possible from this exhibit to calculate the percentage which the directs received other than rail bear to the total receipts at each of the markets as well but I did not make that calculation.

Q. Now, based on your qualifications as a witness as you have outlined them I would like to ask you two or three question on sheet 2 of your exhibit 22. First of all, what do you understand the object of the Swift complaint [fol. 499] in this case to be, Mr. Zelinski?

A. Well, I understand the object of that complaint to be that Swift seeks to have delivery of its direct shipments of livestock to plant spurs at the line haul rate.

Q. Now, directing your attention specifically to these figures on page 2 and more particularly to the total in the next to the last column, $426,000 approximately, if that objective is accomplished, that is to say, if the Commission does rule favorably on the Swift complaint couldn't Swift & Company have all direct livestock, including that which they now run through the yards, delivered direct to their plants?

A. They could.

Q. And if the other packers follow suit what would be the approximate revenue effect upon the Union Stock Yards at Chicago?

A. Well, based on this 1947 volume the Union Stock Yards & Transit Company would have lost the $426,677.52 worth of revenue.

Q. How might that eventuality affect the yardage charges for those producers who continue to use the yard?

A. Well, if the past is any guide to the future, with that loss of revenue we would expect that the Union Stock Yards & Transit Company would seek to recoup the lost revenue through an increased assessment on other livestock or for other services which they render at their market.

[fol. 500] Q. Now, I believe day before yesterday a question arose as to the present rate situation governing the Chicago yards and I suggested to the Examiner that there would be a witness who would know a little bit about that. Can you comment for this record just in a general way about that rate situation?

A. Well, at present the rates in effect at the Union Stock Yards & Transit Company are the result of a stipulated agreement which was made about 1938, I think, under which the Secretary accepted for filing a certain tariff carrying a certain level of rates which was to be effective from that period on, subject to a condition that if in the future expenses of the Stock Yard Company increased or decreased that the rate structure could be reinvestigated and if the company sought any increase in rates thereafter it would have to make a showing as to the increase in expenses which it was basing the proposed increase upon before it would file a tariff with the Department.

Exam. Diamondson: Why don't you call those charges instead of rates, so there won't be any confusion?

By Mr. Knudson:

Q. It was pursuant to that stipulated agreement, as you define it, that this exhibit 23, a schedule of charges, U. S. Y. & Y. Company No. 14 and its several supplements since that time have been filed and published?

A. That is correct. I might add that in addition to Supplement No. 5 there is effective a specific schedule of feed [fol. 501] charges that are based upon Section 2 of U. S. Y. & T. Company tariff No. 14.

You will observe that under Section 2 the feed and feeding charges are set forth on a basis that the charge will be the cost at those stock yards, plus the following amounts which

we term margins. Thereafter, under the provision of Section 2 that all feed charges shall be divisable by 5 and such charges will be amended when the margin between the cost and sale price of feed varies 5 cents from the margins specified above, the Stock Yard Company periodically files a specific feed tariff that shows what the current charge for feed is, for each class of feed is at the market, but this Section 2 is the base charge, the method of assessing the base charge for feed at this stock yards.

Exam. Diamondson: Does the stock yards have to receive authority from the Department of Agriculture before it can make any change in those charges?

The Witness: Oh, yes, it has to file a tariff and give the legal notices to the public and to the Secretary.

Exam. Diamondson: Are hearings held on any changes, Mr. Knudson? Are public hearings held?

Mr. Knudson: Oh, yes, hearings are held with respect to not only the Chicago yards but other yards. With respect to the supplements that are in evidence in this case I shall ask the witness that question.

[fol. 502] By Mr. Knudson:

Q. Have there been hearings held on the supplements that have been published to U. S. Y. & T. Company No. 14?

A. No. There were no complaints filed in connection with the publishing of these supplements and under our statute they automatically went into effect ten days after they had reached the Secretary's office.

Q. In that respect these charges are not unlike the rates that are filed with the Interstate Commerce Commission and which become effective without being suspended by the Suspension Board subject to notice, is that right?

A. That is correct.

Mr. Knudson: Does that answer your question, Mr. Examiner?

Exam. Diamondson: Yes.

By Mr. Knudson:

Q. Now, just one final question. In the event that the Commission should take favorable action on the Swift com-

plaint, that is, from the Swift point of view, and that precedent becomes established, how, in your opinion, could that precedent affect the other yards to which you have made reference in your exhibit?

A. Well, I think that you will observe from the substantial amount of direct receipts at the other yards that if a precedent were set and the packers sought to have deliveries made direct to their plants at the other locations, there would be an accompanying loss of revenue from direct [fol. 503] receipts at the other stock yards as well.

Q. And that might result in increasing the rates because of the loss of volume for the yards?

A. It could if there were no other compensating factors.

Q. Now, I believe you have in your possession a few copies of the official list of posted stock yards. If you will give them to me, we will ask to have them identified.

Mr. Kaylor: What do you mean by "posted stock yards"?

Mr. Knudson: Posted under the Packers and Stock Yards Act.

Exam. Diamondson: This will be identified as exhibit 27.

(Exhibit No. 27, Witness Zelinski, marked for identification.)

By Mr. Knudson:

Q. Will you tell briefly what this exhibit is, Mr. Zelinski?

A. This is a list of stock yards posted under the provisions of the Packers and Stock Yards Act. It is compiled in the division office periodically and is available for anybody who is interested in knowing which of the stock yards are under the jurisdiction of the Packers and Stock Yards Act. It is distributed to the public who ordinarily have business with the livestock branch in connection with the administration of the Act.

Now, this particular list was compiled as of March 15, 1947 and on the last page of the list, which is number 10, [fol. 504] there is stapled a copy of stock yards which have been posted since March 15, 1947 and also stock yards which were deposted since that time and by taking the basic list and referring to the subsequent changes you would have

available the complete list of all of the stock yards that are now posted under the provisions of the Packers and Stock Yards Act.

Q. It was this list to which we made informal reference the other day in questioning the existence of posted stock yards at Atlanta and Des Moines, was it not?

A. That is correct.

Q. Do you have any further testimony on the exhibits or on your own conclusions to be drawn therefrom?

A. No, I have none.

Mr. Knudson: I ask that exhibits 22, 23 and 27 be admitted in evidence.

Exam. Diamondson: Exhibits 22, 23 and 27 are received in evidence.

Mr. Kaylor: They are also received for the Illinois Commission.

(Exhibits Nos. 22, 23 and 27, Witness Zelinski, received in evidence.)

Mr. Knudson: The witness is available for questioning.

Mr. Rynder: If there are any further questions on direct I would prefer they go ahead.

Mr. Belnap: I would like to ask one question or two.

[fol. 505] By Mr. Belnap:

Q. Mr. Zelinski, are you familiar with the physical facilities provided at the stock yards for the handling both of the market stock and the direct stock?

A. To a reasonable degree.

Q. Under your supervision and direction were those facilities at one time valued?

A. That is right. I was in charge of an inventory which was made of all of the property of the Union Stock Yards & Transit Company in 1935 and 1936.

Q. Are you familiar with the tracks which the railroads have provided to serve the facilities of the Union Stock Yards & Transit Company?

A. Yes.

Q. In your opinion is there presently any inadequacy either of such railroad facilities, that is, the tracks on which the stock is loaded or unloaded, or in the unloading chutes

or in the pens which the Stock Yards Company provides for the holding and the sale of the livestock?

Mr. Knudson: Just a minute before you answer that. He has not been qualified under my qualifications to answer that question.

Mr. Belnap: Mr. Examiner, I understand the witness has dealt with stock yards' charges. He has inventoried the property. The investment in the facilities there is necessarily a predicate part for the charges and I think the line of [fol. 506] interrogation is directly relevant to the direct examination of the witness.

Mr. Knudson: We will see how far you are going, Mr. Belnap. I will not object at the present time.

By Mr. Belnap:

Q. I asked you about the adequacy of those facilities to do whatever is necessary in the handling and the marketing of the livestock which comes to the Union Stock Yards & Transit Company either as market stock, that is, for sale, or as directs.

A. Well, I would say generally they are adequate. There may be times when at a specific location under some special circumstances there might be some improvement in the facilities but there is no, shall we say, apparent deficiency in the facilities to handle all of the business that the Stock Yard Company gets, either direct or salable livestock.

Mr. Belnap: That is all.

By Mr. Day:

Q. Just as a matter of information, Mr. Zelinski. In your exhibit 22 do the directs included on sheet 1 of the exhibit include any rail directs?

A. No, they include all directs. At that time, as I stated, the statistics that were available to us did not make any breakdown between the rail directs and those which might have come by any other mode of arrival, although I can say that in that period relatively few directs came to the Union Stock Yards & Transit Company other than by rail.

[fol. 507] Mr. Day: Thank you. That is all.

By Mr. Gladson:

Q. Mr. Zelinski, over what services does the Packers and Stock Yards Administration exercise jurisdiction and supervision at the public yards?

A. They exercise jurisdiction over all of the services that are rendered by the stock yard company to the market agencies after the livestock has moved out of the transportation facilities.

Q. Does that include supervision over the weighing of animals?

A. It does.

Q. And over the handling of animals after they reach the yards?

A. It does.

Q. Does the Commission exercise any jurisdiction over the services rendered in the buying yards which are maintained by an individual packer?

Mr. Knudson: You mean the Interstate Commerce Commission?

Mr. Gladson: I beg pardon?

Exam. Diamondson: Who do you mean by "Commission"?

Mr. Gladson: I mean the Packers and Stock Yards Administration.

A. Well, under Title 2 of the Act, of course, the Secretary has jurisdiction over the trade practices of packers and if there would be any practice at one of these buying stations [fol. 508] that would be complained of we would investigate it and we do seek to the extent possible to determine whether their weighing scales are being tested and are in order. We have under our regulations a provision that all packers who use scales for the weighing of livestock must provide facilities and so maintain them that they will give accurate weights.

Q. Will you refer to pages 3 and 4 of exhibit 22? Were all of the anomals recorded on these pages handled through the yards shown there?

A. They were. You will note they are exclusive of through shipments because there were some animals in those that moved through some of these yards that are

neither consigned livestock for sale or direct shipments of livestock and it varies with the particular yard, the extent of that type of movement.

Exam. Diamondson: You might define for the record what is a through shipment that you exclude.

The Witness: The through shipments are the livestock that are stopped at the public livestock facilities for feed, water and rest, Mr. Examiner.

Exam. Diamondson: And then go on?

The Witness: Go on beyond there.

By Mr. Gladson:

Q. Are you familiar with the volume of traffic that moved through these various points that is not cleared through the stock yards' facilities?

A. Well, I am familiar with it in this sense, that I observe [fol. 509] when the reports are made the extent of that type of movement because to a considerable degree, of course, it does affect the revenues of the stock yard companies involved, since we must be informed as to the revenues that are derived from the feeding operation incident to the feed, water and rest operation, but as to a specific yard I could not state right now the relative amount of livestock that is moving through it on the feed, water and rest basis.

Q. If rates of the stock yards company or charges of the stock yards company are increased, who will have to bear those increases?

A. All of the users of the service, the then users of the service will have to bear those rates.

Q. And are the producers of livestock extensive users of the services of the yards?

A. They are; the most extensive, in fact.

Mr. Gladson: That is all.

By Mr. Smith:

Q. If there were the increase in yardage charges that you have indicated as a possibility as the outcome of any favorable action by the Commission here, such increase being borne by the producers, would that in your opinion increase

the incentive of those producers to sell in the country and further increase direct shipments?

Mr. Rynder: I think that is rather speculative, Mr. Examiner.

[fol. 510] Mr. Knudson: I think it is, too. I don't believe this witness is qualified to talk about the direct marketing in the country, Mr. Examiner.

Exam. Diamondson: Do you object to it?

Mr. Knudson: Yes, I do.

Exam. Diamondson: Objection sustained.

By Mr. Smith:

Q. You have shown a substantial increase in direct shipments throughout the years here by these exhibits, have you not?

A. I have.

Q. Would the granting of the relief here in your opinion give impetus to the increase that is depicted by these exhibits in direct shipments?

Mr. Knudson: Let me hear that question, please.

(Question read.)

Mr. Knudson: You mean to the Chicago yards?

Mr. Smith: Yes.

Mr. Knudson: Do you know? If you know, you can answer that question.

The Witness: Well, I don't know.

Exam. Diamondson: He can express an opinion.

The Witness: I don't know, of course.

Exam. Diamondson: Would you care to express an opinion?

The Witness: Well, in my opinion it probably would.

By Mr. Smith:

Q. You spoke about an investigation that the Secretary [fol. 511] of Agriculture conducted into the yardage charges at Chicago sometime ago, did you not?

A. I stated that we made an appraisal of this property in connection with an investigation, yes.

Q. And I think you said that following that investigation there was some stipulation entered into.

A. That is right. The rates that were in effect at the time of the investigation were modified as a result of that stipulation.

Q. Who were parties to the stipulation?

A. The Union Stock Yards & Transit Company and the Secretary of Agriculture.

Q. That is, the Secretary and the Stock Yards entered into an agreement following this rather protracted investigation into the level of these charges and on the basis of that agreement the charges were modified and the present charges became effective subject to any supplemental changes that you have referred to here?

A. That is right. From that basing point, if we want to call it that, subsequent modifications have been made in those charges upon the showing required by that stipulated agreement, Mr. Smith.

Mr. Smith: I think that is all.

By Exam. Diamondson:

Q. Will you look at your exhibit No. 22, please, on page 2? The volume of direct receipts is shown by head. Is [fol. 512] there any way to determine or estimate how many carloads that would cover?

A. Well, in view of the large volume of truck receipts——

Q. I mean by rail.

A. By rail?

Q. Only by rail.

A. I think maybe we could supply that from the information on file in our office but I don't have that information with me.

Exam. Diamondson: I thought possibly you could give an estimate there under these figures as to how many carloads that represented. If you can't do it, why, that is alright.

Mr. Knudson: Would you have any idea as to how many of each of the species is loaded in the ordinary livestock car?

The Witness: Well, I think that on that basis I would say that the average number of cattle would approximate about 25 to a car, and single deck calves my estimate would be that it would probably be about 65 in a single deck

and perhaps up to 115 or 120 in a double. Hogs I suppose would run 70 to 75 in a single deck and about 140 in a double. And sheep a single deck would run from 100 to 125 and a double deck from 200 to 250 and in extreme cases, if they were small feeder sheep, they might load a little heavier than that.

Exam. Diamondson: You may cross examine.

[fol. 513] Cross-examination.

By Mr. Rynder:

Q. Referring to the last question of the Examiner, you would not recommend dividing the figures you have here by the estimated figures you have given in order to get the number of cars there may be, because as I understand it you——

Mr. Knudson: Would you speak a little louder?

Mr. Rynder: I was asking him if he would recommend dividing the figures shown on sheet 1 of the exhibit by the estimated number of head per car to get the number of carloads.

Q. My reason for that question is I understood the figures there included both rail traffic and truck traffic.

A. They are separated here on page 2.

Exam. Diamondson: I asked about sheet 2.

Mr. Rynder: Oh, sheet 2. Well, just strike that question then.

Mr. Examiner, if I may suggest, I am not sure but it seems to me that that very figure has been published in annual reports of the Stock Yards Company, in the public reports I mean that are handed out to everybody.

Exam. Diamondson: You mean the estimated for the year?

Mr. Rynder: Not estimated. Actual for the last year.

Exam. Diamondson: Actual for the various years?

Mr. Knudson: We are going to put that in.

[fol. 514] Exam. Diamondson: All right. The reason I asked it, we already have numbers by cars and now we have figures by head and we can't compare them.

Mr. Knudson: No.

Exam. Diamondson: Do you have any further questions?
Mr. Rynder: Yes.

By Mr. Rynder:

Q. Mr. Zelinski, on page 2 of exhibit 22 all the dollar results are from simply multiplying the number of head of livestock by the yardage rates there shown?
A. That is correct.
Q. And no other revenue is included?
A. That is right.
Q. Mr. Zelinski, I assume that you are aware from your position that many packing houses are located at points in the United States at which there are not public livestock markets?
A. I am.
Q. And do you understand that such packers pay yardage charges for the receipts of livestock at their plants?
A. Or, no. I don't know. I am not familiar with whether they pay any charge for the use of somebody's facilities.
Q. Well, you have no reason to believe that if the livestock is delivered direct to their plant by rail that they pay yardage charges to a public stock yards, do you?
A. No, I have no reason to believe that.

Mr. Knudson: Mr. Rynder, just to assist the Commission. [fol. 515] are you still using the term "public stock yards" as being synonomous with a posted stock yard?
Mr. Rynder: Yes.

By Mr. Rynder:

Q. What I mean is this, to take a certain point. If Wilson & Company has a packing house at Cedar Rapids, Iowa at which there is no public stock yards performing this service, does Wilson & Company there pay a yardage charge to a public stock yard subject to the jurisdiction of the Secretary of Agriculture?
A. They do not.

Mr. Smith: You could make a point by asking if Swift pays a yardage charge at the Omaha plant in Chicago. That would point it up.

By Mr. Rynder:

Q. Would you agree with me that there are substantial packing plants which receive livestock and process and sell the products thereof at Cudahy, Wisconsin?

A. I would.

Q. Newport, Minnesota?

A. I know of a plant there.

Q. Cedar Rapids, Iowa?

A. Well, I have never been in Cedar Rapids. I don't know as to that.

Q. Davenport, Iowa?

A. I don't know as to that.

Q. Des Moines, Iowa?

[fol. 516] A. I don't know as to Des Moines.

Q. Dubuque, Iowa?

A. I don't know as to Dubuque.

Q. Mason City, Iowa?

A. I don't know as to Mason City.

Q. Ottumwa, Iowa?

A. I don't know as to Ottumwa.

Q. Waterloo, Iowa?

A. I don't know as to Waterloo.

Q. Storm Lake, Iowa?

A. Or Storm Lake either.

Q. Fort Dodge, Iowa?

A. Or Fort Dodge.

Q. Madison, Wisconsin?

A. I don't know as to Madison personally.

Q. Green Bay, Wisconsin?

A. I don't know as to Green Bay.

Q. Austin, Minnesota?

A. I don't know personally as to Austin.

Q. Winona, Minnesota?

A. I don't know as to Winona.

Q. Then you don't know whether the interior packers located at those points are required to support a sort of a fungus growth on their traffic through the payment of yardage charges?

A. Well, I don't know as to that but I know as to the [fol. 517] existence, of course, of plants at those places from records that I have handled but I have never seen those

plants personally and I understood you to ask, of course, whether I knew there were these facilities through which they may have to pay some yardage.

Q. Do you know whether there is a posted yard at Boston, Massachusetts?

A. Well, there is a posted yard at Brighton.

Q. At Brighton?

A. Yes.

Q. Do you know whether the deliveries to the packers at Boston and in that area are made through public stock yards or direct by railroads to their plants?

A. I am not familiar with that location.

Q. Do you know whether there is a posted public yards at Buffalo, New York?

A. There is.

Q. Do you know whether direct deliveries are made by railroads to the packing plants at Buffalo and not through the stock yards there?

A. I don't know that right now.

Q. Do you know whether there is a posted public yards at Chattanooga, Tennessee?

A. Yes.

Q. Do you know whether direct deliveries are made by [fol. 518] the railroads to the packer there without passing through the stock yards?

A. I don't know as to that but my recollection is that there are some deliveries of directs through the Chattanooga yards.

Q. But you don't know that there are not direct deliveries to the packer there by the rail lines?

A. No, as to that I don't know.

Q. Do you know whether there are direct deliveries without a yardage charge by the railroads to the packing concerns at Cincinnati, Ohio?

A. It seems to me that at Cincinnati there at least at one time was a charge for directs. I would have to look back through the tariff to know whether there is at the present time.

Q. Isn't it a fact that at the present time there is no such charge?

A. Well, I couldn't say.

Q. It is a posted public stock yards?

A. That is right.

Q. Is there a posted public stock yards at Columbus, Ohio?

A. There is.

Q. Do you know that deliveries at that point are made by the railroads direct to the packing plants without passing through the stock yards facilities?

A. No, I don't know as to that but there again my recol- [fol. 519] lection is that as to Columbus there is some delivery of directs made through the posted stock yard.

Q. But you don't know whether that is the major portion of the deliveries.

A. No, I couldn't say as to that.

Q. To shorten this just a little bit, Mr. Zelinski, I wonder if you might carry in your mind those questions and let me just name the points from here on. The next one about which I would inquire would be Dayton, Ohio.

A. I am not familiar with Dayton.

Q. Detroit, Michigan.

A. My answer as to Detroit would be similar to that that I made in connection with Cincinnati.

Q. Evansville, Indiana.

A. I am not familiar with the Evansville yard.

Q. Fort Worth, Texas.

A. Well, now, at Fort Worth there are a substantial number of directs received through the stock yards. I don't know whether there are any directs received other than through the stock yards at Fort Worth. There were not at the time I made an investigation at Fort Worth in 1937, as I recall it.

Q. Well, I think Mr. Tally has already testified to that when he was on the stand, as to what the present condition is.

Indianapolis, Indiana.

A. Well, at Indianapolis the situation is similar to the [fol. 520] one at Cincinnati so far as I know. I know that at one time there was a charge for direct movement through the Indianapolis yard and there has been such a rearrangement of facilities there in recent years I don't know whether it is possible to make the movement of directs from that yard to the packers.

Q. Well, you don't know whether the packers there do

receive direct rail shipments without going through the yards?

A. No, I don't know that.

Q. You probably don't recall that there is an ICC Ex Parte 104 case that dealt with that delivery to Kingan at Indianapolis.

A. No, I am not familiar with that particular case.

Q. How about Knoxville, Tennessee?

A. Well, at Knoxville, Tennessee there are some directs handled through the stock yard company there but I don't know whether there is any yardage charge assessed for that because there is a leasehold arrangement down at Knoxville under which the packing company leases the yard facility to the yard operators and they make certain reservations as to the use of the facilities at certain times, so I imagine that it would depend on who performed the service.

Q. Do you know about the conditions at Lexington, Kentucky, whether direct deliveries are made by the rail lines if requested?

A. No, I do not.

[fol. 521] Q. Los Angeles, California?

A. I think that some directs are delivered through the Los Angeles stock yards.

Q. But don't you know that they are also delivered by rail to the packing plants?

A. Oh, yes. Some of the packing plants are not anywheres near the stock yards in Los Angeles.

Q. Would you say that the Swift plant there is any substantial distance from the stock yards?

A. Well, it is rather further removed than the independent plants, but it is in a general stock yard area as compared with the other big packing plants.

Q. It is in the stock yard area, yes. Can you say that livestock is not delivered direct by the rail carriers to the packing plants at Memphis, Tennessee

A. I couldn't say as to that location.

Q. Is Memphis, Tennessee a public posted yards?

A. We have a public posted yards there.

Q. The same questions as to Montgomery, Alabama.

A. I am not familiar with the method of delivery of directs at Montgomery.

Q. The same questions as to Nashville, Tennessee.

A. I am not familiar with the delivery there at Nashville at the moment.

Q. The same question as to Ogden, Utah.

[fol. 522] A. Well, I would say that at one time, at least, directs moved through the yard at Ogden. I am not familiar with it at the present time.

Q. I am not suggesting, Mr. Zelinski,—please don't misunderstand me. I am not suggesting that they do not now, but simply that there is also a direct rail delivery to the plant.

A. Well, as to that I wouldn't know.

Q. For all I know at each point I have named there may be movements both ways. The same question as to North Portland, Oregon.

A. I am not aware as to whether there are any direct deliveries to the plants there.

Q. Richmond, Virginia.

A. The same answer.

Q. San Antonio, Texas.

A. It seems to me that one plant at San Antonio there is some delivery of directs. At the time I made the investigation down there I understood, I believe it was, Rogelein Packing Company or Mission Packing Company, one or the other of those was getting some directs.

Q. You mean through the yards?

A. No.

Q. By rail?

A. By rail at their own plant.

Q. Yes.

[fol. 523] A. I think there is some delivery of directs through the yards yet.

Q. I am not suggesting that there may not be at any of the points I have mentioned. Would your answer be the same as to Seattle, Washington?

Mr. Smith: The question would be the same as what?

The Witness: That I am not familiar with the situation there.

Mr. Smith: Your Honor, I might suggest that most of these points Mr. Rynder is referring to were not named in his complaint as Section 3 matters and they certainly were

not covered by this witness on direct. He obviously has no knowledge of the situation.

Exam. Diamondson: The points named by Mr. Rynder are shown in exhibit Number 10.

Mr. Smith: Yes.

Mr. Rynder: Well, on exhibit 22 I take it that was supposed to be representative and it is not limited to the points named in our complaint. It includes Fort Worth, it includes Denver. Furthermore, I think I am entitled to know whether this is a thing that has been carried out as a general practice at the public stock yards which are under the immediate direction of Mr. Zelinski.

Mr. Smith: The witness obviously is not qualified, there is no proper foundation laid and your questions and his [fol. 524] answers have certainly demonstrated he doesn't know anyt' ing about it.

Mr. Rynder: Then I am very glad to demonstrate that he don't know about it. The witness has been perfectly honest in his answers.

Mr. Smith: I am not suggesting that he doesn't know anything about it.

Mr. Rynder: I can ask my own questions in my own way.

Mr. Smith: I am objecting to them as no proper foundation laid and incompetent.

Mr. Rynder: I have only asked questions concerning points that are under the immediate jurisdiction of this witness as to rates, registrations and what else he described.

Exam. Diamondson: I overrule the objection.

By Mr. Rynder:

Q. Are you informed as to the condition of rail delivery of direct shipments of livestock at Wichita, Kansas?

A. Well, there are some direct shipments delivered through the yard at Wichita the last time I have occasion to look into the matter.

Q. But you are not prepared to say they are not also delivered direct by the rail carrier?

A. I am not.

Exam. Diamondson: I understand that this witness in his investigation goes back to around 1937, but I don't un-

[fol. 525] derstand, Mr. Witness, that you are attempting to say what the situation is today.

The Witness: Well, Mr. Examiner, as to the movement of directs through the yards, we are receiving tariffs constantly, changes in them; new tariffs are being filed and supplements filed which indicate the charges that are being made for direct shipments if there are any through the particular posted stock yard. We also receive annual reports, of course, from the companies that indicate the volume of the livestock that has so moved and the revenues which were collected from those direct yardage charges, so that it does come to my attention as to whether there are any direct movements through the yards.

Exam. Diamondson: Mr. Rynder's question went to whether there were any direct movements to the plants. Do you have any personal knowledge of that?

The Witness: As to those the information I would have on that would be only knowledge that would come to my attention indirectly while I am on some matter of concern to the Department of Agriculture in connection with a posted yards, because some of these matters come to your attention collaterally. There is, shall we say, a close relationship at times between the handling of the livestock in the vicinity of a posted stock yard and at the stock yard itself. A matter of complaint might arise, for example, as [fol. 526] to a delay in the handling of livestock at the stock yard that may have been tied up to some other movement of livestock in the vicinity and our investigations would disclose that there was that kind of a movement and I would only be in possession of that sort of information collaterally to an investigation we made of our own.

Mr. Rynder: Well, Mr. Examiner, the witness was testifying, as I understood it,—the general purpose of the testimony,—to the effect that at Chicago there ought not to be brought about a situation under which we would be relieved from these what I call parasitic and unnecessary maintenance of a facility for which we have no use, the old archaic idea of keeping something because you used to have it although it is no longer fitted to the modern economy.

Mr. Knudson: I shouldn't like to have my witness'

factual data characterized in this way. He is presenting the evidence for what it is worth.

Mr. Rynder: I was just pursuing the witness' knowledge as to stock yards under his jurisdiction to know whether all the other places were saddled with those parasitic charges.

Exam. Diamondson: Whether he had the information.

Mr. Rynder: And he hasn't the information. So I take it the prior testimony stands to the effect that they are not.

Exam. Diamondson: He said he didn't know as to certain points.

[fol. 527] By Mr. Rynder:

Q. Mr. Zelinski, the financial computations on your sheet 2 of your exhibit 22 are upon the assumption that all of the directs would be removed from the receipts of the Union Stock Yard & Transit Company?

A. That is correct.

Q. Now, have you made any effort to determine how much land, pens and buildings could be classified as not used and useful for stock yard's purposes and, therefore, thrown out of its investment account if it would lose all of the directs?

A. I have made no such study.

Q. Have you made any study to determine how much of their operating force could be eliminated if those directs were removed from the yards?

A. I have made no such study.

Q. It would be far from saying that some readjustment of that kind could not be made, wouldn't it?

A. I would believe that it might be possible to, shall we say, find that some facility could be classed as not used and useful. It might also be that there could be some saving in their operations as a result of having personnel distributed in a different manner than is now required to handle those movements, but the extent of it I don't know.

Q. Mr. Zelinski, you have spoken here of the basis for the present stock yard's yardage charges being a stipulation which came after an investigation of the Chicago Stock [fol. 528] Yard's charges and was, I believe, in 1938.

A. About that time, yes, sir.

Q. Can you please tell me how much the yardage charges

were reduced at that time, if any amount, by that stipulation which terminated the investigation?

A. I couldn't say at the moment, but it was a substantial sum.

Mr. Rynder: I would like to have those figures if I can.

Mr. Knudson: Are they matters of public record, Mr. Zelinski? That was before the Federal Register, was it?

The Witness: That is right.

Mr. Rynder: Just a minute.

Mr. Knudson: Well, if there are matters of public record, Mr. Rynder, you can get them. If they have been gathered, we can furnish them. I don't know. I was trying to find out.

Mr. Rynder: I was about to answer your question, Mr. Knudson. They must be matters of public record in this respect, that the old tariff and the new one were both posted. Now, being nine years back I don't know whether we could get them but they are not secret in any way because the two posted tariffs would disclose the changes if any. Isn't that right, Mr. Zelinski?

The Witness: That is correct.

Exam. Diamondson: Do you think it is essential to have that information, Mr. Rynder?

Mr. Rynder: Well, I would like to know whether or not [fol. 529] they were substantial. I saw them at the time but I cannot testify to them and anyway my recollection is not good enough.

Mr. Smith: I would like to inquire as to the relevance of that material to any issue in this case.

Mr. Rynder: Well, let me proceed a minute.

Mr. Belnap: Mr. Examiner, hasn't the witness said they were substantial? I understand that is the only curiosity Mr. Rynder has about them. Hasn't that been satisfied?

Mr. Rynder: Well, I don't like to suggest at this time that maybe the witness was in error. Maybe he is right and maybe he is wrong.

Exam. Diamondson: Could you furnish that information, Mr. Knudson?

Mr. Knudson: Yes, I am sure if it is a public record we can and we will be glad to if you deem it relevant for your purpose.

Exam. Diamondson: Well, I wouldn't care to say how much weight should be given to it but if Mr. Rynder thinks that it is essential and you are able to furnish it, suppose we set a time within twenty days after the hearing for you to furnish it.

Mr. Knudson: Will we have to serve all the parties appearing with that material?

Exam. Diamondson: Yes, you would.

Mr. Rynder: Mr. Knudson, I would be perfectly satis-
[fol. 530] fied with this much if you could obtain it from the two filed tariffs. The yardage charges on the species prior to that stipulation; I believe that would be only four figures, wouldn't it, Mr. Zelinski?

Mr. Knudson: Was there a tariff published before then that we could have posted and distributed in the same way we distributed exhibit 27?

The Witness: Yes, there was. Of course, I don't know now, Mr. Rynder, the extent to which part of the revenues under the tariff charges flow from the feed profits or margins and some of these adjustments that are made, an adjustment is made sometimes only in one category of the tariff charges and not in others and the tariff would disclose, of course, the difference in the feed charges as well, but I call that to your attention because in your question I gathered you were talking as to charges for yardage by species and there are other charges, of course, that are stated in that tariff from which the company gets revenue.

By Mr. Rynder:

Q. What was the number of that proceeding in which the stock yards was interested?

[fol. 531] A. I think it was Docket 472.

Q. 472. It had reached the point of having had hearings on both sides and a proposed report by the Examiner?

A. That is correct.

Q. Didn't the proposed report of the Examiner in that case, following many precedents, exclude certain property as not used and useful and propose a real estate valuation and all the other items that go into the ordinary valuation report?

Mr. Smith: Objected to as immaterial and having no relation to the direct testimony of the witness.

Exam. Diamondson: What is the purpose of inquiring about the proposed report, Mr. Rynder? Wasn't there finally a stipulation in the case? The proposed report would have nothing to do with it.

Mr. Rynder: I think you will find this, that the proposed report stated that in the opinion of the Examiner the Stock Yards Company was receiving what might be called excess revenue or revenue in excess of its necessary operating expenses plus a fair return, of approximately a million dollars a year. Now——

Exam. Diamondson: You are not going to cite a proposed report as a precedent, are you?

Mr. Rynder: How?

Exam. Diamondson: You are not going to cite a proposed report as a precedent, are you?

[fol. 532] Mr. Rynder: No, but it was at least made by an officer after considering the evidence. Now, I don't know how much, if any, of the revenues may have been affected by this stipulation, but if they were affected only in a minor way and if there should at that time have been a reduction of a million dollars a year, it may be there would be no necessity for taking care of the $426,000 if the Stock Yards Company lose that business. I didn't raise the question of this 1938 investigation or of this stipulation. That came out through the direct evidence of this witness, but I think since——

Exam. Diamondson: Do you think that it is essential to your case to have the tariff that was published by the Stock Yards in 1938 or prior thereto in this record?

Mr. Rynder: I think in view of the testimony of this witness it is. When a witness comes to express a certain view, surely opposing counsel have a right to test it.

Exam. Diamondson: Mr. Knudson, are you willing to furnish that information after the hearing?

Mr. Knudson: We are willing to furnish all information of a public character. That is one of the obligations of the government, as I conceive it, and we should do it.

Exam. Diamondson: Can you furnish it within twenty days after the close of the hearing?

Mr. Knudson: The master tariff that was in effect for 1938, is that what you are asking for?

[fol. 533] Mr. Rynder: I don't know the exact dates. I mean the one that was in effect while the investigation was conducted and the one that superseded it as a result of this stipulation. Now, whatever those dates are I don't know.

Exam. Diamondson: Do you understand it now?

Mr. Knudson: Yes, that should help a lot. Of course, these gratuitous remarks that are made on the record as to what the Examiner did, and so forth, are not to be considered as evidence. I am sure you are aware of that.

Exam. Diamondson: But the information described will be furnished within twenty days after the close of the hearing?

Mr. Knudson: Yes, sir. We will obtain a list of the parties and send a copy to each.

Exam. Diamondson: Off the record.

(Discussion outside the record.)

Exam. Diamondson: Back on the record.

Mr. Rynder: That is all of my cross examination unless some more questions on direct are asked.

Exam. Diamondson: Are there any further questions?

Mr. Smith: I have a question.

By Mr. Smith:

Q. Mr. Zelinski, I am referring now as to these points as to which Mr. Rynder asked you whether there were any deliveries of direct shipments to the plants of the packers and you said you did not know. Do you know what the rail operating conditions are in connection with those mar-

[fol. 534] kets to such a degree that you could compare them with the railroad operating plant that serves this stock yards?

A. Well, I think as to some of them I do. I think, for example, at National Stock Yards the situation appears to me to be similar to the situation here at Chicago.

Q. Similar in what respect? Do you have something there like the Ashland Avenue yard of the Chicago Junction, is that what you mean?

A. You have the East St. Louis Junction Railway that

serves the stock yard facilities and it also serves the packing plants at National Stock Yards and the direct shipments of livestock at National Stock Yards are received for Swift and Armour at least through the stock yard facilities the same as they are here, at the unloading chutes of the Union Stock Yards & Transit Company.

Q. You are referring to East St. Louis?

A. That is right.

Q. What is the company that gets direct shipments at its plant there?

A. Well, I have heard the testimony here that the Hunter Packing Company does.

Q. And what road is that located on, do you know?

A. That is located on the Pennsylvania. I happen to know the particular situation as to the railroad and that there are unloading pens available at the Hunter Packing plant.

[fol. 535] Q. Well, now, as far as any condition of congestion which might exist on the Chicago Junction at Chicago as compared with the conditions which exist on the Pennsylvania there at the Hunter Packing Company, are you advised as to that?

A. Oh, no. I am not familiar with any of those operating conditions of the railroads.

Q. At any of these points?

A. At any of these points.

Q. Well, that happened to be my question.

A. Well, I understood your question to deal with the general situation as to the receipt and delivery of the livestock by packers at the stock yard terminal railroad facilities.

Mr. Smith: We were not understanding each other. That is all.

Mr. Knudson: I am through.

By Mr. Gladson:

Q. Mr. Zelinski, in your opinion would it be possible for the Stock Yards Company to reduce its expenses, including whatever it might be entitled to for the use of its land, proportionately to the loss of revenue if the directs did not come through the yard?

A. I doubt that it would be possible to reduce it proportionately because I couldn't see how you could reduce the overhead expense proportionately for one thing and I think that the way some of the facilities are used there would be a less intense use of them but you would still have to [fol. 536] keep the facility in service for the, shall we say, the additional use that is made of them now on top of the handling of the directs through them.

Q. And for peak periods?

A. Well, that is right.

Mr. Gladson: That is all.

Exam. Diamondson: Any further questions?

Mr. Rynder: I want to ask one more, if I may, that frankly I think I forgot.

By Mr. Rynder:

Q. Mr. Zelinski, am I to understand from your direct testimony, including that of other counsel, that all of the yardage charges are borne by the producer?

A. Oh, no, no.

Q. Let's see if we understand each other on that. And so far as I go now I won't try to trace back where it finally may get back to, in the course of economics who pays it.

Mr. Gladson: Mr. Examiner, I am afraid I cannot hear Mr. Rynder.

Mr. Rynder: I am sorry, Mr. Gladson. I was just asking him about who bore the yardage charges in this sense, Mr. Gladson, of who pays them in the first instance.

By Mr. Rynder:

Q. On directs consigned to the packer the yardage charges in that sense are paid by the packer, are they not?

A. That is correct.

[fol. 537] Mr. Knudson: When you answered that question of counsel before you meant to——

Mr. Rynder: Just let me finish, will you?

Mr. Knudson: Yes, go ahead. I understood his answer.

By Mr. Rynder:

Q. Now, in the case of the yardage paid by a commission man for somebody on the market, although the yardage may in the first instance be paid by the commission man, he deducts it on his account sales to the producer so that it does there come out of the gross amount which the producer receives for his livestock?

A. That is correct. I want to supplement the answer to this extent, since apparently there is a little misunderstanding as to the revenues that are received from yardage by the Union Stock Yards & Transit Company. There is an additional source of revenue from yardage which the Stock Yard Company receives that is not on this exhibit. That is the resale yardage charge. Livestock that is resold at this stock yard also pays a charge.

Mr. Gladson: How about feed charges, Mr. Zelinski?

The Witness: Well, all feed sold at the stock yard is sold at the tariff margin and that yields a certain gross profit.

By Mr. Rynder:

Q. And that again would be divided either between packer-owner or the producer in the way I mentioned, dependent on who owns the livestock and ordered the work [fol. 538] done, is that right?

A. It depended on who owned the livestock at the time it was fed.

Mr. Rynder: Yes.

Exam. Diamondson: And those feeding charges are not included on page 2 of your exhibit 22?

The Witness: No. I think it only fair to state, Mr. Examiner, that to the extent that direct livestock is now fed in the yard there would be some loss of revenue from that source, too, in addition to the yardage charge.

Exam. Diamondson: Any further questions?

Mr. Rynder: No.

Exam. Diamondson: Mr. Knudson?

Mr. Knudson: I have nothing on redirect.

Exam. Diamondson: The witness is excused. We will take a short recess.

(Whereupon a short recess was had.)

Exam. Diamondson: You may proceed.

MATTHEW S. PARKHURST was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. Will you please state your name, residence and occupation?

A. Matthew S. Parkhurst, McHenry, Illinois. Statistician, Union Stock Yard & Transit Company of Chicago. [fol. 539] Q. How long have you been employed as a statistician of the Union Stock Yards?

A. I have been employed by the Stock Yard Company for twenty-six years and practically all of that time have had charge of the statistical work.

Mr. Smith: Will you mark this for identification, please?

(Exhibit No. 28, Witness Parkhurst, marked for identification.)

Q. Mr. Parkhurst, handing you what has been identified as defendants' exhibit 28, I will ask you to disregard the five figures which appear in the last column to the right under the heading, "Omaha Packing Company,"

I might say, Mr. Examiner, that I will offer those figures by another witness.

Except for those figures that I have just referred to, Mr. Parkhurst, did you make up this exhibit?

A. I did.

Q. And are the figures shown there true and correct?

A. They are.

Mr. Smith: Your Honor, I want to say that I misstated one figure in my opening statement. Mr. Rynder has been bragging here during the hearing about his poor arithmetic, but I think I take the championship away from him. I am referring to the percentage of directs to total. When I added in the Omaha directs I added them to the directs

[fol. 540] delivered at the yard but I did not add them to the total receipts, and, consequently, I got a percentage here of 47 or 48 that I referred to in my opening statement, whereas the correct figure as testified to by this witness, as shown on this exhibit, is 44.9 as representing the relationship of directs to total shipments for the last five years.

Off the record.

(Discussion outside the record.)

Mr. Smith: Will you identify that as 29, please?

(Exhibit No. 29, Witness Parkhurst, marked for identification.)

Mr. Smith: I think I ought to say about this statement, your Honor, which shows the breakdown of directs, that counsel believe that in the defense of this case it is proper and necessary to show the Commission the direct shipments received by each of the various packing firms. The locations of those firms have been stated on the record and we think it is necessary to the proper determination of this case and the proper administration of the Interstate Commerce Act to have this additional information before the Commission and that is the reason I am offering this showing as to receipts of all the companies.

Mr. Rynder: Mr. Examiner, I gave that back to Mr. Smith this morning with the suggestion that I had no objection to it as such but that I thought that it did not [fol. 541] mean too much unless the distinction was drawn there as between truck shipments and rail shipments, which was not on the copy that I had.

Mr. Smith: And what did I tell you when you said that?

Mr. Rynder: I think you stated that that would be done, or something of that kind.

Mr. Smith: That is exactly what I said.

Mr. Rynder: I just wanted to have it clear at this time.

By Mr. Smith:

Q. Handing you what has been identified as exhibit 29, I will ask you to state what that is.

A. This is a statement of the total receipts of packer directs through the Chicago Union Stock Yard for the

years 1936 to 1947, inclusive, separately by species, cattle, calves, hogs and sheep, and broken down by individual packing houses to whom these directs were consigned. I might say that by "total" we mean rail and truck combined in this statement.

Mr. Smith: Does the Examiner care to glance at that just for a moment to see what it consists of?

Q. Now, you have testified, have you not, that this also includes direct shipments by truck?

A. Truck and rail combined.

Mr. Smith: Yes. Do you want to look at those 1947 figures there? You haven't seen those, Mr. Rynder.

Mr. Rynder: It won't make any difference to me. I assume they are correct.

Mr. Smith: Will you mark this exhibit, please?

[fol. 542] (Exhibit No. 30, Witness Parkhurst, marked for identification.)

By Mr. Smith:

Q. Mr. Parkhurst, exhibit 29 shows the shipments by head, does it not?

A. Yes, sir.

Q. And did you prepare exhibit 30 for identification?

A. I did.

Q. And what is that?

A. That is a compilation of the packer directs received at Chicago Union Stock Yard during the years 1938 to 1947, inclusive, broken down separately by species, cattle, calves, hogs and sheep and again further broken down into whether they were received by rail or by truck under each species.

Q. Exhibit 30, I note, goes back only to 1938, whereas exhibit 29 goes back to 1936. Is that correct?

A. Yes. Exhibit 29 was prepared last year and went back eleven years. Exhibit 30 has been prepared during the current year and goes back ten years from 1947.

Q. Are the figures stated on exhibit 30 true and correct to the best of your knowledge and belief?

A. They are.

Q. Now, exhibit 30 will show, will it not, the total truck shipments for each year, except 1936 and 1937, that are covered by exhibit 29?

A. That is correct. I might say, however, that if these figures were checked against those in exhibit 29 in the year [fol. 543] 1941 a very slight difference would be found in calves and sheep due to the fact that they come from different records but it is only a few head and immaterial.

Q. Well, now, exhibit 30 does not permit, however, an adjustment for the truck movement in respect to each individual specie of livestock shown on exhibit 29 but only an adjustment as to the totals, is that not correct?

A. That is correct.

Q. You have, however, for a period of several years made the truck adjustment for the individual packers named on exhibit 29, have you not?

A. That is correct; in other words, beginning in 1944.

Mr. Smith: Will you mark this, please?

(Exhibit No. 31, Witness Parkhurst, marked for identification.)

Q. Handing you for your examination exhibit for identification 31 I will ask you to state whether you prepared that exhibit.

A. I did.

Q. And are the figures shown on that exhibit true and correct to the best of your knowledge and belief?

A. They are.

Q. And just in a word what does this exhibit show?

A. This shows the packer directs received by truck only through the Chicago Union Stock Yard for the last four years, 1944 to 1947, inclusive, broken down by individual [fol. 544] packers to whom these truck consigned direct shipments were consigned.

Mr. Smith: I think that is all on direct, Mr. Examiner.

Exam. Diamondson: There is no distinction made in these exhibits between interstate and intrastate shipments, are there?

Mr. Smith: No, they are not, I believe. Am I correct, Mr. Parkhurst?

The Witness: No, this is total regardless of where it came from. In all our records we consider the yards as interstate commerce and everthing is combined regardless of where it comes from.

Exam. Diamondson: Off the record.

(Discussion outside the record.)

Exam. Diamondson: Back on the record.

By Mr. Smith:

Q. Mr. Parkhurst, can you conveniently separate between the state and interstate shipments that are shown on these last several exhibits that you have been tesifying about?

A. No, sir.

Q. Why not?

A. Well, if it is by rail I doubt if the record would show where the last movement was made; that is, whether it was an interstate movement or intrastate movement.

Exam. Diamondson: From the point of origin?

The Witness: Yes, but it might have been stopped in [fol. 545] transit for feed or some other purpose. We couldn't take the point of origin, certainly.

Exam. Diamondson: Well, it is a fair statement to say that these exhibits cover interstate and intrastate shipments without any division being possible as to the percentage one with the other?

Mr. Smith: Is that correct, Mr. Parkhurst?

The Witness: That is correct, yes, sir.

Mr. Smith: If the examiner were very anxious to have at least some indication on the record as to how the traffic would divide,—that is a matter we have not considered,—we would be glad to consider it and see whether we could produce anything on that subject.

Exam. Diamondson: From what the witness said I imagine it would be a very difficult thing to do.

Mr. Smith: Apparently it would be very difficult to do it. Mr. Gladson has just told me that it could not be done.

Mr. Gladson: I don't think it is possible, Mr. Examiner, to separate the two classes.

[fol. 546] Mr. Smith: Just a minute, Mr. Parkhurst.

By Mr. Smith:

Q. Will you look at exhibit 29? Is exhibit 29 by cars or by head?

A. Exhibit 29 is by head.

Q. Is exhibit 30 by cars or by head?

A. Exhibit 30 is by head.

Q. Is exhibit 31 by cars or by head?

A. Exhibit 31 is by head.

Mr. Smith: Thank you.

Exam. Diamondson: You are excused.

Mr. Smith: Exhibit 29 will be offered later, Mr. Examiner, as soon as duplicates have been prepared. We offer now exhibits 28, 30 and 31.

Exam. Diamondson: Exhibits 28, 30 and 31 will be received in evidence.

Mr. Kaylor: And they will be received for the Illinois Commission.

(Exhibits Nos. 28, 30 and 31, Witness Parkhurst, received in evidence.)

Mr. Smith: Mr. Examiner, in accordance with the understanding that we had a day or two ago with reference to the record in Docket 29476, namely, that either party could designate any part of that record for inclusion here that such party might desire, defendants designate now the transcript in that docket, entitled, "Neuhoff Packing Com-
[fol. 547] pany vs. Louisville & Nashville Railroad Company".

I don't know whether it would be appropriate to mark that as an exhibit or not. It seems to me it might be. Mr. Rynder, of course, has a copy and I would like to be excused from reproducing this further for the other parties but simply lodge a copy of it in this record. It is a public record of the Commission.

Exam. Diamondson: Is that the complete transcript?

Mr. Smith: That is the complete transcript, yes.

Exam. Diamondson: I think it would be well to offer it as an exhibit.

Mr. Smith: All right. Will you mark it exhibit 32?

(Exhibit No. 32 marked for identification.)

Mr. Smith: In accordance with the understanding previously had we offer defendants' exhibit 32.

Exam. Diamondson: Exhibit 32 will be received in evidence.

(Exhibit No. 32 received in evidence.)

Mr. Smith: Mr. Rynder, were there any briefs filed in this case except the briefs filed by you on behalf of the plaintiff?

Mr. Rynder: That I am not certain of at the moment. I remember that I did file one, but whether the defendants did I cannot recall at the moment. I suppose our files here in Chicago would show that.

[fol. 548] Mr. Smith: Would you be willing to indicate tomorrow or before the record closes whether there were briefs filed other than your own?

Mr. Rynder: We will check it if we can get back to the office today.

Mr. Smith: It doesn't need to be done today if you will do it before the record is closed.

Mr. Rynder: Yes.

Mr. Smith: Thank you very much. I call Mr. Starbuck.

JOHN C. STARBUCK was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. What is your name, please?

A. John C. Starbuck.

Q. Where do you reside?

A. 2721 South Austin Boulevard, Cicero.

Q. What is your occupation?

A. Assistant Superintendent for the Chicago Division of the C. B. & Q. Railroad.

Q. How long have you held that position?

A. Since January 1st, 1944.

Q. Were you in the railroad service before that time?

A. Since 1921.

Q. Largely in the operating department?

A. Since 1936 in the operating department.

[fol. 549] Q. Are you familiar with the handling of livestock in Chicago destined to the Omaha plant of Swift & Company and also livestock turned over to the Chicago Junction and livestock moved by you to the Union Stock Yards over the Chicago Junction?

A. I am.

Q. Have you prepared a statement to submit here?

A. I have.

Q. Proceed with it, please.

A. Livestock arriving on the CB&Q Railroad from road-haul points is received in our eastbound yard at Clyde, the entrance to which is located at Ridgeland Avenue, Berwyn. This stock arrives on various trains throughout the twenty-four hour period mixed with perishable and dead freight.

The handling of the livestock for U. S. Yards is as follows: Upon arrival of train in the eastbound yard the U. S. Yards livestock is switched out and assembled for movement to the U. S. Yards by switch engine. The movement by switch engine is from CB&Q outer yard located between Ridgeland Avenue and 48th Avenue, approximately 9.3 miles from the Ashland Avenue yards of the Chicago Junction Railway. The movement is made eastward over CB&Q main line from that point to Rockwell Street, then over CB&Q connecting bridge to 21st Street, a distance of five miles, at which point the train passes on to C. J. Railway tracks and thence southward to Ashland Avenue, a distance of approximately four miles, where perishable and dead [fol. 550] freight is set out if there is any to be set out. The livestock is then taken to U. S. Yards chutes and unloaded; the same crew then returns with the empty cars to our yards at either Western Avenue or to Clyde.

Exam. Diamondson: That is the CB&Q crew?

The Witness: Yes, sir.

Mr. Ryder: Mr. Starbuck, I wonder if I could interrupt to ask you just one question here to clear things? My recollection from reading some of the previous decisions of the Commission dealing with delivery to the U. S. Yards is that they said the line haul engines brought the traffic clear through to the yards. Did I understand you to say that the Burlington uses a switch engine that does that work?

The Witness: Yes, sir, yard crews exclusively.

Mr. Rynder: Thank you.

By Mr. Smith:

Q. While you are on that, do you have any arrangement with your labor organizations then in relationship to the question that Mr. Rynder has inquired about, or is that apart from that?

A. All work within the general switching limits is to be handled by yard crews.

Q. Is that pursuant to your agreements with the labor people?

A. That is right. A good many years ago the road crews on the CB&Q did handle stock to the U. S. Yards.

[fol. 551] Q. When was that change made?

A. I don't know exactly. Before I came to Chicago.

Q. And how long ago did you come to Chicago did you say?

A. January 1st, 1944.

Q. And where does this switch crew take over?

A. Upon arrival of the stock in our eastbound yard, at the point where the road crew stops.

Q. Does that apply only to livestock or to traffic generally?

A. To all traffic.

Mr. Smith: All right.

Mr. Rynder: Mr. Smith, I think you will agree with me probably that to those of us who know only from reading the Commission's reports that is a change. I am not suggesting whether it is important.

Mr. Smith: Well, I don't know whether it is a change or not. I understand it is a switching crew of the Burlington that does this. You understand that.

Mr. Rynder: Yes, but I understood the Chicago Livestock Exchange case—this can be off the record if you want.

Exam. Diamondson: Yes, leave it off the record. We are only interested in present operations.

(Discussion outside the record.)

Exam. Diamondson: Back on the record.

By Mr. Smith:

Q. Go ahead, Mr. Starbuck.

A. The round trip movement from our yards at Clyde to [fol. 552] the Stock Yards and return amounts to about eighteen miles.

During the period April 16 to May 10, 1947 the CB&Q operated 108 trains southbound over the C. J. Railway. Of these 53 were direct from Clyde to U. S. Yards chutes; 36 set out at Ashland Avenue and then went to U. S. Yards chutes; and 19 were direct from Clyde to C. J. Ashland Avenue yard.

Mr. Rynder: What does that mean?

The Witness: The train handled nothing but dead freight or perishable.

Mr. Rynder: That was 19?

The Witness: That was 19.

By Mr. Smith:

Q. Now, Mr. Starbuck, these trains that were selected by Swift and concerning which they asked us to give the consist were trains moving between these dates that you have named, were they not, April 16th and May 10th of 1947?

A. That is right.

Q. But actually you say there were 89 trains moved during that period?

A. Yes, sir.

Q. And Swift inquired about only 28 of those?

A. I think it is 22 on the sheet, isn't it?

Q. 22?

A. 22.

Q. And Swift selected trains, did it not, that did make set-offs at the yards?

[fol. 553] A. That is right, at the Ashland Avenue yard.

Q. At the Ashland Avenue yard?

A. Yes.

Q. But actually, as I understand your statement now, those trains that made set-offs constituted only 40 per cent of the total trains moving during that period?

A. That is right.

Q. All right, go ahead.

A. Of the 89 trains which carried livestock to U. S. Y. & T. only 36 or 40 per cent made set outs at Ashland Avenue. The average running time from Clyde for trains direct to U. S. Yards without set outs at Ashland Avenue chutes was one hour and two minutes, return movement direct from U. S. Yards to Clyde averaged one hour and three minutes. The average running time from Clyde to U. S. Yards for trains which set out dead freight in Ashland Avenue yard was one hour, thirty-nine minutes. In other words, every time we had to hold up stock for the Yards to make a set out at Ashland Avenue it took us an average of thirty-seven minutes longer to get to the U. S. Y. & T.

Q. Now, there is evidence here, Mr. Starbuck, that 40.8 per cent of all of the livestock received at the Yards was direct livestock. Would you say, referring to these trains that moved directly to the Yards, that all or substantially all of those would carry direct shipments?

[fol. 554] A. Very many of them would. Probably the big majority of them would have carried direct shipments.

Q. Well, then, under this new proposal would the majority or substantially all of them, substantially all of your trains down there have to set out in Ashland Avenue?

A. They would have to set out in Ashland Avenue.

Q. Would this thirty-seven minutes that you refer to here as being the additional time that is entailed in making set outs at Ashland Avenue on trains that have to stop there be representative, in your judgment, of the delays that would occur under this new proposal?

A. No, it would not. This delay reflected for the period in April only, under normal operating conditions as to weather and congestion, which was at a minimum. In my opinion if all the direct livestock was being received into the Ashland Avenue yards, the delay would be much greater.

Q. What would increase that delay?

A. Because of all line haul carriers trying to perform the same operation during the rush hours or the hours that livestock is being received, most of them trying to set out on the same lead. Someone would have to wait.

Q. Would those roads also be setting out in Ashland Avenue cars which they do not now set out?

A. They would, yes, sir.

Q. And would there be any delay to your operation which [fol. 555] you do not now encounter, which would accrue from the fact that the C. J. would be attempting to switch the livestock out of that yard?

A. That is right, because while the C. J. is switching cars on their lead no other engine can enter that yard during the time that operation is being performed.

Q. Go ahead, Mr. Starbuck.

Mr. Rynder: Just so I understand it at this point, is there a suggestion that both the Burlington and the C. J. would in each case separate the livestock on the same track?

Mr. Smith: You have asked a question. Now I will try to answer it. The point is——

Mr. Rynder: I may be totally wrong. I thought there was some testimony heretofore that the C. J. would separate two cars for Swift and ten cars for the U. S. Yards, too, of livestock.

Mr. Smith: There wouldn't be any going to the U. S. Y. & T. that would be in there that the C. J. would have to separate. They would be separating all of the Swift and Omaha and these others and, yes, the C. J. would be doing it but what the witness said was while they were doing it he would be held up in trying to make set outs in the yard. Is that correct?

A. That is correct, yes.

The detailed movement of these trains is shown for the [fol. 556] period April 16 to May 10 in exhibit 33.

Mr. Smith: Will you mark this exhibit, please?

(Exhibit No. 33, Witness Starbuck, marked for identification.)

Q. All right, if you will explain now what has been marked as defendants' exhibit 33, please.

A. This exhibit shows the departure time of these trains from our yards. It is important to note the large percentage of the trains carrying livestock converge on Ashland Avenue within the span of a few hours in the early morning each day. This movement to the U. S. Yards via Ashland Avenue is not spread throughout the entire twenty-four hours of each day.

Q. Is the data shown on exhibit 33 true and correct?
A. It is.

Mr. Rynder: Just so I understand that, does that purport to give all the trains?
The Witness: To the C. J.
Mr. Rynder: All the trains to the C. J. in that period?
The Witness: Yes.
Mr. Kaylor: Explain what Cicero time is in this exhibit.
The Witness: The time as given under "Cicero" is the time that this engine or train passes 48th Avenue or Cicero Tower en route to the Stock Yards from our eastbound yard.

By Mr. Smith:

Q. All right, Mr. Starbuck.
[fol. 557] A. At the present time livestock for Swift & Company is delivered to the Omaha Packing Company yard located on the CB&Q at 2320 South Halsted Street, about three miles north of Ashland Avenue.

Mr. Smith: Just a minute. Will you mark that 34, please?

(Exhibit No. 34, Witness Starbuck, marked for identification.)

Q. Mr. Starbuck, does exhibit 34 for identification show the location of the Omaha plant of Swift & Company?
A. Yes, sir, it does.
Q. Will you point that out in such a way that it will be identified on the record as well as visually?
A. The Omaha Packing Company's plant is located just—the leads enter the Omaha Packing Company just south of 22nd Street.
Q. And is that in the upper half of the map and above and to the right of the red hand shown on the map?
A. It is.
Q. All right. Mr. Starbuck, will you please state for the record what the handling of this stock is to the Omaha plant, indicating on the map exhibit 34 how the traffic moves?
A. All right. CB&Q road-haul livestock for the Omaha Packing Company also arrives at Clyde Yard on various

trains throughout the twenty-four hour period, mixed with perishable and dead freight. The Omaha Packing Com-
[fol. 558] pany stock is switched out and taken to Western Avenue. That is at this point here. This is our Western Avenue yard.

Q. That is near the top in the center of the map, is it not?

A. Top-center, yes, sir.

Q. All right.

A. The movement of this stock between Clyde and Western Avenue is handled in various transfer trains making yard-to-yard movement unless there is short-time stock and a special run is necessary between Clyde and Western Avenue to avoid violation of the statutory time limit. At Western Avenue it is consolidated, whenever possible, with stock arriving from other line-haul carriers and then taken to the Omaha Packing Company chutes and unloaded.

After leaving the Western Avenue yard they move eastward to a point just west of Halsted Street, where we turn sharply to the right and move to Cermak Road or 22nd Street, at which point it is delivered to the Omaha Packing Company chutes.

Q. Well, now, over that route that you just referred to the map indicates that there are North Western as well as Burlington tracks, does it not?

A. It does.

Q. But does each company have its own tracks there?

A. The North Western tracks parallel the tracks of the Burlington.

Exam. Diamondson: Did you give the distance from the
[fol. 559] Western Avenue yard to the chutes here on Cermak Street?

The Witness: It is about two miles. We figure it is two miles from Western Avenue to the Omaha Packing Company chutes. In other words, it is seven miles from the eastbound yard.

Mr. Kaylor: What is that nine mile distance here?

The Witness: That is to the Ashland Avenue yards.

The Omaha Packing Company has twenty-seven unloading chutes and the unloading pens have a capacity of ninety cars. During the year 1947 we handled 6383 cars of live-

stock to the Omaha Packing Company. Of these 2786 were road-haul cars off the CB&Q Railroad and 3597 were cars received from connecting lines into Western Avenue yard, which point is approximately two miles from the Omaha Packing Company.

By Mr. Smith:

Q. Mr. Starbuck, will you look at the figures in the last column of exhibit 29, which purports to show deliveries to the Omaha Packing Company during the last five years?

A. The last figures here?

Q. Yes.

A. Oh, yes.

Q. Did you supply me with those figures?

A. I did.

Q. Are they true and correct?

A. To my knowledge they are true and correct.

Mr. Smith: That supports all of the data on exhibit 29 [fol. 560] then, Mr. Examiner.

Q. All right, Mr. Starbuck, proceed, please.

A. The stock handled for the Omaha Packing Company from both road-haul movements and from connecting lines is detailed by months of 1947 in exhibit 35.

Mr. Smith: Will you mark this exhibit 35, please?

(Exhibit No. 35, Witness Starbuck, marked for identification.)

Q. Will you explain exhibit 35 for identification?

A. Exhibit 35 indicates the number of cars of stock received from connecting lines and also road-haul carriers for the year 1947,—I mean also road haul cars for the year 1947 for the Omaha Packing Company.

Mr. Smith: Will you mark this exhibit 36, please?

(Exhibit No. 36, Witness Starbuck, marked for identification.)

Q. Handing you exhibit 36 for identification I will ask you to state what that is, please.

A. It indicates the number of cars of livestock handled

for Omaha Packing Company for the years 1942 to 1947, inclusive.

Q. It differs from the figures I called your attention to in exhibit 29 only in the respect that it shows what part of that total for each year was brought in by your road and what part was received from connections, isn't that right?

A. That is right, yes, sir.

Q. All right. Proceed, please.

[fol. 561] A. Records indicate that throughout 1947 to handle livestock for the Omaha Packing Company chutes required an average of approximately four trips per day, a total of 1460 trips having been made. On the basis of 1947, which was an average representative year, figures indicate that the switching of Omaha Packing Company stock at Clyde, handling of this stock from Clyde to Western Avenue, consolidating with stock received from connections at Western Avenue, delivering to the Omaha Packing Company chutes at 22nd Street, and taking empties from the chutes to Western Avenue yard required the use of only twelve engine hours daily. The fact that we were able to effect the entire handling and delivery of Omaha Packing Company stock with twelve hours engine time was because the movement is entirely over CB&Q tracks and is controlled entirely by the CB&Q. In contrast, on deliveries to Ashland Avenue or to the U. S. Yards the tracks are under jurisdiction of another company and are used by many other railroads in making movements to and from U. S. Yards and setting out or picking up en route, thus causing congestion and delay to all movements. In these movements, moreover, we have to cross the tracks of four other roads.

Q. By "these movements" you mean the movements to the Junction?

A. That is right.

Q. All right.

[fol. 562] A. This is another cause of delay in handling which we do not encounter in making deliveries to Omaha Packing Company on our rails. The operation to Omaha Packing Company is much simpler in every respect than is the job of making runs to the U. S. Yards via Ashland Avenue.

Mr. Smith: Will you please mark this defendants' exhibit 37?

(Exhibit No. 37, Witness Starbuck, marked for identification.)

Q. Handing you exhibit No. 37 I will ask you to state what it is please.

A. It shows the record of stock handled by the CB&Q to U. S. Yards during the year 1946 and 1947 by months, with average number of trips per day, and the average number of cars per trip. For example, in October 1947 we made 140 trips to the Stock Yards with 730 cars or an average of 5.21 cars per trip, and four and one-half trips per day.

If all the packers had been taking their directs at their plants during October 1947, 504 cars of livestock would have been delivered into the Ashland Avenue yard by the CB&Q for further handling by the C.J. Railway.

It would not be feasible to expect that transfer runs could be made in all instances with stock for both the U. S. Yards and dead freight for Ashland Avenue; in other words, taking just Swift deliveries the combined total of [fol. 563] 1059 cars of stock for U. S. Yards and Swift & Company could not have been made with an average of four and a half trips per day. Therefore, even considering only Swift, there will be many occasions when independent runs will be required to C. J. Ashland Avenue yard.

Under normal operation transfer trains of the line-haul carriers operating over the Chicago Junction main tracks have to wait to get into the chutes from Ashland Avenue. To stop at Ashland Avenue to make a set-out requires a crossover movement in a badly congested area—an area which, while now conducive to many delays, will be much worse by reason of twenty-two line-haul carriers attempting to perform the same entirely new operation with livestock. With this added congestion by reason of Ashland Avenue deliveries, additional train movements and picking up empties, it will undoubtedly be necessary to make frequent independent runs with stock either for U. S. Yards or for Ashland Avenue, or both, in an attempt to avoid some of the serious delays and consequent violations of

the statutory time limit. Even these added runs will not solve the problem since more runs will, of course, mean more engines in Ashland Avenue.

Q. There was testimony here, Mr. Starbuck, that in many instances cars are taken to the C. J. for unloading in cuts of one, two, three and four cars. What is the reason for an operation of that kind?

[fol. 564] A. Depending upon the time of the stock, whether it is on short time or not, whether you are really able to make the market by holding it for larger runs.

Q. Well, when it is moved down in those small trains is that for the reason that that particular stock is on short time?

A. That is one of the main reasons. Another reason why it may be taken special and dead freight or perishable not handled with it is because of the fact that too much delay would be encountered at Ashland Avenue yard in attempting to set it out, to set out dead freight or perishable.

Q. Is there any freight on the railroad that moves on faster schedules than livestock?

A. Well, perishable is given almost the same handling as livestock.

Q. I say is there any freight that moves on faster schedule than livestock?

A. No, there is not.

Q. All right, proceed.

A. The C. J. Railway has indicated that if the Swift & Company request is granted they will require two to eight hours after receipt of the livestock into Ashland Avenue yard until the time it is set for unloading. This means eight hours as far as we are concerned. Because of the eight hours free time which will be required by the C. J., the CB&Q Railroad will need at least eleven hours free time because of the extra switching involved in the freight [fol. 565] yard in preparing the trains for Ashland Avenue and the congestion en route to Ashland Avenue. The CB&Q will be compelled as a result to make many additional runs in order to get stock to the C. J. and to U. S. Yards within the time limit, or much of the stock will have to be unloaded and fed at Clyde before it can start for the Stock Yards. At Clyde, where the CB&Q receive this

stock, there are feed and rest facilities for only fourteen cars of stock.

Q. Why do you mention the fact that there are facilities for only fourteen cars of stock? Do you think that would be adequate to handle the additional stock which may require additional unloading for feed and rest if this new program were adopted?

A. No, I don't think it is.

Q. I am not sure that your statement is clear when you say that the C. J. has told you that it would require from two to eight hours to handle this stock through the Ashland Avenue yard and you say as far as you are concerned that means that you would have to allow eight hours on all of the stock. What do you mean by that?

A. Because we wouldn't have any way of knowing whether the C. J. could handle it in two or eight hours.

Q. That is, as to any particular car?

A. Any particular car.

[fol. 566] Q. Go ahead.

A. It is not possible to forecast with complete accuracy at this time what the congestion will cost in engine hours or other out-of-pocket expense.

Again taking October 1947 as a basis for difficulties that may be involved in this entire matter, to have switched at Clyde the 175 cars of livestock consigned direct to packers from the 730 cars of stock delivered to U. S. Yards chutes would have required approximately five extra engine hours per day. Under the proposed plan practically every train going to the Chicago Junction Railway would require additional grouping at Clyde Yard because it would be the policy of the CR&Q to have U. S. Yards stock next to the way car; Ashland Avenue set out of perishable and/or dead freight next ahead; and Ashland Avenue stock next to the engine. The only trains that would be operated that did not carry two of these three groups would be the special, independent runs to either U. S. Yards or Ashland Avenue with livestock only when the statutory time limit is jeopardized. This additional grouping at Clyde will increase the switching to one engine trick per day.

Q. Let me see if it is perfectly clear now as to what that

additional handling is. Do you receive at your Clyde yard trains embracing both livestock and dead freight?

A. We do.

Q. And what separation do you make now as far as livestock is concerned?

[fol. 567] All livestock for the U. S. Yards is placed in one group.

Q. And what other livestock do you have?

Exam. Diamondson: In Clyde yard?

The Witness: In Clyde yard, yes.

By Mr. Smith:

Q. And what other livestock do you have?

A. Omaha Packing Company, which is placed in one group.

Q. So that you segregate livestock into those two components on that basis?

A. That is right.

Q. One going to the Omaha plant and the other going directly to the Yards?

A. That is right.

Q. Does this proposal contemplate that you would have to make a third segregation in your Clyde yard?

A. It does because the livestock that would be consigned to Ashland Avenue would have to be placed in a separate group from the U. S. Yards livestock and dead freight or perishable for Ashland Avenue.

Exam. Diamondson: Couldn't it move down in the same train to the Union Stock Yards and be dropped off there?

The Witness: It would be in different groups, only it would be in the same train.

Mr. Smith: He is talking, Mr. Examiner, about the different segregations that would be necessary and I am going to develop that a little further.

[fol. 568] Exam. Diamondson: I see.

By Mr. Smith:

Q. In going down to Ashland Avenue with a train now that handles dead freight and perishables and some livestock where is the livestock?

A. The livestock for U. S. Yards is next to the way car.

Q. That is, it is on the rear end of the train?

A. It is on the rear end of the train, that is right.

Q. And the set outs at Ashland Avenue are on the front end of the train?

A. That is right.

Q. So that if any livestock were to be set in Ashland Avenue where would you put that?

A. That would be next behind the engine.

Q. So that would be separated from the stock that was going to the Stock Yards?

A. Yes, sir.

Q. And it is that additional segregation as between the stock that were going to Ashland Avenue and the stock that were going to the Yards and the switching of that in making that additional segregation that you have been talking about here?

A. Yes, sir, that is right.

Q. When you bring down trains to the C. J. for deliveries into Ashland Avenue do you run these clear through Ashland Avenue?

[fol. 569] A. To make the set outs at Ashland Avenue?

Q. Yes.

A. We pull to the east end of the yard.

Q. And then make your set outs from the east end?

A. That is right.

Q. And what happens to any livestock that happens to be on that train that is destined for the Stock Yards?

A. That is standing on the main track waiting for the engine to return.

Q. That is the stock that is permitted to stand in that track 3 that we talked about with the witness yesterday?

A. That is right.

Exam. Diamondson: We will adjourn at this time until two o'clock.

Mr. Smith: All right.

(Whereupon, at 12:37 o'clock P.M., a recess was taken, to reconvene at 2:00 o'clock P.M.)

[fol. 570] Afternoon Session 2:00 P.M.

Examiner Diamondson: The hearing will be in order.

Mr. Smith: Mr. Starbuck, will you please resume the stand.

JOHN C. STARBUCK resumed his testimony as follows:

Direct examination (continued).

By Mr. Smith:

Q. Mr. Starbuck, just before the recess you said that the additional switching which would have to be performed at your Clyde Yard in order to segregate the direct shipments from the market shipments would increase the switching operations to one engine trick per day. Did you mean that?

A. What I meant was it would increase the switching one engine trick a day.

Q. In other words, the "to" should have been out of there?

A. That is right.

Q. Will you tell the Examiner what that means when you say it would increase the switching one engine trick per day?

A. That means that we figure it would require eight hours per day to perform the extra switching that would be involved in the sorting of livestock for the Ashland Avenue and the U. S. Yards.

Q. And an engine trick is the equivalent of an eight hour day?

[fol. 571] A. That is right.

Q. If you had eight trains that would be an hour per train or if you had four that would be two hours per train, depending on how many trains you had?

A. That is right.

Q. That would determine what the delay would be per train?

A. That is right.

Q. And have you any estimate as to how many trains you might have?

A. Well, I think we would probably have eight trains or

close to that daily from our east bound yards to the rails of the C. J.

Q. And it might run into the neighborhood of an hour a train delay?

A. That is right.

Q. All right, go ahead.

A. To show the effect of congestion on trains going to the Chicago Junction Railway, trip reports indicate that in October, 1941, a round trip to the U. S. Yards averaged slightly less than two hours. In October, 1947, the average was increased to four hours. It is estimated that if all packers are to receive their stock direct, approximately 37,000 additional cars of livestock will be set out at Ashland Avenue each year by the various railroads. Under present conditions, most of the delay encountered to C. B. & Q. trains [fol. 572] on the Chicago Junction Railway occurs in the vicinity of Ashland Avenue. Since the handling of livestock at Ashland Avenue will, by the very nature of the commodity, bunch at certain hours on certain days of the week, a situation will be created at Ashland Avenue that will seriously handicap the operations on the Chicago Junction Railway and reflect in prohibitive costs to the C. B. & Q. Railroad. There will be delays to all kinds of freight—livestock, perishable, dead freight. Since January 1, 1948, the C. B. & Q. has been notified several times by the Chicago Junction Railway, as early as 12 o'clock noon, that deliveries of dead freight could not be accepted until approximately 4:00 o'clock the following morning.

There is no question that the C. B. & Q. will be required to make at least four additional trips, or approximately double the trips now being made, to U. S. Yards or to Ashland Avenue. Because of the congestion that will occur, a trip cannot be made in four hours. Should that congestion result in but one additional hour per trip, the C. B. & Q. would be making approximately nine trips per day on the C. J. Railroad, at approximately five hours a trip; in other words, the handling of livestock would be increased from the 30 hours engine time now required to more than 50 hours per day.

Aside from the increased cost involved in such additional [fol. 573] runs, there would be an element of delay to livestock for all firms, with greatest delay occurring to stock

which would still be delivered to U. S. Yards. There would likewise be delay to cars of perishable and time freight interchanged to the C. J. Railroad for various firms and industries. There would be delays to loads and empties to be picked up by the C. B. & Q. at the C. J. North Yard.

In the final analysis, should the packers take their direct shipments at their plants, not only will their stock be considerably delayed, but—equally important—stock for the U. S. Yards and dead freight and perishables which we carry down to Ashland Avenue will be held up for many hours.

Q. When you have stock for the yards, which is on a train that has setouts at Ashland Avenue, does the delivery of the stock at the yards await the placement of the dead freight in the Ashland Avenue Yards?

A. The stock is delayed while the cars are being placed in Ashland Avenue Yards.

Q. In other words, the setout in the Ashland Avenue Yard is made first and then the stock is delivered at the yards?

A. That is correct.

Q. Why is that procedure followed?

A. Well, because the Ashland Avenue cars have to be set out first. You could not take those on to the U. S. Yards [fol. 564] with the stock.

Q. Why not?

A. It would cause too much confusion or congestion and delay in unloading stock, not only of the C. B. & Q., but other lines as well.

Q. Well, does the physical layout down there permit you or would it permit you to take the dead freight down into the chutes and then make delivery of the livestock first and then move the dead freight back into the Ashland Avenue Yards?

A. No, it positively would not permit it.

Q. At the present time the livestock does have to wait until this setout is made in Ashland Avenue and you say the setout would be more difficult under this new arrangement? You testified here that the delay to the stock going to the yard would be the greatest of all?

A. Yes, it would be.

Q. Did you hear the testimony of Mr. Kinsella and Mr. Sorensen with reference to operating conditions in the Chi-

cago Junction Yard and the conditions that they would expect to encounter if the new arrangement went into effect?

A. I heard their testimony for the most part.

Q. You did not hear it all?

A. No, because of the noise.

Q. Were you present?

[fol. 575] A. I was present. I heard most of it.

Q. Are you familiar with the operations in the C. J. Yard?

A. I am familiar with the operations in the C. J. Yard as far as it pertains to the C. B. & Q.

Q. So far as it relates to the C. B. & Q. would you say that their testimony reflected the conditions which you would expect to find down there?

A. From my experience, it does.

Q. Will you undertake briefly to compare in respect to congestion and delay the handling of stock to the Omaha plant and the handling that you would encounter in moving directs into Ashland Avenue?

A. There is hardly any comparison between the two as far as making quick deliveries are concerned.

On the Omaha Packing Company stock, which is handled exclusively by the Burlington Railroad, you can handle stock from our east bound yard or from Western Avenue to the Omaha Packing Company without any interference from connecting lines engines whatsoever. There is nothing to interfere with their movements, but on the other hand when we leave our railes at 21st Street, we take our turn in following anyone that may be moving southward from that point, a North Western train or a C. J. train, depending, of course, on how much delay is encountered from that point to Ashland Avenue or the U. S. Yards, which is very bad at times.

[fol. 576] We can make deliveries to the Omaha Company from Western Avenue if conditions made it necessary within probably 25 or 30 minutes of one or two cars of stock.

Q. Am I correct in understanding your testimony to be that apart from the delay that the Chicago Junction would cause in delaying this stock, the delay that the Burlington would encounter would be in this additional switching in the Clyde Yard and in the additional time that would be involved in moving the directs into Ashland Avenue and in

moving your market stuff down through Ashland Avenue to the yard on C. J. tracks?

A. That is right. From past experience it is not unusual after a train arrives at the east end of the Ashland Avenue Yard to wait for one and as high as to and sometimes more hours before there is room to make a setout.

Mr. Smith: I think that concludes the direct statement.

Exam. Diamondson: You may cross examine.

Cross-examination.

By Mr. Rynder:

Q. Mr. Starbuck, do I understand your direct testimony to be that from April 16, to May 10, out of 53 trains to U. S. Y. and T. there had to be set out 36, or approximately 40 per cent?

A. That is right, that is correct.

Q. So those setouts are occurring already, are they not?

A. We set out at Ashland Avenue, yes. However, there [fol. 577] were 53 trains went through without setting out.

Q. 53 without setting out, but 36 that had to be set out?

A. That is right.

Q. According to the exhibit I have, Exhibit 17 for the 16th Street team track, in 1946, last year, you show you delivered 1,144 cars of livestock. Are you familiar with that?

A. Yes. I could not say as to the number set out on the 16th Street team track, however.

Q. That is an exhibit given to me on behalf of the carriers. I had nothing to do with preparing that.

A. We probably did.

Q. I suppose that has to be classified and divided somewhere, doesn't it?

A. It does. Those cars are usually handled on that track with perishables for the Racine Avenue team track.

Q. Do they have to be properly placed at the team track?

A. Anywhere on the team track.

Q. Anywhere on the team track?

A. Any spot on the team track.

Q. But it involves setting out the classification some place prior to setting it out on the team track, doesn't it?

A. It does.

Exam. Diamondson: Where is that team track with respect to the Western Avenue Yard?

The Witness: It is located approximately a block or a [fol. 578] block and a half west of the point of where we go to the Omaha Packing Company.

Exam. Diamondson: Just east of where Blue Island crosses your tracks?

The Witness: Yes, that is right, just east of where Blue Island crosses our tracks. That is right.

By Mr. Rynder:

Q. I take it that practically every full train coming in on the Burlington Railroad is a line haul carrier and it has cars destined to different lines in Chicago and to different consignees, is that right?

A. That is right.

Q. Well——

A. Most of them do.

Q. Most of them do?

A. Yes.

Q. And they all at some place require these various switching moves that you have described for the purpose of classification for another road or delivery to a particular industrial siding or team track, do they not?

A. They do.

Q. I believe that you said that the suggested change would produce prohibitive costs to the Burlington?

A. Yes.

Q. I would like to call your attention to your Exhibit No. 33, if you will look at it?

[fol. 579] A. Yes.

Mr. Smith: By the way, I would like to offer Exhibits 33 to 37 inclusive, if you please.

Exam. Diamondson: Any objection?

Mr. Rynder: No objection.

Exam. Diamondson: Exhibits 33 to 37 will be received in evidence.

(The documents marked Defendant's Exhibits 33 to 37, both inclusive, Witness Starbuck, were received in evidence.)

Mr. Kaylor: Exhibits Nos. 33 to 37 will also be received by the Illinois Commerce Commission.

By Mr. Rynder:

Q. Take the first train on there. You have two cars of livestock for the Union Stock Yards. Do you know the cost of delivering those two cars?

A. No, I would not know the cost of these particular cars.

Q. Now suppose that in addition to those two cars for U. S. Y. and T. the train had contained two cars destined to the proposed Swift location making four cars behind that engine. Do you know what the cost would have been?

A. No. It is dependent on how much the train was delayed before the setout in the Ashland Avenue Yard.

Q. But you are pretty certain of this: That if you drag down four cars behind one engine instead of two cars behind one engine, the cost would be greater for dragging [fol. 580] down the four cars?

A. Sir? There would not be much difference in the handling or the actual expense involved in the pulling of six cars or two cars. The weight would not make much difference to make any increase in that case.

Q. Well, the cost of delivering a car in terms of delivery, I take it, would be the entire engine's expense, and it would be different if the engine delivered only one car? That would be the cost of delivering that particular car out of pocket, wouldn't it?

A. Yes.

Q. If that same engine delivering two cars were involved, the cost per car would be half as much per car?

A. That is right, it would be reduced.

Q. That is right, per car, not the total cost?

A. Yes.

Q. But you divide that cost, whatever it may be, into the number of cars to find out the terminal expense of delivering those two cars?

A. What I was speaking of in terms of cost, as far as an operating man is concerned, is in the engine hours.

Q. Well, you said they would be prohibitive.

A. So far as the engine hours are concerned.

Q. Let us stick to that train of two cars.

A. Yes.

[fol. 581] Q. I take it that is not prohibitive now for your doing it? You can not do something that is prohibitive, can you?

A. No.

Q. But it would become prohibitive if that train consisted of four cars instead of two and two of them being destined to the Swift & Company location, isn't that your testimony?

A. It is not.

Q. It is not?

A. Your question is not clear.

Q. Well, I think it is so obvious that I won't press it. I won't press the witness any further on that. That is simply what his testimony comes to. I believe that is all.

Redirect examination.

By Mr. Smith:

Q. I want to pursue that a bit, if I may. Why would you be running down to the yards with two cars presently with a train as light as that?

A. It could have been in the case of the two cars in question being short, but that the 28 or 36 hours might have been expired at 4:30 or 5:00 a. m. and to have held them and consolidated them with the following run would have resulted in a violation of the statutes.

Q. Now would the conditions then which forced you to run clear down to that yard with two cars permit you to take down two additional cars of the source that Mr. Rynder is talking about and wait your chances to set them in at [fol. 582] Ashland Avenue?

A. Conditions would govern most movements. May I have that question again, please?

Mr. Smith: Mr. Reporter, will you please read the question?

(The question was read by the reporter.)

Mr. Rynder: Now, Mr. Examiner, I object to that question. It is purely speculative.

Mr. Smith: I don't think it is speculative at all.

Mr. Rynder: If two cars were there it would depend on when the 36 hours were running out and any number of facts to be taken into consideration.

Exam. Diamondson: He can express his opinion based on those factors.

Mr. Smith: You injected the speculative provision when you told him if he could not take on two more cars to set out at the Ashland Avenue Yards.

Exam. Diamondson: Can you answer the question?

The Witness: I can, sir. If the two cars in question were traveling on short time then no other cars would have been handled with that run.

By Mr. Smith:

Q. Now what would be your reason for taking a train of only two cars down to the Union Stock Yards without any other traffic except the matter of time?

A. The matter of time could be involved or a delay to the [fol. 583] cars in the eastbound yard in taking a chance on missing the morning market because of congestion on the rails of the C. J.

Q. By and large, do you hold your livestock at Clyde to accumulate the cars in the event that you have plenty of time to deliver them?

A. In so far as conditions permit, yes.

Q. So when you run down there with two, three, or four cars, does that indicate that you are short on time?

A. It does.

Q. Now if you put on these two additional cars of Rynder's, that were to be set out at Ashland Avenue that would defeat the very purpose of taking down the two cars alone directly to the yard, would it not?

A. Yes it would.

Q. And it would defeat its purpose because it would involve additional time in setting out at Ashland Avenue, wouldn't it?

A. It would.

Q. In the light of that additional delay, could you then simply spread the time evenly over the four cars and think that you were going to handle each car as cheaply as you did the two?

A. No.

Q. I don't think I asked you, Mr. Starbuck, whether it is [fol. 584] a matter of importance to the Burlington to get its empty stock cars back to its line promptly after unloading? Is it or is it not?

A. It is very important.

Q. Do your crews wait after deliveries at the Union Stock Yards and take the empties immediately back to your line?

A. They spot the stock for unloading and while the stock is being unloaded, the engine uncouples from the head end of the train and it runs around the train, couples to the other end and as soon as the cars are unloaded, they are returned to our yard with the same engine.

Q. If the empties were to be handled by the C. J. through the North Ashland Avenue Yard, would there be a delay in returning those empties to your line, that is not encountered now?

A. There would be a delay of probably 10 or 12 hours to the cars.

Q. Would they have to be handled not only by C. J. crews but by some other Burlington crew than the one that sets the load in?

A. There would be another crew handle the empties back.

Mr. Smith: That is all.

Exam. Diamondson: What is the procedure for returning the empties from the Omaha plant?

The Witness: Well, they might be handled back by the [fol. 585] same engine or any one of several other crews.

By Mr. Smith:

Q. Explain that a little bit, please.

A. For instance, the Omaha Packing Company is located in our lumber district switching territory. We have several engines working in that locality during the 24-hour period. We might use one of our engines from the east bound yard to run the stock there and set it out.

Exam. Diamondson: In other words, it would not be necessary to have an engine stand by while the cars are being unloaded?

The Witness: No, we do not do that except in very few cases.

Mr. Smith: That is all.

Exam. Diamondson: Any further questions?

Recross-examination.

By Mr. Rynder:

Q. Well, I am still looking at this first train here with the two cars. I now understand your testimony to be that if you had these two cars then two cars more for the Swift Location, making four, and you had sufficient time to deliver the four cars after setting out two at Ashland Avenue, you would still not do it and the cost would be prohibitive, is that correct?

A. No, that is not right, Mr. Rynder. If I had the time and the conditions would permit I would handle the cars for Ashland Avenue.

[fol. 586] Q. I thought you objected to it in an economical way.

A. That depends upon conditions of what you are confronted with. If the two cars of stock were moving on short time, I just had time to make the stockyards, I would not take cars for Ashland Avenue with those.

Exam. Diamondson: You are not worried about the economies, but you are worried about the operation itself?

The Witness: Yes, that is correct.

By Mr. Rynder:

Q. But after all, short time is a relative term. If you had three hours on each of them and that was nevertheless short time, it might be enough to enable you to make both deliveries, might it not?

A. We usually work with the people of the C. J. and if there is any doubt as to whether we can make the unloading chutes, we go right through, but if the congestion is not bad and we have the time to handle the Ashland Avenue as well as the U. S. Yards, we would handle the Ashland Avenue with them, yes.

Q. I thought perhaps you would, but I did not know

whether all railroad practices were tending to pile up unnecessary costs or not.

A. No, sir.

Mr. Rynder: That is all.

Mr. Smith: That is all.

Exam. Diamondson: You are excused.

(Witness excused.)

[fol. 587] Mr. Smith: Mr. Stein.

JOSEPH J. STEIN was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. State your name, occupation and residence.

A. Joseph J. Stein, assistant general manager of the Chicago Northwestern Railway Company. I reside in Chicago.

Q. State very briefly your railroad experience, Mr. Stein?

A. I have been connected with the Chicago, North Western Railway for over 31 years in various capacities, stations, towers, yards, offices, and on trains.

Q. Most of your time has been spent in the operating department?

A. Yes, practically all of it.

Q. Where do you receive your inbound traffic at Chicago?

A. Proviso Yard.

Q. State in a general way the character of trains that come into that yard?

A. Stock coming into the Northwestern's Proviso Yards west of Chicago is carried in trains together with dead freight. These trains will run as high as 100 cars. The cars of livestock on each of these trains usually is a small percentage of the total number of cars on the train.

By the time the trains carrying livestock reach our Proviso Yards the livestock has usually been placed at the [fol. 588] head of the train. The switching necessary to

accomplish this is done at some outlying point, such as Clinton, Iowa.

Q. Well, is any segregation made of livestock at that point as between one kind and another at Clinton?

A. Just how do you mean, Mr. Smith?

Mr. Smith: Maybe you did not hear the question. Mr. Reporter, will you please read the question?

(The question was read by the reporter.)

The Witness: Well, we attempt to segregate the stock as between stock for the Omaha Packing Company, stock for the unloading chutes at U. S. Yards, and stock for the Indiana Harbor Belt which would carry it to eastern connections.

At our Proviso Yards the stock is detached from the dead freight and is hauled to the U. S. Stock Yards. The practice for many years and the practice today is for the road haul carrier to place livestock directly at the unloading chutes at the U. S. Yards. When the livestock is unloaded, our crew and engine usually returns with the empty stock cars to our terminal.

The handling of the stock by the Northwestern, once it reaches Chicago varies with the source of the stock. By that I mean that exchange of a so-called stock relief crew for the road crew may take place either at our Proviso Yards or at Fortieth Street, depending upon the Division over which the stock was carried. Thus, livestock from [fol. 589] the west is handled through the Proviso Yards to Fortieth Street by the road crew and at that point relieved by a Galena division stock relief crew who takes the stock to the U. S. Yards. By contrast, stock from the north is handled into Proviso by the road crew, at which point it is relieved by a Wisconsin division stock relief crew which takes the stock to the U. S. Yards. In some cases two or more trains are consolidated at Proviso or Fortieth Street and handled by one stock relief crew.

Q. Well, what is the reason for that circumstance? Who handles that stock out of Proviso? Is that a matter of caprice, or what is behind it.

A. That is because the labor agreements set forth which crew will handle which stock from which direction and each crew is limited as to what stock he may handle.

Q. The labor organizations have managed to divide up this traffic and to designate in the agreements which particular crews will handle which particular traffic, is that it?

A. Yes. The entire operation—that is, the initial picking up of a car of stock at an outlying country point, the assembly of the stock on to the front of the train at Clinton or some other point, the switching off of the stock at Proviso, the picking up of the stock by the stock relief crew, the rapid departure from our yards—all this is an operation which is conducted relatively efficiently only as [fol. 590] a result of years of experience and custom in this particular method of delivery.

I do not mean to suggest that we are not today, even after years of experience, encountering delay in the delivery of stock when our trains reach the Ashland Avenue tracks of the Chicago Junction Railway. In order to reach the Stockyards the Northwestern must pass through Ashland Avenue. We enter Ashland Avenue from the west and the Stock yards are just east of there.

Train operation under present conditions in the Ashland Avenue area is seriously hampered because of inevitable congestion in this district. About 8 line haul carriers enter Ashland Avenue from the west as does Northwestern. About 12 other line haul carriers come in from the east. Our experience shows that even under present conditions, our stock relief crews trying to get stock to the unloading chutes encounter serious delay at Ashland Avenue due to other line haul carriers attempting to enter this point and because of the activities of the C. J. cars and engines. A score of carriers—both line haul and terminal—attempting to operate in and through an area as congested as Ashland Avenue just cannot avoid conflict with one another in many ways.

The result is that the run through Ashland Avenue to the Yards even today is not a rapid one which moves without interference. A large number of our stock trains going to the Yards today are stopped and must wait on the main [fol. 591] running tracks because of the congestion.

I wish to discuss now the effect of our operations if direct shipments were to be delivered at the packing plants. In my opinion, based upon my experience and knowledge of

the operating conditions in this greatly congested area at Ashland Avenue, the delays we now encounter are going to be so tremendously magnified in this area as to make such operations entirely impractical. This increased delay is going to be due to a number of factors which just do not exist today.

In the first place, nearly all of the line haul carriers entering this area—and there are 22 of them—are going to be making set outs of livestock which are not made today. In my opinion, it is going to be inevitable that with all these carriers coming in to make set outs, they are going to be constantly in each other's way and Northwestern cannot expect to always be able to make set outs at Ashland Avenue without serious delays. We may find a Milwaukee, or any one of a score of carriers blocking the main running track because they, in turn, are delayed by some other carrier.

In the second place, the new delay is going to be encountered by us in making our set outs, because the Junction in attempting to separate stock from dead freight and then reswitch and classify the stock, must of necessity interfere with the tracks used by the line haul carriers in this area.

In the third place, the confusion is going to be compounded because of the problem the Junction will face in [fol. 592] returning empty stock cars from Swift and the other packers to the interchange at Ashland Avenue. In order to return empty cars from the Swift facility to that part of the Ashland Avenue Yards where the Junction interchanges the cars to the Northwestern and the other line haul carriers the Junction will have to cut across and interfere with the main running track. We will not be able to get in to make set outs because of the empties which the Junction will try to place for interchange with the line haul carriers. Reswitch and classify the stock would of necessity interfere with the tracks used by the line haul carriers in this area.

Q. That is they can not get over to the north yard to place those empties to return to you without crossing the tracks that you would use in making your own placements in the Ashland Avenue Yard and in going to the Stock Yards?

A. And returning, yes. Delays to us are going to be

further increased by the necessity on the part of the Junction and of the line haul carriers of putting on additional engines to handle this new operation. Thus, in my opinion the Northwestern will be required to operate additional trains from our terminal to the Ashland Avenue District in order to return the empty stock cars to our property. At the present time this situation does not obtain because in all instances the crew which delivers the stock to the unloading chutes brings the empty cars [fol. 593] back with them.

Today, we have several transfer runs every 24 hours that pick up traffic including empties for our line in the Ashland Avenue District, but the point is that we will not be able to depend upon those transfer trains to handle the greatly increased number of cars the Junction will be turning back to us at Ashland Avenue, and in my opinion there is not ample facility in this congested yard for assembling and holding the number of stock cars which will be made empty awaiting movement on scheduled transfers. This is one illustration of the necessity of operating additional engines which will be required in this congested area.

The need for additional engines, so far as the Northwestern is concerned, is going to be due not only to the problem of these empties. We are going to have to make additional runs with stock over and above what now is required. Today it is possible in some cases to consolidate on one stock relief engine cars of livestock coming into Proviso or Fortieth Street on different line haul trains. Thus, cars of stock coming in on one train may wait for a period of time to move down to the Stock Yards with other cars coming in a while later. The limitations of the Federal 28-36 hour law combined with the increased delay at Ashland Avenue are going to mean that we cannot undertake this consolidation as frequently as it is now possible to do. Here again we must add to the con- [fol. 594] fusion at Ashland Avenue the additional trains trying to go through that point.

One of the important facts about this added delay is that people will suffer who have nothing to do with the proposal; namely, shippers who still choose to take their deliveries at the unloading chute. When we are delayed at Ashland Avenue because of the Swift demand, it is

going to mean, of course, that that stock which must run through Ashland Avenue to get to the Yards is going to be held up while the operations just described are taking place in that area.

So far, I have dealt only with the problem of delay to the Northwestern in the Ashland Avenue area. This point, of course, will be the most serious bottleneck we will encounter if the Swift demand is granted. Nevertheless, in my opinion, there are going to be some additional complications in our handling of live stock, even before we reach the Ashland Avenue area. The burden, of course, of blocking out the stock for Swift from stock for every other packer who wants his direct deliveries at his plant must be upon the Junction and must be done in the congested Ashland Avenue Yards.

By Mr. Smith:

Q. That is, Mr. Stein, do you mean by that that the Northwestern could not assume the burden of segregating these stock cars, the cars of stock of directs as between Swift and Armour and Wilson, etc.?

A. No, we could not and we should not.

[fol. 595] Q. It is the duty of the receiving road to make such classifications, is it not?

A. Yes.

Q. And even if you should depart from the normal practice in that regard and yourself make the classification as between packers, would you have any assurance in the light of the congested condition of these receiving tracks in Ashland Avenue that you would be able to preserve that segregation as you tried to fit these cars into the Ashland Avenue Yard?

A. No, I don't think we would.

Q. Either Mr. Sorensen or Mr. Kinsella justified yesterday, as I recall it, that frequently it was necessary to put part of a cut on one track and part of a cut on another track. If that became increasingly necessary because of the introduction of this livestock in the Ashland Avenue Yard, would that operate to impair your segregation as between packers even if you had made it?

A. Well, Mr. Smith, there is a great many complications inherent in the proposition you offer. In the first place,

that would change the operation as compared to the present operation.

Most likely that would mean a complete renegotiation of our agreements with the train service labor organizations. No one has any way of knowing as to just what position the engineers, the firemen, the conductors, or the trainmen or the switchmen will take if we undertake to [fol. 596] tell our crews to set out cars on a number of tracks in the Ashland Avenue yard.

Q. You mean the C. J. Employees might claim that classification function was theirs in accordance with the regular custom of the receiving lines making those segregations?

A. The C. J. employees may do that and on the other hand our employees might contend that that was not a part of their regular assigned work and claim, as they have in the past, and be sustained in such claims, that that work entitled them to an additional day's compensation.

On the other hand if such a position were sustained by the National Labor Relations Board or some other constituted or duly constituted tribunal, the C. J. crews could claim from the C. J. Railroad a day's pay because of our men usurping their working rights in their own terminals and then I presume the C. J. would immediately turn around and bill the Chicago & Northwestern so we would be paying three days pay where it now costs us one.

Mr. Rynder: Three days is as high as you can run that, is it?

The Witness: No, sir, it has been run up to as high as ten.

Mr. Rynder: I am glad to hear that.

Mr. Kaylor: Did management sit idly by and let it go [fol. 597] that way?

The Witness: Those are Labor Board decisions, sir.

By Mr. Smith:

Q. You may continue.

A. How it can possibly be done there I cannot imagine. But the Northwestern is not going to undertake to perform that job. Even so, when a half dozen or more p kers are asking for delivery of livestock to their plants which comes in on the Northwestern we are going to have a problem at

our Yards which is going to add time and expense to our operation. A train into our terminal having several cars of stock for the unloading chutes, and cars of stocks for various packing plants on the Chicago Junction, will necessarily require us to switch these cars into separate blocks in order that the Ashland Avenue stock may be set out at that point and the cars for the U. S. Yards taken through to the unloading chutes. This work would necessarily have to be performed in our own yards, as our crews could not switch cars while on the Chicago Junction property.

Now, of course, we do today switch out cars of stock at our outer yards for the Omaha Packing Company, but these cars are a very, very minor percentage of the total number of cars of livestock handled into Chicago by the North-
[fol. 598] western. For example, in 1946 the Northwestern interchanged only 287 cars with the Burlington for the Omaha Packing Company. In 1947, 369 cars were similarly interchanged. However, in 1946 the Northwestern brought in 14,198 cars of livestock for delivery to the Union Stock Yards, and in 1947 the figure was 10,4[illegible]9.

Now, the evidence introduced by Mr. Parkhurst shows that about 45 per cent of the stock coming into the stockyards by rail were direct deliveries. Applying the same percentage to the cars of stock carried by the Northwestern in 1946 and bearing in mind that all the other packers will insist upon the same type of service that Swift asks, approximately 7,000 of the 14,000 odd cars carried by the Northwestern in 1946 would have needed switching out from the stock going to the U. S. Yards. In contrast, therefore, to the very minor problem of blocking out stock for Omaha Packing Company, it is apparent that this blocking of stock between cars destined to the Yards and cars which must be set out at Ashland Avenue is going to be a much more time consuming job. If we are going to be obliged to make the segregation as above indicated, I would estimate that phase of the operation alone would entail another hour's delay on an average in our yard where the stock was switched.

Q. Just a moment, would that be an hour a day or an hour a week or an hour per train?

[fol. 599] A. An hour per train, Mr. Smith.

Q. All right.

A. As far as the delay we are going to encounter at Ashland Avenue before we can interchange, in my opinion, I believe it conservative to say in light of the above description as to the problems at Ashland Avenue, that we will face at least another hour's delay per train on the average in that district.

Q. Do you mean by that an hour of delay in addition to whatever delay you are encountering in your present operations?

A. Yes.

Q. All right, proceed.

A. In order to obtain a full picture we must add to these two hours the time it is going to take the Chicago Junction to make delivery. The Junction has testified that it is going to take them anywhere from 2 to 8 hours to make the deliveries to the packing plants from the time that the stock is set on the Ashland Avenue interchange. As far as we are concerned, in planning our schedule of deliveries of livestock, this means that we must figure on giving the Junction eight hours' time in which to make delivery. We have no way of knowing from time to time and in each specific instance whether the Junction on a particular car is going to demand two, four or eight hours' time. We must work on the assumption that the eight hours applies to all [fol. 600] stock we set out at Ashland Avenue as it will remain our responsibility to avoid violation of the Federal Law as long as the stock is in our possession.

This matter of the violation of the Federal 28 and 36 hour law is going to become a very serious situation as far as we are concerned. All carloads of livestock, of course, are shipped subject to Federal regulation. The livestock may not be confined in the cars for longer than 28 or 36 hours, depending upon whether or not the shipper will sign a "release" permitting the stock to remain in the cars for a period of 36 hours. If the livestock is loaded at a given point, it must be unloaded at the U. S. Yards within a maximum of 36 hours, or it must be unloaded, fed and watered at some intermediate point.

I have made a very careful study of the stock cars handled by the Northwestern during the period from April 15, 1947, to May 15, 1947. During this time we handled 1000 cars of stock to the U. S. Yards. These cars were carried by 110

Northwestern trains. Many of these cars, even under present conditions, were delivered to the chutes of the U. S. Yards with only short time remaining within the limits of the Federal law. If the Junction is going to require eight hours, and since we must face an additional two hours delay —a total in all of 10 hours' additional time—my study shows that for this period 209 cars of livestock from 36 [fol. 601] trains would have violated the Federal regulations if we had attempted to bring them to their destination without unloading for feed, water, and rest at an emergency unloading station. In other words, 33 per cent of the Northwestern trains handling livestock during this period would have failed in the delivery of 21 per cent of the cars of stock to the consignee. Considering the year as a whole, this is a very conservative estimate, since deliveries during April and May are more rapid than during the winter months, when weather conditions cause constant delay in our operating schedules.

Q. Now what is that period of April 15, 1947, to May 15, 1947, that you have used here? Is that the period in which those trains moved that Swift asked us to supply the consists of?

A. Yes.

Q. In other words it is a complainant's selected period, is it?

A. Yes. What all this means, of course, is that the Northwestern might have to completely revise its operating schedules to provide for additional unloading en route of these cars of stock which would otherwise violate the 36 hour law. This will add enormously to the cost and effort involved in the transport of livestock.

One particular point about these additional unloadings is that they are going to involve additional delay for stock which otherwise would reach the stockyards area in plenty [fol. 602] of time. Every time a train has a car of livestock which, under these conditions unloading is necessary, it will delay the entire movement while that car is being pulled out. Thus, in considering the quantity of stock which would have to be unloaded we must take into account the added delay to cars of livestock, because of added stops for rest and feed, which otherwise would reach the stockyards with time to spare. At these feeding points, the added cost

is borne by the shipper providing the tariff covers the stop. If the extra feeding is occasioned because of the inability of the carrier to maintain its schedule, then the responsibility for the extra feeding falls upon the railroad.

The delay involved in setting out cars would result from bringing the train into a yard and having a switch engine remove from the train the stock to be set out for feed, water and rest. After a minimum of five hours rest, some later train will pick up this stock and bring it through.

Q. Would the setting out of all of these additional cars at these points that might be selected for unloading, feed and rest of these animals that would otherwise be held in the cars in violation of the law have any effect on your train schedules generally that are now maintained on the Northwestern?

A. They could have a very serious effect depending on how much stock was to be unloaded in a train and at what [fol. 603] point that stock would be unloaded to comply with the Federal regulations.

Q. How could that affect other train schedules?

A. Well, that could very readily affect other train schedules and I think the only way I can explain that is to give you an example.

We have a through time freight train and those are the trains on which stock is usually carried. We will say that train is operating from Omaha to Chicago. The schedule is set up with certain terminal points for switching, for any setouts or additions, inspection and servicing of the trains and based upon years of experience and operation, that train is fitted in between other trains, freight and passenger alike, the streamliners, and we have many of them on our lines. We have a train to Calumet which carries quite a bit of Swift & Company stock quite regularly. That train is now set up so that if we had to make a stop say at West Chicago to set out one car of stock, that train would make no eastern connections. That schedule of that train would be entirely disrupted.

Q. Do you have a number of trains that are on tight schedules of that sort that would be interfered with by these additional settings out?

A. Yes. Mr. Kinsella and Mr. Sorensen of the Junction have emphasized the delay and inconvenience which will

[fol. 604] result to other non-packer shippers on the Chicago Junction. Similarly with the Northwestern, the Swift demand will not merely add cost and confusion to our handling of stock, but will inevitably delay our deliveries for other industries.

We can not be expected to undertake the added burden inherent in the Swift demand, and in consequence thereof sacrifice our operating responsibilities to other shippers on the line.

Mr. Smith: That concludes the direct examination.

Exam. Diamondson: Would you mind looking at Exhibit No. 34? I know that Proviso is not shown on there, the Proviso Yard? Could you give me some idea where it is and what the distance is from that yard to your connection with the Chicago Junction?

The Witness: Yes, I think I can do that. If you will take Western Avenue and go to Roosevelt Road and then continue about a mile and a third straight north——

Exam. Diamondson: On Roosevelt Road?

The Witness: No.

Exam. Diamondson: On Western Avenue?

The Witness: Yes. By looking at Exhibit No. 9 in the middle left hand section we find Proviso Yard. To the east, approximately 11 miles to Western Avenue, is a junction with a Chicago & North Western track and extending southward to 14th Street, a distance of approximately two miles. At this point the Chicago & Northwestern joins the Chi- [fol. 605] cago Junction and upon its tracks the Chicago & Northwestern livestock relief crews handling stock for U. S. Yards proceed in a southerly direction on the C. J. to approximately 39th Street, a distance of three miles, and then turns east into the Ashland Avenue Yard of the Chicago Junction.

Exam. Diamondson: You may cross examine.

Cross-examination.

By Mr. Rynder:

Q. Mr. Stein, you deliver a good many trains to the Ashland Avenue Yard which are composed of livestock and other freight, do you not?

A. Livestock and perishables, yes.

Q. And other freight, too?

A. Well, our setup is a little different, Mr. Rynder. Our crews which handle stock to the U. S. Yards are permitted to handle perishables, time freight or setouts at Ashland Avenue. The work of handling dead freight does not belong to that particular class of employees. That is handled by another group of employees.

Q. If the number of cars of dead freight offered to you were increased for delivery in the Chicago area, I take it that that would increase your delays at Ashland Avenue?

A. If the number of cars of dead freight were delivered?

Q. Yes, if the number of cars of dead freight to be delivered in that area were increased, I suppose that would increase your delays in Ashland Avenue?

[fol. 606] A. Yes.

Q. I am assuming you probably would not for that reason make a delivery there?

A. No, we would not refuse to make a delivery of them there.

Q. You don't refuse to make deliveries of livestock at the various packinghouse points on your line because the trains have to set out the livestock at those towns, do you?

A. No, sir.

Q. Whatever happens there you take care of it someway?

A. If it is on trains that are scheduled to stop at those towns, yes.

Q. And if it is on a train not scheduled to stop at the town, what do you do, haul it out to Chicago and send it back, or what?

A. We set it off at a terminal where a scheduled train is scheduled to stop there and that train would pick it up and handle it.

Q. I assumed you might do something like that.

A. Yes.

Q. Have you consulted packers other than Swift & Company to find out whether they desire a direct delivery here in Chicago?

A. No, sir.

Q. I think I have your statement in quotes here that you said they will insist on the same thing. Have you asked anyone?

[fol. 607] A. No, I have not asked Swift either.

Q. You can not concede that for some reason of their own, they might prefer to continue their present delivery, is that right?

A. Why no. I think the Swift people are pretty clever operators and I think they are smart and if they have something that is good I think the rest of them would go along with it.

Q. I agree with you and I believe we are the smartest in fact. However, I would like to call your attention to this fact that Swift has been operating that facility at the Omaha point for, I think, to my knowledge, 40 years and no other packer around here has set up a similar facility.

A. Well, I would not question that and I think they have similar facilities at other points too.

Q. You know they have none in Chicago, don't you?

A. Yes.

Q. Would it be fair to summarize your testimony this way: You say your position is that Swift should be penalized in the receipt of its livestock at Chicago by the extra expense occasioned through the present method of delivery because you are unable to operate your road or your connections are not able to operate efficiently or economically or promptly?

Mr. Smith: That is objected to as pure argument and not calling for any statement of fact by the witness.

Exam. Diamondson: The objection will be sustained.

[fol. 608] By Mr. Rynder:

Q. Well, it comes to this: that you say that you can not deliver this additional amount of livestock at a point on the Chicago Junction promptly, is that right?

A. Yes, that is correct.

Q. And if I used the word "economically" I mean to say that your testimony has been that it will cost you a great deal more than the present delivery, is that right?

A. It will cost more, yes.

Q. Is it a fair deduction that you can not either do it efficiently?

A. Well, Mr. Rynder, I don't know. We are here somewhat on a clairvoyant adventure.

Q. I thought so as I listened to your testimony, sir.

A. I don't know what is going to be the requirements upon us by our labor organizations when and if our present method of handling this traffic comes about. We have no way of knowing. We have our experience and we have docket and docket and docket to back up our position that whenever you change, and when I say you, I mean a railroad changes its method of operation, they are going to change the method of handling and in most cases the method of compensation.

We don't know, Mr. Rynder, but what the present crews who handle this stock may not even be permitted to touch it if we change the designation of the stock now.

Q. And if they did not want to work for your railroad, [fol. 609] they could seek another job?

A. No, sir, that is not the way it works at all.

Q. And if you had no employees you would have trouble operating your engines, wouldn't you?

A. We would not operate them.

Q. Can you give me the name and address of the crystal gazer that you consulted in Chicago?

A. I have not consulted any.

[fol. 610] Exam. Diamondson: The witness is excused.

(Witness excused.)

Exam. Diamondson: We will have a short recess.

(A short recess was here had.)

Exam. Diamondson: The hearing will come to order.

WALTER HEIDE was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. What is your name?
A. Walter Heide.
Q. Where do you reside, Mr. Heide?
A. Blue Island, Illinois.

Q. What is your occupation?

A. Superintendent of the Rock Island Chicago division.

Q. How long have you been with the Rock Island?

A. 46 years this coming May.

Q. Has a substantial part of that been in the operating department?

A. Ever since 1905.

Q. You are presently superintendent of what division?

A. The Chicago division.

Q. As superintendent of that division, do you have jurisdiction of the handling of freight in the area that has been discussed here in this case?

A. Yes.

[fol. 611] Q. Proceed with your statement, please.

A. I shall first describe the manner in which livestock for the U. S. Yards is handled today by the Rock Island Railroad. Our method of handling this stock is one which has taken many years to develop. Conditions are such that even after years of experience we are unable to avoid many difficulties and delays in handling this traffic.

Livestock coming in from the west on the Rock Island, enters Chicago on numerous trains carrying both stock and dead freight and is collected at our Chicago Yards, known as the Burr Oak Yards, located at Blue Island, Illinois. By the time the stock reaches Burr Oak it is generally at the head of the train. It has been placed there by switch engines at the Rock Island's Yard at Silvis over on the Mississippi. Silvis, Illinois, is about 169 miles west of Blue Island, and at Silvis stock is received from three different directions. Any stock which is picked up by the engine between Silvis and Blue Island is placed up in front, so that on arrival at Burr Oak all of the stock is next to the engine.

Q. Now, Mr. Heide, the two previous witnesses were connected with railroads whose trains approached Ashland Avenue from the west. Do your trains approach Ashland Avenue from the opposite direction?

A. We approach Ashland Avenue from the east.

Q. What other trains approach from that direction?

[fol. 612] A. The New York Central.

Q. Yes?

A. The Nickel Plate, the C. & E. I., Wabash, Monon, Erie, Pennsylvania, and the Illinois Central.

Q. The Illinois Central south line?

A. That is right.

Q. Now, when you make deliveries at Ashland Avenue, do you first pull through on Ashland Avenue on the running tracks from east to west before you make your setouts?

A. That is right, we enter Ashland Avenue from the east.

Q. Do you pull through Ashland Avenue before you make your setouts in the yard?

A. Yes, we make our setouts on the west end of Ashland Avenue.

Q. So the trains that come from the east make their setouts on the west side and the trains that approach from the west make their setouts on the east side?

A. That is correct.

Q. Why do you go through Ashland Avenue and make your setouts on the west side?

A. Because we are on the running track and we would have to set out so we would have our cars in the right position from the engine to make the setout. If we set out at the east end it would be a case of us either having to pull through a clear track or drop our cars.

When these trains arrive at Burr Oak the stock is taken [fol. 613] off of the train and the dead freight is switched for delivery to connections and industries. Where time permits, stock coming into Burr Oak on one train will be held up and consolidated for the run to the U. S. Yards, with stock coming in on another train. The line haul crew is replaced by a switch engine and crew at Burr Oak.

The Rock Island situation as far as delivery of livestock to the U. S. Yards is a different operating problem from that of the Northwestern and the Milwaukee, for example.

Those roads approach the congested Ashland Avenue area from the west and in going to the U. S. Yards their trains pass through Ashland Avenue before they reach the Yards. The Rock Island approaches the U. S. Yards and Ashland Avenue from the east, and we reach the Yards before we hit the Ashland Avenue interchange. Between Burr Oak and the Ashland Avenue Yards it is about 14 miles. The normal running time between Burr Oak and the Stockyards or Ashland Avenue is about one hour if we do not have any delays. Unfortunately such delays are frequent.

Because we come into Ashland Avenue from the east, I

want to explain the method of operation involved in our making deliveries to the Swift Omaha Packing Company plant. This stock comes into Burr Oak the same as stock consigned for the U. S. Yards. Of course it is a very small percentage of the total stock handled by us in a year. For [fol. 614] example, in 1946, while the Rock Island carried 5896 cars of livestock for delivery to the Union Stock Yards we interchanged only 213 cars of stock with the Burlington for delivery to Omaha Packing Company. Stock which is consigned to the Omaha Packing Company is placed on the same train with dead freight and perishables which are to be set out at the Ashland Avenue Yard and for the Chicago Produce Terminal Yard, and for the Wood Street Terminal of the Chicago & Northwestern at Western Avenue. This stock moves through Ashland Avenue on the running tracks. On a switching or belt line, such as the Chicago Junction, the main tracks are called running tracks.

Right today the Rock Island is having all it can do to meet its schedules on delivery of livestock to the Stockyards, because of the delays and congestion in that area under present conditions.

It might seem that because the Rock Island reaches the Stockyards before it hits Asland Avenue interchange, the Rock Island would not encounter the same delay as those roads which have to pass through Ashland Avenue in order to get to the Stockyards. But that isn't the way it works. The congestion arises because of this bottleneck at the Ashland Avenue interchange, and it spreads out and backs up for quite a distance on both sides of that interchange. For example, the Rock Island in carrying stock to the Yards from the east enters Chicago Junction tracks at Root Street, [fol. 615] which is about two miles due east of the Ashland Avenue Yards, and we frequently have to stop our trains and hold up stock at Root Street, even though we are two miles from the Ashland Avenue interchange, because of delays at Ashland Avenue. In other words, even though we do not have to pass through Ashland Avenue in order to reach the Yards, we are many times forced to hold up our stock trains because of delays in the Ashland Avenue area. We are not the only carrier using the Junction tracks from the east. The Illinois Central, the Wabash, the C. I. & L., Erie, Pennsylvania, N. Y. C. and Nickel Plate, and some

other roads coming in from the east may be delayed and back us up. It isn't an uncommon experience for a Rock Island engine to take seven hours from the time it enters the Junction tracks at Root Street until it reaches the C. & N. W. Potato Terminal via Ashland Avenue. The potato terminal is four miles west and north of the Ashland Avenue Yards. Seven hours to run approximately six miles—that gives an idea of the operating problem we are facing in this Ashland Avenue area where Swift wants to create an additional burden.

I want to give an illustration of what I mean when I say we are delayed even today. Exhibit A——

Q. Just a moment, Mr. Heide. I would like to have that document marked Exhibit No. 38.

(The document referred to was marked as Defendant's Exhibit No. 38, Witness Heide, for identification.)

[fol. 616] By Mr. Smith:

Q. Mr. Heide, what you have marked as Exhibit A in your statement has been identified now as Exhibit No. 38.

A. Yes, sir.

Q. Now I wish you would take that exhibit and explain it and comment on it briefly. Let me ask you this first: Does that statement cover all of the trains that were involved in the operations depicted here over the Rock Island between January 18th and 24th?

A. Inclusive, yes.

Q. And——

A. Taken from the foreman's trip report.

Q. Now state if you will with reference to a few of these first trains that are recorded here just what this means and what it shows?

A. Well, I would like to call attention to several of them to back up what I have already said. You can take on sheet No. 2. I marked them for my convenience.

Q. If you do not mind, let us start out with No. 1 now and go right straight through for a few of them.

A. Those delays I would not consider serious.

Q. All right.

A. No. 1, the first train shown was by a man who shows two engine numbers because he changed engines at 47th

Street and the two engines are shown on the foreman's strip report and that is why they both show on this report. He [fol. 617] was only delayed 25 minues before he reached the C. J. tracks which does not enter into this. He went to the stockyards and made a reasonable trip. He got out at Burr Oak at 6:45 a. m. and got to the stockyards at 8 a. m., being delayed 25 minutes of that hour and 15 minutes to make the run with two cars of stock on our rails. He returned with his empties out of the stockyards at 8:10 and got back to our 44th Street Yard where he made further pickups in 15 minutes; very reasonable running time.

Now the next one shown, engine 2100 on sheet No. 1, he was held at Root Street to enter the C. J. tracks as I mentioned here by reason of the backup of other trains in there and we cannot even get onto their tracks from 2:35 a. m. to 5:20 a. m. on January 18, 1948, waiting for permission to enter C. J. tracks on account of congestion.

Q. Let us skip over.

Mr. Rynder: Mr. Heide, if I may interrupt a moment.

Mr. Smith: Surely.

By Mr. Rynder:

Q. Just how do you deduce that? Is there something on here that shows that delay?

Mr. Smith: It shows the two times, Mr. Rynder, and the delay is the difference between them. However, you may ask him about any one that is not clear to you.

By Mr. Rynder:

Q. To follow through on that, is the delay from 1:15 a. m. to 9:15 a. m.?

[fol. 618] A. 1:15 is the time he left Burr Oak and over here is the C. B. & Q. time, and that is the time he arrived at Western Avenue at the C. B. & Q.

Q. That is at 1:15 to 9:05 a. m.?

A. Yes, that is right. To travel from Root Street around to Western Avenue Yard.

Q. Does that mean that that much was delayed there?

Mr. Smith: Yes, he went through Ashland Avenue and encountered that much delay.

The Witness: He stood from 2:35 to 5:20 a. m.

Q. Those last figures are not on the exhibit, are they?
A. Sir?

Mr. Smith: That is shown in great detail down below.
The Witness: That is shown down below here, Mr. Rynder.
Mr. Rynder: OK.

By Mr. Smith:

Q. Let us take the next one at the top of page 2.
A. That is engine 2539 on January 18th. He left Burr Oak at 6:25 p. m. with 24 loads and 16 empties. He arrived at Ashland Avenue Yard at 4:10 a. m. the following day, the 19th. He was delayed from 7:30 p. m. to 10:15 p. m. at Packers Avenue for switching. Packers Avenue is east of Ashland Avenue.
Q. What was the occasion for that delay?
A. Congestion at Ashland Avenue. He could not move. [fol. 619] Somebody else was ahead of him.
Q. Now it shows here——
A. And he was delayed from 10:25 p. m. to 4:05 *p.* m. He only moved for ten minutes and he got up to the west end of Ashland Avenue Yard and he stood there from 10:25 p. m. to 4:05 a. m. waiting for a track to get into the yard.
Q. In other words, he waited almost six hours for an opportunity for that traffic to clear in Ashland Avenue sufficiently so that he could get in on a track, is that right?
A. Yes, but really the entire delay from 7:30 p. m. to 4:05 a. m. should be charged at the delay of not being able to get into the yard by reason of the other crews ahead of him that could not get into the yard.
Q. Does that sufficiently explain the setup of this exhibit so that the reader can understand it, Mr. Heide?
A. I think it would be. The delays are all shown. In fact I have shown all of the delays wherever they occurred just exactly as the foreman made his report.
Q. Now this period that you have shown is a period in January while we were working on the preparation of this case?
A. Yes.
Q. Would that be an average period or a somewhat worse

than average or a somewhat better than average? What have you to say about that?

A. It is about an average check of what is going on. I [fol. 620] took the previous week when you told me what you wanted and it made no difference to me what week, but I took this week out from the 18th to the 24th. I have some of them worse than that. Some of our crews are tied up 16 hours over there.

Q. Well, we will come to that.

Exam. Diamondson: You said this included all of the cars during this particular period?

The Witness: Yes, going to the stockyard territory.

Exam. Diamondson: All of the trains?

The Witness: That is right.

By Mr. Smith:

Q. You omitted no trains during that period from this showing?

A. No, sir. Exhibit 38 is a record of all our trains running down to the U. S. Y. T. and Ashland Avenue for the week from January 18th to 25th, 1948. This exhibit shows the running time on each of these trains. It also shows the delay and the cause of the delay. This exhibit shows that 60.6 per cent of our trains during that week were delayed for one reason or another.

Now, I want to explain just what is going to happen if Swift and every other packer in the Ashland Avenue area is going to receive their direct shipments at their respective plants. In my opinion, if the Rock Island and all these other carriers were required to throw all this livestock on the hands of Junction at Ashland Avenue, it is going to [fol. 621] create a terrible congestion there. I would like to further say that this congestion and delay is not going to be just on stock consigned to these packers, but is going to definitely delay stock which we still have to deliver to the Stockyards and the delivery of dead freight as well.

There are at least two major places where we will face additional delay due to this Swift demand. One is at our Burr Oak Yards where we will have to switch out the stock consigned directly to the packers from the stock going to the yards, and the other more difficult spot is in the Ash-

land Avenue area where the limited facilities will cause blocking of the tracks by roads attempting to make deliveries, and by the Chicago Junction crews, as I will explain later.

We are going to have some additional delay in our switching at Burr Oak. Today, out of all the cars of livestock coming into Burr Oak we have to switch only a very few out for Omaha Packing Company. Practically all our stock goes to the Stockyards. However, when the packers ask for deliveries to their plants, we are going to separate out from the stock still moving to the Yards approximately one-half of the total number of stock cars carried by the Rock Island for delivery to the Junction at Ashland Avenue. That is going to impose a heavier burden on us than we now face at Burr Oak, because of the additional number of cars which are going to have to be classified. We may have 10 [fol. 622] cars of stock coming into Burr Oak, 4 cars may be for packers and 6 for Stockyards. Those four cars which are going to be set out at Ashland Avenue for the packers may be scattered among the cars of stock going to the Yards. We have got to classify those 10 cars into their respective groups.

It is difficult to attempt to forecast just how long the new operation is going to take. We know that we are faced with delays today, and even at our Burr Oak Yards, before we get to Ashland Avenue, we would lose some time in the additional switching. It isn't easy, however, to put a time tag on this new operation. One thing, for example, that undoubtedly is going to add to our troubles is the inadequate supply of switch engines and crews on the Rock Island and other line haul carriers today. Any operating man will tell you that there just aren't enough engines and crews to go around. Now, if we have this greatly increased number of cars to be classified it is going to make matters much worse.

Another factor is the problem that would arise under the proposed new arrangement by shipments which come into Burr Oak on short schedule and would have to be unloaded, fed, watered and rested so as not to violate the 36 hour Federal law. At Burr Oak we only have facilities for handling two cars at a time for feeding, and if a car of stock is unloaded for feeding and rest, that stock must

remain outside the car for at least five hours. Now, if we [fol. 623] have more delay in Ashland Avenue and at Burr Oak, we will face a very serious situation as far as handling and unloading of any cars at Burr Oak is concerned. Here again is a case of a problem which can arise at our Burr Oak Yards which may add to the time which we will consume over and above that taken today. Every time a car has to be cut out and unloaded, it not only holds that car up but the whole cut.

Q. If you only have facilities for unloading and feeding and resting two cars at Burr Oak, where would the additional cars which would have to be unloaded because of this two or three hour delay on your road and the eight hours on the C. J.,—where would they have to be unloaded and tested?

A. We would have to take the violation of the Federal law on them because there is no way of unloading them. We have no stock chutes anywhere near Burr Oak on any other line. It is a matter of us having to assume the violation of the Federal law.

Q. Where is your first feeding lot west of Chicago?

A. At Carbon Cliff.

Q. Silvis?

A. Just east of Silvis Yard.

Q. That is on the Mississippi?

A. Yes.

Q. Wouldn't an alternative to the violation of the feed law be a rescheduling of the livestock trains?

[fol. 624] A. Oh, you would have to take up for the additional time it would take.

Q. It would be that or it would be a violation of the law, would it?

A. That is right.

The best estimate I can make, and I think it is a conservative one, is that a minimum of one hour would be required by the Rock Island at Burr Oak to handle the additional switching required which would be brought about if Swift and the other packers were to take direct deliveries at their plants. Now, of course, in some cases the delay may not run to an additional hour; in other cases it may well involve two hours.

The greatest delay and confusion and congestion, how-

ever, is going to arise in and around the Ashland Avenue area and is going to be even more serious than anything we may face in our Burr Oak Yards. I am not talking about any delays that the Junction may face in making its deliveries. I am talking about the problem the Rock Island crew will have in trying to set off live stock at Ashland Avenue for some packer at its plant and in making deliveries at the Stock Yards.

In my opinion, it is going to be a hopeless situation from an operating standpoint when all these line haul carriers begin converging on Ashland Avenue and attempt to shove the stock consigned to these various packers into the Ashland Avenue Yard. The Northwestern and the Milwaukee, [fol. 625] the Burlington, and a dozen more roads are going to be coming into Ashland Avenue from the west, while the Rock Island, the Wabash, C. I. & L., P. R. R., I. C., N. Y. C., Nickel Plate and other roads will be converging from the east. We will all be attempting to set out live stock and dead freight in the same small area in an attempt to avoid violation of the Federal law. Our difficulties at Ashland Avenue would arise from a number of different causes. The first thing is that we are going to be held up time and time again by other line haul carriers who are blocking the running track because they have been blocked by some other carrier.

I would like the Examiner to bear in mind that while we enter the Ashland Avenue Yards from the east, one of the principal causes of delay that we are going to face is due to the fact that those roads which enter Ashland Avenue from the west proceed all the way over to the eastern end of Ashland Avenue in order to make their setouts.

This is what is happening today, and is going to be multiplied many times if the request here were granted: The Rock Island train comes on to the Junction tracks at Root Street, and is held up before it reaches the Ashland Avenue Yards while any train from the west is setting out cars at Ashland Avenue. The Rock Island crew is going to have to wait for any such train to complete its set out and get out of our way before we can move in to the western end [fol. 626] of the Yards, set out, leaving the rest of our train on the running track, push the set outs onto the interchange and return and pick up the balance of the cars. In

the meantime, we will be holding up any train coming in behind us from the east.

This isn't the only reason why we would be held up at Ashland Avenue.

Q. Just before you get to that, Mr. Heide, your Exhibit No. 38 shows instances where you are delayed in attempting to get into the Ashland Avenue Yard after a train has left Burr Oak as many as six, eight and ten hours. Now is that situation a fact of which you have knowledge, a substantial length of time before the train leaves Burr Oak or do you leave Burr Oak hoping for the best and run into that delay?

A. We have no system whereby we would know what conditions we are going to meet over on the C. J. track when we get out of the Burr Oak Yard.

Q. So would it happen if that delay were increased you would more and more be going in there hoping that you can comply with the Federal law and not unload the cars in this small facility that you have in Burr Oak and then find that you have no alternative except to violate the Federal law?

A. That is right, that is correct.

Q. You were about to state some other reasons why you would be held up at the Ashland Avenue Yard?

A. Yes. The Junction would be getting livestock and [fol. 627] dead freight set out all over its yards, mixed right in together. It would have to switch out the livestock from the dead freight, and then block the livestock at Ashland Avenue according to the consignee. All this activity,—if the job can be done at all—would mean more delay to the Rock Island when it attempts to place its cars on the Ashland Avenue interchange. If the Junction is blocking the receiving yard lead because of an attempt to separate and then collect stock, dead freight or perishables, we just aren't going to be able to set off our cars of stock at that point. Neither is the fellow ahead of us or behind us. And furthermore, if the Junction hasn't been able to clear out stock which had arrived previously because of these difficulties, there isn't going to be any room for us to put our stock on the interchange tracks. How the Junction people could do it I don't know. I do know, after many years experience in this area, that the Junction's handling, however it does it, is going to have very bad effect upon our operations.

Today, when we make deliveries to the Stockyards, there is no problem at all as far as the empties are concerned. Our engine remains with the cars at the chutes while they are being unloaded, and then returns with them. None of the empties—or for that matter, of course, none of the loaded cars of stock— now pass through the Ashland Avenue Yards. A lot of the cars now going to the chutes would [fol. 628] go down into Ashland Avenue if Swift gets its way. That means that so many more empty cars will have to be turned back to us by the Junction through their Ashland Avenue departure yard. The problem of these empties is again going to add delay as far as we are concerned, because it means additional movements and additional cars in the Ashland Avenue area. These empties to be returned will have to cross the inbound and outbound running tracks to get to the departure yard at Ashland Avenue.

I know that we would have to send down additional engines to collect these empties under the proposed arrangement. Today we have two runs every 24 hours to pick up cars from the Junction. Now, those trains can handle just so many cars. Furthermore, the Junction would probably have to ask us to act more quickly in getting the empties out of the Ashland Avenue Yards than twice in every 24 hours.

There is one additional fact about this setting out at Ashland Avenue, which I would like to make clear; that is, when the Rock Island wants to set out four cars on an interchange track at Ashland Avenue, under the present agreements with the different labor organizations, the Rock Island crew can do no more than place those four cars at the clearance point. It is the job of the employees of the Junction to shove those cars down the track to make room for following deliveries. This means that another line haul train isn't going to be able to put its cars on that same track, even if [fol. 629] there were room on this track unless in the meantime the Junction has shoved the Rock Island cars on down the track. Of course, as long as that other train is waiting on the running track it is going to delay trains which are following it.

Speaking of problems of the labor organizations, there is another factor which is going to become very serious if we are faced with these additional delays in making deliveries,

and that is this problem of the maximum amount of time that any crew may work without relief. We have got to relieve a crew after 16 hours, that's all there is to it; they cannot continue to operate that train beyond that time. Now, I have taken as an illustration the problem we face even today, some time records on crews during October, November, December, 1947, and January, 1948, and these records are collected on Exhibit B.

Mr. Smith: Mr. Reporter, will you mark that document Defendant's Exhibit No. 39 for identification.

(The document referred to was marked as Defendant's Exhibit No. 39, Witness Heide, for identification.)

By Mr. Smith:

Q. Mr. Heide, you do not mean to offer Exhibit 39 as showing the records of all crews operating during that period, of course?

A. No, sir.

Q. Or not all crews operating, for example, on October 16th?

A. No, sir.

Q. Or on any other day?

[fol. 630] A. No, sir.

Q. You have selected examples of crews which worked up to or approximately up to the 16 hour time limit?

A. That is right.

Q. Under present conditions?

A. That is correct.

Q. And you are referring in this connection to a Federal law which mandatorily forbids any crew to operate over 16 hours?

A. That is correct. This exhibit will show two crews that I had to send crews over to the stockyards to relieve on the C. J. rails by reason of the delays they were getting.

Q. You might elaborate on that just a little bit, if you can.

A. There is no way I can get a crew to relieve these men on the stock yards tracks except by street car or automobile. We don't have suburban trains running over there to relieve them.

The answer is that this crew, we try to relieve them before

the 15 hours and 55 minutes is up and that is why a lot of them are 15 hours and 55 minutes and some of them 15 hours. When a man gets close to 15 hours and he is over on the C. J. tracks, we know without going any farther that he has to be relieved because he is not going to get home.

Therefore, all I took out of this record was the crews that worked there full 16 hours or were relieved by reason of the delays that they received on the Chicago Junction [fol. 631] tracks.

Q. Now, when you relieve these men you send down a new crew to take their place?

A. An engineer, fireman and three switchmen.

Q. Proceed.

A. That is Exhibit 39. I have shown the date, the engine number, the name of the crew foreman, the amount of time that that crew was working from the time it left Burr Oak until it returned to Burr Oak after going to C. & N. W. Potato terminal via Ashland Avenue. This round trip is about 36 miles.

Q. Now, Mr. Heide, are we to understand that these crews which consumed the time shown on Exhibit No. 39 started out fresh from Burr Oak without any accumulation of time except that incident to the particular train that they were handling?

A. The incidents to getting their train ready to leave and getting out of town, that is correct.

Q. In other words, in a manner of speaking these are one crew trains? They exhausted their full time in handling the train from Burr Oak down to Ashland Avenue, is that correct?

A. That is correct.

Q. Is that right?

A. Yes.

Q. And they did not accomplish their mission and they had to be relieved in the middle of the stream, so to speak, is that it?

[fol. 632] A. That is right. They can not finish their trip. It takes two crews to do the job of one and you pay one of them eight hours time and a half. The first crew gets eight hours time and a half when he works them seven hours and 55 minutes and you have practically two and a half crews to make the round trip. That is what you are paying for.

One further point. These additional delays which we would have down at Ashland Avenue, of course, will affect not only the stock that comes into Ashland Avenue, but also our deliveries to the Stockyards, the Chicago Produce Terminal, and the C. & N. W. Potato Terminal. As I pointed out earlier, even though on a run only to the Stockyards we do not have to enter Ashland Avenue, we are delayed because of congestion in and around the Ashland Avenue area. Now, if there were to be a greatly increased delay at Ashland Avenue—and I would estimate at least an hour and a half additional delay for the Rock Island's operations through this area—that is going to back up, delay and block the trains which still have to make the run to the Yards with stock for the shippers who would still take delivery there.

On stock for Omaha Packing Company, we are able in most instances to put these cars on a train carrying perishables and dead freight to Ashland Avenue and the Produce Terminal and the Wood Street Potato Terminal. We have relatively very few shipments of stock consigned to the Omaha Packing Company. We have two trains every day [fol. 633] which depart from Burr Oak to make this run via Ashland Avenue up to the Produce Terminal and the other points I have referred to. Now, when the packers ask delivery down in the Ashland Avenue area, and that stock is coming in on short time, and we know that we will be faced with delay at Ashland Avenue, we simply are not going to be able to depend on these two runs to handle that stock. This means, that it is very likely that we are going to have to put additional engines on at Burr Oak in order to handle this new movement.

In other words, today the great majority of our stock goes to the U. S. Y. & T. If this Swift demand is granted, a large portion of that stock is now going to go to Ashland Avenue and our present operations as far as the number of engines is concerned, and the crews, and the operating schedules, just aren't set to handle this new movement. The lack of any deliveries for the Omaha Packing Company would not mean that these runs made up for that interchange will cease. In other words, stock now going to the Omaha Packing Company is incidental to the movement

from our Burr Oak Yards to Produce Terminal which is adjacent to the Burlington interchange.

Finally, I want to say that if this request of Swift is granted, the Rock Island stands to lose all or most of their business to the Chicago Produce Terminal and the C. & N. W. Potato Terminal as we will not be able to make the [fol. 634] cutoff time of perishables coming into Chicago by reason of the congestion that will arise in the Ashland Avenue territory. Our competitors for this perishable traffic—the Santa Fe, C. B. & Q. and C. & N. W.—can reach those terminals without having to pass through congested Ashland Avenue and therefore can make much quicker deliveries.

Mr. Smith: That concludes the witness' direct testimony.

Mr. Day: I have a question or two.

Cross-examination.

By Mr. Day:

Q. Wherever your 44th Street Yard is referred to in your Exhibit No. 38, it refers to a point just about three blocks south of the interchange with the C. J.?

A. Yes, it is about three blocks south of where we enter the C. J. tracks.

Q. And 47th Street would be about—would be what?

A. About seven blocks.

By Mr. Gladson:

Q. Suppose you had a train that contained livestock for the yards and also for Ashland Avenue, how would you handle that stock? Would you set out the livestock to the yards and then go on to Asbland Avenue?

A. No, we are forbidden by rulings of the U. S. Y. & T. that we can not pull into the chutes with dead freight. Whenever we have stock for the U. S. Yards we have to make a separate run with that particular stock. They don't allow us to bring any other cars in with us.

[fol. 635] Q. The reason is that it blocks the unloading chutes, isn't it?

A. That is right.

Q. So you would have to make special runs from Burr Oak?

A. I would not call them special runs, but separate runs.

Q. Separate runs from Burr Oak with all stock going to the yards?

A. To the U. S. Y. & T., that is right.

Mr. Gladson: That is all.

Mr. Smith: I would like to offer into evidence Defendant's Exhibits Nos. 38 and 39.

Exam. Diamondson: Is there any objection?

Mr. Rynder: No.

Exam. Diamondson: Exhibits 38 and 39 will be received.

(Defendant's Exhibits No. 38 and 39, Witness Heide, were received in evidence.)

Mr. Kaylor: Exhibits 38 and 39 will be received by the Illinois Commerce Commission.

By Mr. Rynder:

Q. Mr. Heide, I am not sure that I understand Exhibit 39 correctly. The top of it reads: "Record of time consumed by crews on runs from C. R. I. & P. Burr Oak Yards to C. & N. W. Potato Terminal via Ashland Avenue and back to Burr Oak Yards." From that I thought it probably meant the first one consumed 15 hours and 55 minutes in going over there and back to your Burr Oak Yards, but [fol. 636] from your oral testimony that is not correct?

A. That is correct.

Q. I thought you were saying they were stuck somewhere out on Ashland Avenue.

A. That is what this crew worked, and possibly that heading is a little misleading because I did not show the crew that relieved them. However, that is what this particular crew that started out on this date made in hours and minutes.

By Mr. Smith:

Q. That was the objective that it failed to accomplish?

A. That is right.

Q. In every instance this crew started out to go to these points and back to Burr Oak and having failed, you had to

put on another crew which accomplished the mission, is that right?

A. Yes, they finished the day.

By Mr. Rynder:

Q. Well then I would think that that does not conform to what is stated at the top there as I read it.

Exam. Diamondson: The top is a little misleading. It indicates that this crew returned to Burr Oak.

The Witness: That is right, it does. I will admit that.

Exam. Diamondson: You did not intend it to mean that?

The Witness: No, sir.

By Mr. Rynder:

Q. Does it mean that in every instance the crew was taken off somewhere else before it got back to Burr Oak?

[fol. 637] A. That is right.

Q. Did you state somewhere in the early part of your testimony as to how many cars you delivered in the past year or how many cars you had for the Omaha Packing Plant delivered?

A. 213.

Q. 213?

A. Yes.

Q. Less than a car a day?

A. Yes.

Q. Have you consulted any packer at the Union Stockyards other than Swift & Company as to whether they presently or in the near future desire a delivery of their directs to any location there?

A. No, sir, I have not talked to any packers.

Q. Have you a record of the temperatures and other weather conditions during the period covered by your Exhibit No. 38?

A. No, sir.

Q. Do you know whether it was extraordinarily cold and severe weather?

A. Well, we did not have no severe weather in this territory until the 1st of January.

Q. This starts on January 18th.

A. This last one, yes. I thought you were talking about the other exhibit.

[fol. 638] Q. No, 38.

A. This one is in bad weather, that is right.

Q. Were there periods during that time when the C. J. itself was practically out of commission on account of the weather or other conditions and called you up and told you?

A. They never had me shut off.

Q. Never shut you off?

A. All I got in the month of January was one phone call from Mr. Joseph Sorensen to make a pull to give him relief, which I immediately did.

Q. Now on Exhibit 38 you have various numbers under the heading "loads". Does that mean in each instance that the entire number of loads were livestock only?

A. No, sir, that is all of the cars, dead freight and perishables that move into or through the stockyards area.

Q. You have not segregated them as between livestock and dead freight?

A. No, sir. They are all here together. It shows the individual runs made to U. S. Yards as well as the runs——

Q. Is it fair to assume that each one of those numbers is a train in which there was some livestock or might this train be wholly dead freight?

A. Well, that would show you this: Any train that is marked here arriving at the U. S. Yards was all stock. Any train that shows going to the C. B. & Q. or C. & N. W. [fol. 639] Potato Terminal or Ashland Avenue did not have any U. S. Yards stock on it.

Q. Well, for instance the top of page two, engine No. 2539. Would the information there indicate that that train had no livestock?

A. He had no livestock whatever. What I was trying to point out there was the fact that there is a typical example of it that we won't have any business left if there is any more congestion in the Ashland Avenue Yard.

Exam. Diamondson: Let me ask you this question, please: If one of these trains is shown as going to the U. S. Yards with a certain number of cars, for example, on page

2, you have 10 cars shown. It is fair to say that they were all livestock?

A. Yes, wherever it is shown as U. S. Yards, it is all livestock.

By Mr. Rynder:

Q. Why would that be? Don't you ever run mixed trains over there?

A. The only mixed trains we run over there would be Q stock, Omaha Packing Company.

Q. In deliveries of livestock to the Union Stockyards you make it either a straight train of livestock or a straight train of something else, is that correct?

A. That is correct. We have no authority to go into the stock chutes with anything else than U. S. Yards stock.

[fol. 640] Q. That is rather different from some of the other railroads?

A. That is correct, because we apparently enter from the east. I can give you an example of what it will take. This is for the U. S. Yard movement. If I had a man leaving Burr Oak of a 96 with one car of U. S. livestock and one car for C. P. T., I have got to set either one of those cars out at our 47th Street Yard before entering the C. J. tracks and then either let this engine go over and deliver the U. S. Yards stock, unload it and come back and pick up C. P. T. or have another engine there to take that one car of stock over to the yards and unload it and bring the empty back.

Q. Is that a requirement of the C. J. or is — your own operating practice?

A. No, sir, it is an operating requirement of the Stockyards people, U.S. Y. & T. I certainly would like to cancel it if I could. It would save me a lot of trouble.

Q. Is there any other road that you know that follows the same practice?

A. I can not say about that. I am just following my own.

Q. The reason I am asking you is because in some of these train consists there were many trains of mixed livestock and dead freight.

Mr. Smith: Mr. Rynder, for your benefit, those are trains that come in from the other direction. All of these witnesses have testified as has this witness, that the chutes

[fol. 641] and sidings of the Union Stock Yards are such that they can not take a lot of dead freight in there and hold it out while they are making deliveries of the livestock, and so those coming in from the direction of the east as Mr. Heide has to handle it as he handles it.

The Witness: The reason for that is that they arrive at the Ashland Avenue Yard and can set over their dead freight and go into the stockyard and chute the same as I do with nothing but stock.

By Mr. Rynder:

Q. Then why do you move to the west end of Ashland Avenue Yard?

A. I have to go to the west end because the cars are on the east end of my engine and the C. J. would have to furnish a clear track for me to pull in on and cut my cars off, or I would have to drop them in order to set them out at the east end. In other words, it is the natural end to go to to set your cars out without making a drop or having to pull in on a clear track.

Our setouts amount to two, three, and four and five cars. Certainly the C. J. would not let me pull in and block a clear track with a few cars of that kind for operating reasons.

Exam. Diamondson: You are talking about a mixed train now, are you, dead freight and livestock?

The Witness: That is right.

Exam. Diamondson: What happens in connection with a [fol. 642] straight train of livestock for the yards?

The Witness: A straight train?

Exam. Diamondson: Why do you go to the west end there?

The Witness: I don't go to the Ashland Avenue Yard at all. I hit the stock chutes at Halsted Street.

Exam. Diamondson: You don't enter the Ashland Avenue Yard with a straight train of livestock?

The Witness: No, sir.

Mr. Smith: May I ask a question or two there, Mr. Rynder, or will it interrupt you? Never mind, go ahead.

By Mr. Rynder:

Q. Mr. Heide, is it your idea that you operate with a fair degree of promptness and so forth until you reach the tracks of the C. J.?

A. That is correct, my records will show that.

Q. But I take it your records would indicate that at the present time the C. J. is not in position to handle that track efficiently even in its present volume and it being made up of what it is, is that correct?

A. Yes, I have been receiving delays there and it is getting worse there all the time. For the period back I would say for five years or six years, we could move through that area all right, but by reason of apparently more business going into the Ashland Avenue Yard we are getting more delays right along. It is becoming a heartache.

Mr. Rynder: That is all, thank you.

[fol. 643] Redirect examination.

By Mr. Smith:

Q. Mr. Heide, Mr. Rynder talked to you about the severity of some weather conditions encountered in the winter?

A. Yes, sir.

Q. You do have to handle livestock during the winter, do you?

A. That is right, no matter whether there is a blizzard or what, it keeps going.

Q. Will you look at your Exhibit No. 39?

A. Yes, sir.

Q. Did you show all of the crews tied up during the period from October 16th to 28th?

A. That is right.

Q. Would that be true for each of the subsequent periods?

A. That is right for all of the balance of the sheet.

Q. You had four crews tied up from the 16th to the 28th of October?

A. That is right.

Q. Let me ask you this: Are the same number of days covered in each of these periods? They are not, are they?

A. No, we had four crews tied up in October and five

crews in November, five crews in December, and then we hit the sleet storm and we had seven crews in January.

Q. Seven in January?

A. That is right.

[fol. 644] Q. But the crews as the exhibit shows increased from four to five and then to seven, but there is some increase in the days included in the period as shown by that exhibit too, isn't that correct?

A. That is right.

Q. For example, from the 16th to the 28th, that covers 12 days in October?

A. That is right.

Q. And then for November?

A. That is for the full month, whatever happened in that particular month.

Q. The full month?

A. That is right.

Q. Well then would you say that that increase from four to five and then to seven in January might depict some change in weather conditions?

A. No doubt about it.

Q. It might fairly represent the change in weather conditions?

A. There is no doubt about it. The month of January was terrible.

Q. And you might have encountered some trouble in February, I take it?

A. I have not checked February yet.

Q. But you do encounter more in the winter months?

A. That is right, always. We are waiting for the February blizzard now.

[fol. 645] Q. Now, Mr. Heide, I want to make it as clear as I possibly can. Every car of livestock that you now deliver to the yards comes into the Union Stock Yards on a train which consists only of livestock and which does not in any instance pass through the Ashland Avenue Yard?

A. That is correct.

Q. Now, if this new arrangement were adopted something like 45 per cent of those cars that move in on solid livestock trains for the yards would have to go up into Ashland Avenue, would they not, and you would have to sepa-

rate those out of these solid trains of livestock now moving to the yards?

A. That is correct. You would have to get the Ashland Avenue cars, the interchange cars out of them.

Q. They would have to go by the point where they now go off into the stockyards?

A. That is right.

Q. Is any road which approaches the yards from the east permitted to take dead freight into the chutes and sidings of the Union Stock Yards?

A. I can not answer; I don't know.

Q. You don't know about that?

A. I don't know.

Mr. Smith: That is all.

Recross-examination.

By Mr. Day:

Q. I have a question. Mr. Heide, Mr. Rynder asked you [fol. 646] on cross examination about delays while the trains were on the C. J. tracks and your answer indicated that the delays were caused by the C. J. Railway?

A. That is right.

Q. Do you mean the crews operating on the C. J.?

A. That is right, they are responsible for the operations. No matter if I am delayed by the C. & E. I. or the Wabash, or the C. J., the C. J. is operating that piece of track and it is their responsibility.

Q. That is what you meant by the C. J. delaying the operations?

A. Certainly, when I hit their track it is their responsibility to move me and anything that happens is chargeable to the C. J.

Q. In the statement of the particulars covering the operation of your various engines, you indicated that in many cases what particular engines of other roads delayed your engine, isn't that correct?

A. That is correct. Whenever our foreman can get that information or the engine number of caboose number, I require him to get it so if I want to check him to find out if he is doing any cheating on us, I can catch him at it. That is

why whenever it is possible to get the engine number of the caboose number, we get it.

Q. And your Exhibit No. 38 also indicates that your engine is held up on the C. J. at the tracks there by the Santa Fe target?

[fol. 647] A. Yes.

Q. Or a C. & A. target?

A. Yes, it shows whatever the delay is.

Q. By a B. & O. target? I think you have some of those in there?

A. That is right.

Q. But all of those you charge up to the C. J. because you happen to be on the C. J. rails, is that correct?

A. That is right.

Q. Even though the delay is caused by one of those other roads?

A. That is correct.

Q. Making the crossing?

A. That is correct.

Mr. Day: That is all.

Exam. Diamondson: Any further questions?

By Mr. Rynder:

Q. You just spoke of your solid trains of livestock. Have you made any count or investigation to determine approximately how many cars of livestock you moved to the stockyards per train?

A. No, I did not.

Q. I have seen some of these consists for other roads that perhaps show certain trains with as many as 20 or 25 cars, but show many other trains with just two, three, or four or five cars. Would your traffic be like that too?

[fol. 648] A. Yes, it would. It is very spotty. We might have a man with two cars of stock and we might have on Monday morning and Wednesday morning 20 or 30 cars of stock in one group or one lump as we call it.

Q. So the movement in there in train loads does not always mean that it is going in in what we might think of in full train loads or large train loads?

A. They are small train loads. They are not large trains like the freight trains.

By Mr. Smith:

Q. Where the stock is moving on short time under the Federal law, might you have as few as one or two cars in the train, of what we call a train to the yards?

A. That is right. An engine is considered a train, so far as that is concerned, under the rules, but if we had one car of stock on which the time was short, we would do everything we could so that we could show the Commission that we had done everything possible to get that stock over to avoid a violation even though it cost an engine.

Mr. Smith: That is all that I have.

Exam. Diamondson: Any further questions? (None) You are excused.

(Witness excused.)

Mr. Smith: Mr. Kiesele.

E. G. KIESELE was sworn and testified as follows:

[fol. 649] Direct examination.

By Mr. Smith:

Q. Will you state your name, please?

A. Edwin G. Kiesele.

Q. Where do you live?

A. Oak Park, Illinois.

Q. What is your occupation?

A. Superintendent of the Chicago Terminals of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

Q. In that capacity do you have the direction and responsibility for the supervision of the train operations that we have been discussing here in this case which are handled over the Milwaukee?

A. I do.

Q. How long have you been with the Milwaukee or engaged in railroad work?

A. 41 years.

Q. Has that been principally in the operating department?

A. Yes.

Q. Will you just indicate briefly what operating experience consisted of in recent years?

A. During the period December, 1937, to April, 1939, I was trainmaster at Bensenville, and from April, 1939, to May, 1942, I was assistant superintendent of the Chicago Terminals. As superintendent of the Chicago Terminals, I have charge of the operation of the railroad within the [fol. 650] Chicago switching district and that includes the operation of the large yards, the movement of freight within the terminal, the handling of all line-haul trains reaching the terminal as well as the making up of trains for movements beyond the terminal. I am thoroughly acquainted with all of our operations in and about Chicago, and with the movement and handling of livestock.

Q. You may proceed.

A. The Milwaukee Road has lines extending north and west into the farming areas and handles a large volume of livestock to middle west markets and packing house centers, including Chicago. During 1946, we handled 12,884 cars of livestock and in 1947, 9,425 cars for delivery to the Union Stock Yards & Transit Company in Chicago. This represented 19.78 per cent of the 65,139 cars of stock received at the yards from all lines in 1946 and 17.60 per cent of the 53,561 cars received during 1947.

The Milwaukee Road handled 415 cars of stock in 1946 and 326 cars of stock in 1927 for delivery to the Omaha Packing Company via the Chicago, Burlington & Quincy Railroad. These cars were interchanged direct to that line at their Western Avenue Yard.

Livestock arriving on the Milwaukee Road for deliveries in Chicago is received at our outer yards at Bensenville, in trains carrying both dead and perishable freight, as well as the livestock. The trains on arrival at the yard [fol. 651] consist of as many as 90 cars. Some of the trains may have only one car of livestock while others may have as many as 15 or 20. It is the practice of the Milwaukee Road to bunch the livestock as much as is possible when trains are classified at Savannah, Illinois, and Mil-

waukee, Wisconsin, the first terminals west and north of Chicago, but in all cases there is considerable switching involved to assemble the stock in one block for forwarding in the stock trains for delivery to the U. S. Yards after arrival at Bensenville. This switching is required because cars of livestock to be moved in one train from Bensenville, are taken from many of the long trains reaching Bensenville from the road divisions. This may mean anywhere from one to five trains.

The Milwaukee Road maintains livestock scheduled train service from various points in Iowa, South Dakota, Minnesota and Wisconsin, the territory that normally ships livestock to Chicago.

I have prepared from our records a tabulation, marked Exhibit 40.

Mr. Smith: Mr. Reporter, will you mark this document Defendant's Exhibit No. 40?

(The document referred to was marked as Defendant's Exhibit No. 40, Witness Kiesele, for identification.)

By Mr. Smith:

Q. Are the data shown on Exhibit 40 true and correct, Mr. Kiesele?

[fol. 652] A. Yes.

Q. That is an exhibit entitled "Tabulation showing effect of consolidation of trains at Bensenville Yard"?

A. Yes.

Q. Will you make any comments on that that is necessary?

A. Exhibit No. 40 shows a tabulation of the total number of trains arriving at Bensenville with Livestock during the months of August, 1947, and December, 1947.

It also shows the total number of cars of livestock in the trains during the same period with the average number of cars of livestock per train and the average number of livestock per day and the average number of trains per day. It also shows information relative to the movement of the same cars of livestock after arriving at Bensenville and between Bensenville and the U. S. Yards, Illinois, with additional information showing the total number of stock trains operating from Bensenville to the U. S. Yards

chutes and the average number of cars of livestock per train and the average number of trains per day for the same periods, August and December, 1947.

Q. Proceed.

A. These cars of stock, after arrival at Bensenville, from the various road trains, heretofore mentioned, are consolidated into trains at Bensenville, and operated from there to the U. S. Yards, a distance of 26.5 miles, using the tracks [fol. 653] of the I. H. B., C. R. & I. and C. J. railroads to reach the stockyards. The stock is handled from Bensenville, to the U. S. Yards by what is known as "stock relief crews". In making these consolidations to handle this stock from Bensenville, to the U. S. Yards, we are required to have in mind the availability of crews and engines, and also the avoidance of unnecessary delay in moving stock to the yards. Consolidations are made depending on how the stock reaches us at Bensenville, from the road divisions, how much time we have before the stock must have feed, water and rest, the number of cars involved and the availability of the crews and power.

Under our working arrangement with the railroad labor organizations, the crews used in stock relief service between Bensenville and the U. S. Yards are divided equally between the Chicago Terminal and the Dubuque and Illinois division yardmen and enginemen. In other words, your Honor, we have still another manner of handling our stock relief crews that is somewhat different from the other lines. We call these crews alternately.

These stock relief crews handle the stock to the U. S. Yards chutes and, after the stock is unloaded, the empty stock cars are returned to Bensenville, by the same crew and cars are placed in westbound trains for prompt dispatch to the stock loading stations for subsequent loading. This practice and custom of handling by stock relief crews [fol. 654] has been in effect on the Milwaukee Road for many years and was established through agreement with labor organizations and provides for a workable method of handling the livestock and empty cars under the present plan. Because of the large amount of business handled in the area and the congestion incident thereto, we now encounter certain unavoidable delays in making deliveries.

The Federal statute requires that stock must be unloaded and fed within 28 hours but the shipper has the privilege of granting the railroad an eight hour extension if the stock can not be delivered at destination within the prescribed rest and feeding time. If it is necessary to rest and feed the stock enroute, because of the carrier's inability to accomplish scheduled delivery, the stock is rested and fed at the carrier's expense. Of course, if it becomes necessary to lengthen the schedules because a change in operation is imposed on us which causes delay in handling, then some of the expense incident to such slower handling falls on the shipper. If Swift & Company's demands were granted, additional losses and expenses would be incurred due to market fluctuations and the setting out of cars for feed and rest to meet the requirements of the Federal statute. The C. J. Railroad has indicated that it would require from two to eight hours to make delivery of stock after the interchange is accomplished at their Ashland Avenue Yard. Since that railroad cannot advise, of course, which cars will take the longer period of time, our only [fol. 655] recourse, if we are to avoid violations, is to add an additional eight hours on the time required for the making delivery of direct shipments of livestock. This would add eight hours to our present stock schedules and would require complete change in our stock handling. The eight hours mentioned does not take into account the delay we will encounter in accomplishing the interchange after our arrival in the vicinity of the Ashland Avenue Yards.

There are now delays in the movement of livestock to the U. S. Yards on account of deliveries of dead and perishable freight from the stock trains of the line-haul carriers to the C. J. at its Ashland Avenue Yard. If, however, all of the line-haul carriers were required to deliver the direct shipments of livestock to the C. J. at its Ashland Avenue Yards, the delays would be greatly multiplied because of the congestion, the waiting for available tracks and the activity of the C. J. itself in attempting to pick up the livestock out of the dead freight in its yard. It must be remembered that many of the line-haul carriers in their effort to get their livestock to the U. S. Yards in time for the market would be attempting to deliver the direct ship-

ments to the C. J. at its yard about the same time and during the peak periods when most stock deliveries are made in the U. S. Yards area.

It is my opinion that at least one hour additional delay will be met at Ashland Avenue to each crew setting out live-
[fol. 656] stock and other freight at the Ashland Avenue Yard if we are required to deliver direct shipments of live-stock to the C.J. rather than to the U. S. Yards chutes, where such stock is presently delivered. This means not only delays to the direct shipments but also delays to practically all livestock moving to the U. S. Yards.

In the event we were required to make deliveries of the direct shipments to the C. J. at the Ashland Avenue Yard, we would not be in position to make separate classifications at Bensenville, of the stock consigned to the various packers due to the reduced time that would be available under the Federal statute to accomplish delivery of the direct shipments to the C. J. and the remaining livestock shipments to the U. S. Yards chutes.

In the fact of these serious delays, it would not be possible to hold stock at Bensenville, for consolidation as is done presently, and it would require running the stock immediately out of each train after arrival. This would result in the operation of additional stock relief crews. For example: During December, 1947, as shown on Exhibit 41——

Mr. Smith: Mr. Reporter, will you mark this document Defendant's Exhibit No. 41 for identification?

(The document referred to was marked as Defendant's Exhibit No. 41, Witness Kiesele, for identification.)

By Mr. Smith:

Q. You may proceed.

[fol. 657] A. During December, 1947, as shown on Exhibit 41, we would have been required to operate up to 168 trains under the plan proposed and certainly many in excess of the 67 trains actually operated through the numerous consolidations made under the present plan.

Q. Is the data shown on Exhibit 41 true and correct, Mr. Kiesele?

A. Yes.

Exam. Diamondson: What is the distance from Bensenville to Ashland Avenue Yard?

A. 26.5 miles.

The operation of the additional trains between Bensenville, and the U. S. Yards would greatly add to our expense of handling stock and would also materially increase the congestion at Ashland Avenue due to practically all trains stopping at that point to make setouts. The full accumulative effect of this is appreciated when it is realized that all the other lines which switch in the area would also find it necessary to run more trains.

We have an acute shortage of power and men and it is questionable if we would be able to provide enough of either to operate the additional trains necessary under the proposed plan. Any additional engines and men provided for the handling of stock would necessarily have to be at the expense of our other service and would materially retard [fol. 658] the handling of time and dead freight and perishable freight for other patrons.

We would be required to enter into new negotiations with the railroad labor organizations and attempt to secure their agreement for any change in our present method of handling U. S. Yards stock, especially if it were proposed to set out direct shipments of livestock at the Ashland Avenue Yard and pick up empty stock cars from that yard for return movement to Bensenville.

To meet the requirements of the 28 and 36 hour Federal Statute, a good many cars of stock, now going through direct to the U. S. Stock Yards, without setting out for feed and rest, would have to be set out enroute at established feeding points. Should the packers insist upon placement of livestock at their plants, instead of at the chutes, and should the C. J. require receipt of such stock at their Ashland Avenue Yard eight hours in advance of the regular expiration period, many more cars of stock would be stopped enroute for unloading, feed and rest. Taking into consideration the additional delay in assembling the stock at Bensenville, 191 cars of the livestock which we handled from points on our line during December, 1947, and shown on Exhibit 40, would have been set out for feed and rest, if the proposed plan had then been in effect. This would represent 20 per cent of the total number of cars of stock handled by us to

[fol. 659] Chicago during the month of December, 1947. The computation of 191 cars, which we would have been required to set out for rest and feed during the month of December, is based on the assumption that we would have had a 36 hour release on all these cars. Actually some of these cars were traveling under the 28 hour limitation which would have required us to set out additional cars. Of course, if we adopted the plan of eliminating consolidations and run the stock immediately on arrival at Bensenville, at added expense, the number of cars that we would have been required to set out enroute for feed and rest would have been reduced.

Under the proposed plan, a good many more of the cars would have to be set out at Bensenville, for feed and rest before forwarding either to the Ashland Avenue Yards or Union Stock Yards chutes. We have accommodations for feeding and resting six cars of stock at our Bensenville Yards, and it would be necessary for us to enlarge these facilities to accommodate the increased number of cars of stock that would have to be set out to be fed and rested. All this would add considerably to our expense, as Bensenville now is considered only an emergency feeding point.

During the period April 15, 1947, to May 15, 1947, the period within which Swift & Company asked concerning the movement of stock trains from Bensenville to the U. S. Yards, the Milwaukee operated 62 livestock trains and of [fol. 660] these 46 stopped to set out cars at Ashland Avenue and 16 moved through to the U. S. Yards without stopping at Ashland Avenue. During the month of December, 1947, the Milwaukee Road operated a total of 67 stock trains between Bensenville and the U. S. Yards. 50 of these trains were obliged to stop at Ashland Avenue to set out packing house products and perishable freight and the remaining 17 trains passed Ashland Avenue and moved direct to the U. S. Yards chutes.

Under the proposed plan, all of these trains, which moved directly from Bensenville to the U. S. Yards would necessarily have been required to stop at Ashland Avenue to set out direct shipments of livestock. The 50 trains, which we operated in December, 1947, and which set out cars at Ashland Avenue were delayed there an average of 55 minutes.

Through our experience and records, maintained in connection with the operation of our stock relief crews, I believe one hour is a conservative estimate of the additional delay over and above the present 55 minute delay that would occur to each train at Ashland Avenue through the added congestion that would be brought about by all trains of all carriers enroute to the stockyards stopping at Ashland Avenue to set out.

The movement from Bensenville to the U. S. Yards is through a congested area and over railroad tracks used by several railroads. We encounter many unavoidable delays [fol. 661] wholly unrelated to the stop at the Ashland Avenue Yard to set out cars for the C. J. I have stated that during December, 1947, we encountered an average delay of 55 minutes in the operation of our trains in setting out cars at the Ashland Avenue Yard. To further demonstrate how the setting out of cars at Ashland Avenue now delays the arrival of our stock trains at the U. S. Yard chutes, I have taken each of the days between December 1, and December 15, 1947, when our train movements from Bensenville to the U. S. Yards consisted of more than one train and instances where one of the trains moved through to the U. S. Yards without a stop at Ashland Avenue to set out cars for the C. J.

The result is shown on my Exhibit marked 41. This shows all of the stock trains on the days indicated, the consist of the train and the overall time from Bensenville Yard to the U. S. Yard chutes. This is not necessarily typical but it does show what happened on those particular days and I believe further illustrates that the movement of livestock to the U. S. Yards would be most seriously delayed if all lines were required to set out direct shipments of livestock at the Ashland Avenue Yard.

The stock schedules in effect on the Milwaukee Road from the territory that normally ships livestock to Chicago, precludes the possibility of making delivery of livestock to either Ashland Avenue Yard or the U. S. Yards chutes [fol. 662] within the time required by the Federal statute from stations such as Jackson, Minnesota, Council Bluffs, Iowa, Kansas City, Missouri, and Sioux Falls, South Dakota. The schedule from those points provides for movement only from point of loading to Bensenville, and does

not include the time required for switching and assembling cars after arrival at Bensenville, as well as the time consumed in the movement between Bensenville and the stock yards area. The proposed plan would result in the change in the handling of return empty stock cars after being unloaded at the packers' plants. Our present agreement with the labor organizations would not permit stock relief crews to pick up empty stock cars at either Ashland Avenue Yard or Seeley Avenue Yard upon return from the stock yards, and this would result in the operation of additional crews to handle the empty stock cars for return movement to Bensenville.

It is estimated that the required handling under the new plan would result in as much as two days' additional delay in returning the empty stock cars to the stock loading territory for subsequent loading.

During the month of January, 1948, the Milwaukee Road operates 55 stock relief crews between Bensenville and the U. S. Yards, and the time consumed for the round trip was anywhere from eight hours to 15 hours and 55 minutes. Had the new plan been in effect, with the additional delay that [fol. 663] would be encountered at Bensenville and at Ashland Avenue, 12 of the 55 crews would have tied up under the 16 hour Federal statute at some point between Bensenville and the stockyards. This would greatly increase the expense of handling this traffic, as we would be required to send complete relief crews to the tie-up point to complete the service.

I believe it is very evident, from the facts cited above, that, if the demands of Swift & Company are granted, it would create tremendous operating difficulties and would be burdensome and expensive, not only to the Milwaukee Road but to the shipper of dead freight and livestock handled in the area.

Mr. Smith: That concludes the direct statement.

Exam. Diamondson: What do you conside: a good average running time between Bensenville and the Ashland Avenue Yards?

The Witness: About two hours and 30 minutes.

Exam. Diamondson: You may cross examine.

Cross-examination,

By Mr. Rynder:

Q. Mr. Kiesele, did you state in your direct testimony how many carloads you handled for the Omaha location?

A. Yes.

Q. How many was that?

A. 415 cars in 1946 and 326 cars in 1947.

Q. That is a little more than one and not quite two a day on [fol. 664] the average?

A. Yes.

Q. I understand your testimony to be if that number were added to deliveries made to the Ashland Avenue Yard it would delay all trains one hour per day; it would cause you to enlarge your Bensenville feeding yards, and it would cause you to delay livestock schedules, etc.?

A. No, sir.

Q. No?

A. Not on the assumption that one car would create all of that difficulty, but on the assumption ——

Q. You have not had as many as two cars a day on the average, have you?

A. For the Omaha Packing Company, no.

Q. That is right then, isn't it?

A. No. It is based on the assumption that all of the directs would be involved in this delay.

Q. Have you consulted any other packers to know whether presently or in the near future they desire to change their locations?

A. No, sir.

Q. Would the length of your haul be any greater to the new location of Swift & Company than to your haul to your Ashland Avenue Yards or would it be exactly the same?

A. Exactly the same.

[fol. 665] Q. Exactly the same?

A. The length of the haul from Bensenville to the Ashland Avenue Yards as compared to the present delivery at the U. S. Yards?

Q. The delivery at the U. S. Yards as compared to the Swift location, if you know where that is?

A. Well, I have a general idea of what I saw on the map.

Q. Just east of Ashland Avenue?

A. It would be a very little as I understand it, a matter of a block or two.

Q. A negligible amount?

A. That is right.

Mr. Smith: I am not sure the record is quite clear. Of course the crews of this witness would not make any deliveries to the new Swift proposed facilities.

Mr. Rynder: No, but what I asked him first, before he added anything on, was whether the haul to the Ashland Avenue Yard would be exactly the same as to the new Swift location and he said he thought it would be.

Mr. Smith: What could increase the distance between his breakup at the Ashland Avenue Yard?

Exam. Diamondson: He asked him as to the comparative distances.

Mr. Rynder: That is all.

Mr. Smith: What two distances, if you please, from Ben-
[fol. 666] senville to the Ashland Avenue Yard as against from Bensenville to the new location of Swift & Company?

Mr. Rynder: I asked him if the distance from the Ashland Avenue Yard to the proposed Swift & Company location would be the same as from the Ashland Avenue Yard to the U. S. Yards.

Exam. Diamondson: According to the map it would be slightly less. The proposed location of the Swift Plant is west of the stockyards, is it not, Mr. Witness, or do you know?

The Witness: Yes.

Mr. Rynder: Now, Mr. Kiesele, I understood you to suggest that if any cars were added onto those already going to the stockyards, they would bring about much additional delay if they had to be switched out at Ashland Avenue, is that right?

The Witness: That is right.

By Mr. Rynder:

Q. In your Exhibit 41 your first train, as I understand it, carried livestock and perishables?

A. That is right.

Q. And the second train livestock only?

A. That is right.

Q. I take it on the first train the perishables had to be dropped and switched out at Ashland Avenue?

A. That is right.

Q. And the difference in the elapsed time, if I am right, was eight minutes?

A. That is right, in those two examples.

[fol. 667] Q. Yes. In the next one I can find where you have comparisons on December 3rd, train No. 2 which had livestock only and train No. 3 which had livestock and perishables which I assume had to be set out at Ashland Avenue?

A. That is right.

Q. There the difference in elapsed time between the two trains was five minutes, wasn't it?

Q. Now, coming down to the next example, I find your train No. 1 on December 9th had livestock and perishables and had to be set out at Ashland Avenue for the perishables?

A. That is right.

Q. And your train No. 2 had livestock only and it did not therefore have to set out?

A. That is right.

Q. The train on which you had to set out the perishables had an elapsed of 35 minutes less than the train on which you did not have to set it out?

A. That is right.

Q. And the last example that shows both of them is on the 11th of December. Without repeating it, there is a difference of five minutes, is that correct?

A. That is right.

Mr. Rynder: I believe that is all.

Redirect examination.

[fol. 668] By Mr. Smith:

Q. Mr. Kiesele, might it not be possible under certain conditions to have a number of trains, perhaps, that made setouts at Ashland Avenue and then delivered stock to the U. S. Yards where the stock was delivered to the

U. S. Yards in even less time on the consolidated train than on the direct shipments, depending entirely upon conditions?

A. Yes.

Q. And you have every conceivable combination of circumstances and time in making your deliveries to that yard, do you not?

A. Yes, that is right.

Mr. Smith: That is all.

Exam. Diamondson: Any further questions? (None) The witness is excused.

(Witness excused.)

Exam. Diamondson: Are you offering Exhibits 40 and 41?

Mr. Smith: I will offer into evidence Exhibits Nos. 40 and 41.

Exam. Diamondson: Any objection?

Mr. Rynder: No objection.

Exam. Diamondson: Exhibits Nos. 40 and 41 will be received.

(Defendant's Exhibits Nos. 40 and 41, Witness, Kiesele, were received in evidence.)

Mr. Kaylor: Exhibits Nos. 40 and 41 will be received by the Illinois Commerce Commission.

[fol. 669] Exam. Diamondson: We will adjourn at this time until 9:30 o'clock tomorrow morning.

(Whereupon, at 5:20 p. m., an adjournment was taken until 9:30 a. m., Saturday, February 28, 1948.)

[fols. 670-671] Met, pursuant to adjournment, at 9:30 a. m.

[fol. 672] Exam. Diamondson: The hearing will be resumed.

Mr. Smith: Mr. Examiner, I have one more witness who will deal with the operating conditions in Chicago. I tried to hold the number down. We have five out of the 22 roads which come in here and I do not think it will be in any considerable part repetitious.

Before I call Mr. Clousing I would like to offer one exhibit because it is bulky and we have been carrying it around for some time. This exhibit which I will ask the reporter to identify with the next exhibit number is one that shows the history of the relations of the packers, including Swift, to the Stockyards Company.

Exam. Diamondson: It will be marked Exhibit No. 42.

(The document referred to was marked as Defendant's Exhibit No. 42, Witness Smith, for identification.)

Mr. Smith: Now, I may say that these are the exhibits or part of them that were offered in the previous Swift Case and Mr. Rynder has agreed as to their authenticity. I believe as I understand it that he desires to make some objections other than the one going to their authenticity, and if he does I would like to reply to that.

Exam. Diamondson: All right.

Mr. Smith: If the Examiner would care to have me do so I shall be very happy to make a more extended statement as to what this exhibit is and why we believe it to be entirely [fol. 673] relevant and material in this case, or I will make such statement as is necessary after Mr. Rynder has made his objections. However, that is up to the Examiner to decide.

Exam. Diamondson: Are you going to object to it, Mr. Rynder?

Mr. Rynder: Yes. It contains many different documents the objections to which are separate and apart, one from the other, and it will require considerable argument. I can start now or if that would interfere with the witness we can postpone it until later.

Mr. Smith: How long will it take you approximately?

Mr. Rynder: About an hour.

Mr. Smith: I do not think we should go ahead with it, then. I am afraid that that will impinge too much on my understanding with Mr. Belnap and if it would take that long I think we had better go ahead with our witness.

If I may I would like to distribute the several copies that I have here subject, of course, to the ultimate ruling on the matter.

Mr. Smith: I can tell you what this is by reading what

the Supreme Court of the United States said about the same evidence in the previous case. It was objected to there, not [fol. 674] only informally but in a very formal way. Mr. Rynder filed a motion to rule it out of the case and the Commission in its formal report, ruled adversely on that motion and received it.

The Supreme Court said this, and I will read only in part what they said, but I think it will describe better than I could what is in this document:

> "The packers object to the consideration of their own part in evolving the situation of which they complain. The Commission, however, considered it and made findings as to the history of the relation between the Yard Company and the packers. The Commission found that since the Yard Company began operation in 1865 there has been a line of demarcation between the services which shippers are entitled to receive for the transportation charges and the services received from the Yard Company.
>
> "The line-haul carriers would pay the Yard Company for the unloading services and absorb the charges for such services of their line haul rate. From the beginning, however, all shippers were required to pay the Yard Company yardage charge on every animal unloaded; dealings with respect to those charges were between the Yard Company and the shippers with no intervention by the carriers.
>
> "After these practices had been in effect for about 25 years the Yard Company entered into certain ar- [fol. 675] rangements under which the packers participated in the profits from this operation. Some time before 1890 the packers threatened to move their plants from Chicago and to establish facilities of their own for the receipt of their livestock. The packers acquired a large tract of land in Indiana as a site for their proposed plants. They had also purchased property known as the Central Stockyards near the Union Stock Yards and erected thereon, platforms, pens, sheds and sidings for the purpose of receiving all cattle and livestock consigned to them."

I will interpolate and say that they then in 1890 approximately what they are proposing to do now.

> "They (the packers) also filed a complaint in an Illinois court demanding that the Yard Company be required to permit their line-haul carriers to use its tracks to make deliveries to the packers Central Stock Yards."

So you will notice history repeats itself here in a very large degree.

> "Having put themselves in this independent position and threatened to reduce the revenues of the Yard Company the packers negotiated a contract which in substance involved the abandonment by the packing companies of this threatened move to Indiana and surrender of their own facilities for receiving direct shipments in return for a participation in the profits and capital of the Yard Company.
> [fol. 676] "In 1892 the packers conveyed to the Stock Yards interest the Indiana Site and the Central Stock Yards and agreed by contract to dismiss the suit filed in the Illinois court and to refrain from filing any similar suit for a period of 15 years and to continue their business at Packingtown adjacent to the Union Stock Yards for a 15 year period from July 1, 1891, and have all livestock slaughtered by them on their premises or within 200 miles of the City of Chicago, during such period and pass through and use the Union Stock Yards and pay the usual yardage charge therefor. And they guaranteed the Yard Company would receive and collect from its yardage charges to the packers for livestock the aggregate sum of $2,000,000 within six years and agreed to make up any deficiency in that amount."

Now note this:

> "The packers also agreed that as long as the Yard Company conducted its business in Chicago they would not interest themselves in any other stockyards in Chicago for the receipt and use of their own livestock."

Now I won't elaborate on that or comment on that, but I simply state that as answering the Examiner's question as to what in a general way this exhibit consists of. It consists of the documents which underlay the statements of the Commission and the Supreme Court to which I referred and at an appropriate time I want to reply to any objections [fol. 677] that are made to its admission in this case.

I won't offer the document in the light of the time that Mr. Ryder says he wants to take. It seems to me that it is a perfectly footless thing in this hearing to be talking for an hour about the admissibility of this document when both the Commission and the Supreme Court have passed on it already.

Exam. Diamondson: And as I understand it these exhibits are already a part of the record in the Swift & Company versus Alton Railroad Company, Docket No. 28762?

Mr. Smith: Yes, every one of them.

Exam. Diamondson: All right, call your first witness.

Mr. Smith: Mr. Clousing.

R. D. CLOUSING was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. Will you state your name, occupation and residence, please?

A. R. D. Clousing, superintendent of the Chicago Terminal Division of the Santa Fe Railway Company.

Q. Have you prepared yourself to make a statement to the Commission here, Mr. Clousing?

A. I have.

Q. Will you please state your business experience as an operating officer and then proceed to make your statement?

A. I have been connected with the Santa Fe Railway [fol. 678] Company for 28 years, principally in the operating department. I have been in Chicago for seven years, of which about five and a half have been in the capacity of superintendent of Chicago Terminal Division.

Q. Proceed with your statement.

A. During 1947 the Santa Fe handled 5281 cars of livestock to the Union Stock Yards and Transit Company in Chicago. This represented slightly less than 10 per cent of the 53,561 cars received by the Stock Yards in 1947.

During the year 1947 the Santa Fe handled to the Chicago, Burlington & Quincy Railroad for delivery to the Omaha Packing Company a total of 209 cars.

I shall first outline the present method of handling livestock arriving in Corwith Yard, located between 38th Street and South Central Park Avenue and 47th Street and Archer Avenue. Livestock arrives at this yard in various trains throughout a 24-hour period, together with dead and perishable freight. However, the bulk of the stock arrives during the early morning hours or in sufficient time for handling to the Union Stock Yards to be unloaded for the morning market of the arrival date, and to the C. B. & Q. for early arrival at Swift's plant. The Santa Fe has a livestock extra scheduled to arrive at Corwith Yard at 12:30 a. m. The schedule of this train, as well as the schedules of other trains picking up livestock along the line, is arranged so as [fol. 679] to provide a convenient loading time for shippers at origins, and also to have the livestock arrive at the terminal sufficiently in advance of the expiration of free time and of market opening to enable us to handle it efficiently and economically.

Trains are not switched at some outlying point to get all livestock on the head end, but they are run into the Terminal to be switched. By the time these trains reach the Terminal, due to picking up cars enroute, the livestock in many cases is mixed with dead and perishable freight and empties. In other words, whether livestock for one Packer arrives fairly well together in the train, depends on whether or not additional pick-ups have been made for that packer enroute.

I shall describe the handling of livestock arriving in a train at Corwith Yard, which includes stock for Swift & Company, other packers, and commission houses. It is necessary to switch out all livestock and make up two transfer trains, one with Swift & Company stock for handling to C. B. & Q. Western Avenue Yard, from which point the C. B. & Q. delivers it to the Omaha Packing Company. The C. B. & Q. yard is located approximately three miles from

Corwith Yard. Our transfer is moved by a yard crew over 1.5 miles of Santa Fe main track to Panhandle crossing at Ash Street, and from that point to C. B. & Q. yard over C. J. and B. & O. C. T. trackage, a distance of about 1.5 miles.

During the period November 1st to 7th, inclusive, 1947, [fol. 680] the Santa Fe made 12 trips; six direct to the C. & N. W. or 50 per cent, one to the B. & O. C. T. or 8 per cent, two consolidated trips to the C. & N. W. and B. & O. C. T. or 17 per cent, one consolidated trip to the C. B. & Q., C. & N. W. and B. & O. C. T. or eight per cent and two direct to the C. B. & Q. or 17 per cent. One direct trip consumed 39 minutes and the other 55 minutes from the time of departure at Corwith until arrival C. B. & Q. yard. There are times of course, when there is more time consumed, depending on the congestion experienced enroute. The consolidated trip with stock for C. B. & Q. consumed two hours and 50 minutes. The C. B. & Q. yard is first reached and the transfer then continues on to the Yards of the C. & N. W. and B. & O. C. T., which latter two yards are in close proximity to the C. B. & Q. yard. Because of the fact that we have almost daily runs to the C. & N. W. and B. & O. C. T. with other traffic, there are many times when stock for the C. B. & Q. can be consolidated with business for C. & N. W. and B. & O. C. T., thereby saving a special trip to the C. B. & Q.

Q. Now, have you made it quite clear whether the stock that you bring in that is destined for delivery at the Omaha plant of Swift & Company goes through the Ashland Avenue Yard or whether it does not?

A. I have attempted to make it clear that it does not go through the Ashland Avenue Yard.

[fol. 681] Exam. Diamondson: It goes through the Western Avenue Yard?

The Witness: Yes, that is right, the C. B. & Q. Western Avenue Yard.

By Mr. Smith:

Q. All right, proceed.

A. Livestock for other packers and commission houses located within the Stock Yards District and on the rails of

the Chicago Junction Railway Company is assembled without classification from the inbound train into another transfer for handling direct to the unloading chutes at the U. S. Yards, where stock is unloaded by the U. S. Y. & T. Company, and after the stock is unloaded, the empties are returned to our yard by the same yard engine and crew. It takes from one to one and one-half hours from the time inbound train arrives at Corwith until cars are inspected, switched out, assembled in a transfer and bills made ready to accompany the transfer.

Sometimes this operation consumes less time and more at other times, depending on the amount and location of livestock in the train. The U. S. Yards are located about 3.75 miles from the Corwith Yard. Our transfers use I. H. B. trackage to Oakley Avenue at which point C. J.—C. R. & I. trackage is used into the chutes.

During the period November 1st to 7th, inclusive, 1947, our crews made eight direct trips to the U. S. Yards or 40 per cent, five consolidated trips to Leavitt Street and Ash-[fol. 682] land Avenue yards or 25 per cent, one consolidated trip to Leavitt Street, Ashland Avenue and U. S. Yards or 5 per cent, four consolidated trips to Ashland Avenue and U. S. Yards or 20 per cent, and two trips to Ashland Avenue Yard or 10 per cent, a total of 20 trips of which 40 per cent were direct to the U. S. Yards and only 25 per cent when we had livestock consolidated with other traffic for either Leavitt Street or Ashland Avenue Yards or both.

Now at this point I would like to inject some additional testimony. For the period April 15th to May 15, 1947, the Santa Fe yard crews made 74 trips into this district with stock, of which 47 trips were directs to the stockyards for unloading or approximately 60 per cent. In other words, what I am trying to convey is that the greater percentage of the movement went direct to the chutes for unloading.

By Mr. Smith:

Q. Well, as I understand the statement you made just previously in this other period from November 1st to November 7th, you had limited the showing only to trains containing livestock, the percentages would have been about the same, however, wouldn't they? It would have been about

60 per cent directs to the yards and 40 setting off something at Ashland Avenue?

A. Considering only the trips made into that district with stock, there were a total of 13 trips, eight of which went direct to the stockyards for unloading, or 61 per cent.

[fol. 683] Thank you. You may proceed.

A. The Leavitt Street Yard on the C. J. is used extensively for the interchanging of l.c.l. merchandise and is first reached enroute to Ashland Avenue Yard and U. S. Yards. Our route from Corwith Yard to U. S. Yards also passes by Ashland Avenue Yard of the C. J., at which point we make deliveries of freight destined to industries on the C. J. The consolidated trips can be made only when there is sufficient time to make the set out at Ashland Avenue Yard and continue on to the chutes to get the livestock handled within the free time for morning market. Our crews arrive at Ashland Avenue first before moving into the Chutes and the Santa Fe can not assume the risk of delaying the livestock by setting out business at Ashland Avenue Yard unless there is plenty of time in which to do so.

We have to estimate this time, taking into consideration the delays to be experienced enroute, time it will take to make setout at Ashland Avenue Yard and if there appears to be insufficient time, a special run is made with the livestock to the U. S. Yards and another trip is made with the other traffic to Ashland Avenue Yard. Making consolidated trips also depends on whether or not there is other traffic in the yard which can be consolidated with the stock. On the other hand, when making a consolidated transfer with Swift & Company stock, the C. B. & Q. Yard is first served and [fol. 684] cars for the C. & N. W. and B. & O. C. T. are delivered afterward.

During the week cited, it took from 45 minutes to four hours to make trips direct from Corwith Yard to the chutes, so it is impossible to state definitely how long it will take to make delivery on a given day. The distance from Ashland Avenue Yard to the chutes is about one mile. Our crew one day received a delay of 40 minutes waiting at Ashland Avenue account traffic ahead, and on another day 30 minutes. Both of these were direct runs to the Stock Yards. On November 4th our transfer waited one hour and 45 minutes from Ashland Avenue and consumed another hour and

45 minutes from Ashland Avenue Yard to the chutes, when the move should be made in 10 to 15 minutes.

Exam. Diamondson: What was the cause of the delay, do you know?

The Witness: Other trains ahead, setting out at Ashland Avenue Yard and the delay between Ashland Avenue Yard and the chutes was on account of the congestion in the chutes.

This was also a direct run to the stock yards, and was a trip that consumed four hours from departure at Corwith. Again, on November 5th, our crew stood at Ashland Avenue 20 minutes and consumed one hour and 20 minutes getting from Ashland Avenue to the chutes. This was a direct run, and consumed three hours and 10 minutes from Corwith Yard.

The examples I have just given were all direct runs from [fol. 685] Corwith to the Stock Yards. Even more delay is frequently encountered on runs where traffic for Ashland Avenue Yard is consolidated with traffic for the Stock Yards. For example, a consolidated run on November 1st to Ashland Avenue Yard and the chutes took our crew five hours and 30 minutes in all, four hours and 50 minutes of the time being spent in moving through the congested area between Corwith Yard and Ashland Avenue Yard. In other words, it took from 7:00 p. m. to 12:30 a. m. to move from Corwith Yard to the chutes, making setout at Ashland Avenue Yard. This check of running time was made only for the period November 1st to 7th, inclusive, 1947, and there are many more such cases.

By Mr. Smith:

Q. Mr. Clousing, would there be more livestock trains that would make setouts at Ashland Avenue if all of the directs were delivered at Ashland Avenue?

A. Quite so. It would mean many more additional movements in the Ashland Avenue Yard vicinity.

Q. You have testified that it takes longer to get stock to the U. S. Yards when it is in the consolidated trains with what is now dead freight that has to be set out at Ashland Avenue and Mr. Rynder pointed out yesterday in some of the exhibits that there are trains that make faster time

where they actually set out at Ashland Avenue than certain other trains might make in going right down to the yard.

Is there any rule of thumb in respect to that, or does that [fol. 686] depend upon the condition which the particular train encounters at the particular moment or hour when it tries to go through that area?

A. Well, I think we can answer that by saying it depends on the congestion at that particular time. There are hours when the congestion at that point is much greater than others. Generally there is congestion at most any time of the day.

Q. Well, my point is this: We had evidence yesterday of a train trying to get into the Ashland Avenue Yard for six, eight, or ten hours. Might it work this way: that there would be a train with shipments only for the U. S. Yards, livestock, and that train might be held up for four or six hours whereas at a different time of the day or a few hours later, another train might go through, a consolidated train; and actually make setouts at Ashland Avenue and get to the yards faster? Could that happen?

A. That could happen, yes.

Q. But you testify, as I understand your statement here, that under the same circumstances and conditions, it will take a substantial amount of time to set out at Ashland Avenue which is not experienced by a train under the same circumstances that would go straight through?

A. That is correct.

Q. All right, proceed.

A. Livestock loaded at points Kansas City and east gen- [fol. 687] erally arrives Corwith with sufficient free time. However, stock from Oklahoma and other points west of Kansas City which is not stopped for feed, water and rest arrives Corwith with very little free time. For example, shipment of stock from Oklahoma City arrived Corwith 2:00 a. m., August 1, 1947, with free time up at 5:15 a. m., August 1, 1947. This stock departed Corwith 3:20 a. m. August 1, 1947, and was unloaded at chutes at 4:10 a. m. August 1, 1947.

Another shipment loaded at Wichita, Kansas, arrived Corwith 2:00 a. m. August 1, 1947, with free time up at 6:30 a. m. August 1, 1947. This stock departed Corwith

3:20 a. m., August 1, 1947, and was unloaded 4:10 a. m. August 1, 1947.

As regards stock for Swift & Company, our records show a shipment which arrived Corwith at 2:15 a. m., October 24, with free time up at 5:00 a. m. the same day. This shipment was moved out of Corwith yard at 3:05 a. m. and was delivered C. B. & Q. 3:30 a. m., October 24, 1947. Another shipment with free time up at 5:10 a. m. October 30, 1947, arrived Corwith 2:15 a. m. October 30, 1947, departed 3:30 a. m. and was delivered to C. B. & Q. at 4:20 a. m., October 30, 1947.

Q. Mr. Clousing, I would like to inquire whether these are extraordinary isolated instances or whether you are indicating to the Examiner the type of thing that is regularly encountered in the handling of this livestock?

[fol. 688] A. That is a regular occurrence, Mr. Smith.

Exam. Diamondson: That is when the shipments come from a point like Omaha City?

The Witness: That is right. As I said in my statement, stock coming from Kansas City and east of there we have more free time on that stock but we have a considerable amount of stock coming from points down in Oklahoma and western Kansas which are not stopped enroute for feed, water and rest, and naturally the time is very short when it arrives at the terminal.

By Mr. Smith:

Q. In other words, Mr. Clousing, is there a substantial amount of livestock that comes into that market from such locations and in regard to your present running schedules, it just gets in now without unloading for feed and rest?

A. That is right. The time is very short on a great amount of this stock arriving.

Exam. Diamondson: Let me ask you, were those illustrations that you gave all from Oklahoma?

The Witness: I gave one from Oklahoma and one from Wichita, Kansas, and I could have picked out many, many more cases, but I just cited those few cases to indicate what the situation is.

By Mr. Smith:

Q. All right, proceed.

A. It is, of course, greatly to our interest and of the ship-
[fol. 689] pers for stock to be delivered and unloaded within the free time for morning market since this saves stopping the stock enroute for feed, water and rest.

It is understood that the complainant wants livestock delivered to its new plant which is located on the C. J. Due to Railway Labor agreements, Santa Fe crews could not make direct delivery to Swift & Company's plant, and we would consequently have to deliver the traffic to the Ashland Avenue Yard of the C. J. which is located approximately one mile west of the Stock Yards. The Swift & Company request would require that we place its stock on the head end of the transfer so that such stock could be set out at Ashland Avenue Yard, after which the transfer would continue on to the U. S. Yards with the stock for other packers in case of a consolidated transfer. This would require additional time at Corwith of 10 to 15 minutes in making the classification of Swift's stock.

Also, as our check of November 1st to 7th shows, delivery of Swift stock to the C. J. at Ashland Avenue would, in many instances, cause excessive delay to the stock destined to the U. S. Yards, some of which might well arrive late for unloading. In the light of our experience under present handling, the only way in which the Santa Fe could avoid the risk of delaying other stock for the U. S. Yards would be to make special runs with the Swift stock for delivery
[fol. 690] to Ashland Avenue Yard. Possibly on occasions when sufficient time was available this stock could be consolidated with other freight for Ashland Avenue Yard, but in my opinion even that operation would be a more expensive operation than present method of handling.

It is reasonable to conclude that if the Swift demand is granted, other packers would demand the same service. All of the large packing plants are located on Chicago Junction rails. All together there are in the neighborhood of 13 packers located on its rails. Even so, there would still be stock for the Commission Houses which we would have to handle to the Stock Yards for unloading.

The additional switching required at Corwith to segre-

gate the stock to be handled direct to Packers by the C. J. after delivery to Ashland Avenue Yard by the road haul carriers and that for the U. S. Yards would entail about another hour. Ashland Avenue Yard is already congested. I have also mentioned some of the delays our crews are now experiencing waiting for other foreign line crews ahead setting out business at Ashland Avenue Yard. If this request is granted it will mean the handling of approximately 75,000 additional loads and empties and I am very doubtful if this additional business could be handled at Ashland Avenue Yard. The volume of deliveries to the C. J. would be tremendously increased. The road would be required to classify the stock for setting direct to [fol. 691] packers, and the handling of the empties out of the various plants to an interchange point with the carriers.

Due to the inadequacy of the Ashland Avenue Yard, one track for instance would be used for acceptance of two or three deliveries and in that case, there would be livestock mixed with dead freight. This would mean an additional burden on the C. J. and delay in handling the livestock and other traffic. All lines would be faced with the problems of added congestion, increased delays in classification, return of empties, and in various other ways. As I have stated before, on traffic to the Stock Yards, empties are returned to the road haul carrier by the transfer crew handling the stock to the Chutes for unloading. They are disposed of quite rapidly in this manner and the congestion relieved.

If stock is delivered at Ashland Avenue Yard for the C. J. to handle, it will mean that after the cars are unloaded at the packing plants they will again have to be handled by the C. J. to an interchange yard where they can be picked up by the respective road haul carriers, which means additional handling by the C. J., extra trips, some times light, by the road haul carriers to secure the empties and a resultant loss in car days due to delay in getting them handled out of the congested area. Under present handling they reach home promptly and again on their way to some loading point.

I might inject a little additional testimony there. These [fol. 692] empties going back to the Santa Fe would be interchanged to our road at Loomis Street Yard and it has

been my observation and in looking over the trip reports and taking into consideration the amount of delays our crews receive in making pulls from Loomis Street Yard, there would be another very congested condition arising at the Loomis Street Yard because of the fact that that yard at the present time is so terribly congested it can hardly take care of its present operations.

The C. J. Rails are used more extensively by foreign line crews than any other rails in the Chicago switching district. The Stock Yards District is a very congested area. The additional handling and extra movements involved in Swift's request will in my opinion, based on present experience, result in tremendous added confusion and delay.

By Mr. Smith:

Q. Would you be in position from your observation and experience to compare the conditions at the Ashland Avenue Yard with respect to traffic handled and foreign crews operating in that yard and congestion and factors of that kind with other terminal yards in Chicago?

A. Well, Mr. Smith, I think no doubt all railroads have experienced in the past some congestion in their own respective yards, but this Ashland Avenue Yard is in such a location and means of getting to and from that yard and setting out of business in that yard making it necessary to use the lead tracks over which these interchanges are moved [fol. 693] on farther east, presents a very congested condition, subjecting these trains to considerable delay because of other transfers ahead and attempting to handle their business or set out their business into this yard.

Q. Is there any busier yard in Chicago in your opinion?

A. I do not believe there is a yard much busier than Ashland Avenue Yard, no, sir. I don't know of any.

Q. All right, proceed.

A. There will be less free time available to the road-haul carrier because of the amount of time that the C. J. will require to handle the stock from Ashland Avenue Yard to the packers' plants. This will mean that livestock can not be held by the road-haul carrier for consolidation with stock arriving 30 minutes to an hour later as is now fre-

quently done. This, in turn, will mean additional trips by the road-haul carriers into an already badly congested district, as well as extra movements of the C. J. in handling the stock to the plants for unloading and disposing of the empties.

I know that the Santa Fe will be required to make many more trips in the handling of loads and empties than by present method of handling and this business will suffer delays never before experienced. In fact, I am of the opinion it will be necessary to relieve many crews handling this business with a fresh crew to keep from violating the 16 hour law. This means additional expense and delay. [fol. 694] All of this is going to mean not only delay to stock but added delays to other shippers of freight because of the extra burden imposed upon the C. J. and road haul carriers.

It is my understanding that the C. J. would not accept cars at Ashland for delivery to the packing plants when there is insufficient time to permit unloading within the free time. Since we could not assume responsibility for violation of the Federal Regulations, the Santa Fe would be required to revise its present handling practices so as to permit unloading of stock enroute for feed, water and rest where necessary. This, again, means additional delay to the stock in reaching market, and such revision of our present handling would appear to be necessary in view of the statement of the C. J. that it will require a maximum of eight hours for making delivery to the packers.

On the average we allow ten hours running time on the Illinois Division from Shopton to Corwith. If Swift's demand were granted and were extended to other packers, we would require at least 20 hours free time on all stock passing Shopton, and in most cases 20 hours would be insufficient. A check of the records at Shopton for the period October 5th to 11th, inclusive, 1947, when movement of stock was about normal, indicates we handled the following Chicago stock:

92 cars forwarded with 20 hours or more free time.

26 cars forwarded with less than 20 hours free time.

[fol. 695] 57 cars unloaded for feed and rest because of insufficient free time.

On the basis of 20 hours free time we would have had

to unload for feed and rest 26 additional cars or a total of 83 cars in the 7-day period mentioned. However, we would undoubtedly have to unload some of the 92 cars because the 20 hours that I have estimated is the bare minimum and allows nothing for the delays that we customarily encounter. For example, the 10 hours running time and the eight hours required by the C. J. leaves us only two hours for working the train at Corwith and making delivery to the C. J. at Ashland Avenue Yard. Under the best of conditions we cannot accomplish this in less than two hours, so that a total of 20 hours is probably inadequate for average and normal operation.

Q. Now you refer to free time. I think it is clear you mean by free time the time left to run before violation of the Federal Act would occur?

A. That is right.

Q. You may proceed.

A. If we set our schedule on the basis of 20 hours free time from Shopton, there will be many cases of stock reaching Corwith with insufficient time to be handled to the C. J. for unloading, and these cars will have to be taken to the Belt Railway at Clearing for feed, water and rest. Since we can not anticipate this requirement, it would mean in [fol. 696] some instances making special trips to Clearing when it would not be possible to handle in our regular transfers between Corwith and Clearing. After the stock has been reloaded at Clearing for handling to the C. J., it would mean we would have to send a light engine to Clearing if the stock could not be handled back to Corwith in our regular transfer. All of this entails additional handling, expense, and at least 24 hours delay to the stock.

Mr. Smith: That concludes, Mr. Examiner, Mr. Clousing's direct statement.

Exam. Diamondson: Did you say what feeding and rest facilities you had at your Corwith Yard?

The Witness: At the Corwith Yard?

Exam. Diamondson: Yes.

The Witness: Our facilities will take care of about one car of stock.

Exam. Diamondson. You may cross examine.

Cross-examination.

By Mr. Rynder:

Q. Mr. Clousing, did you consult any packer other than Swift as to whether they presently desire or are in position to erect facilities or otherwise arrange for the delivery of livestock?

Mr. Smith: Just a moment, that question has been asked every witness and I would like to have it appear on the record that I think it is entirely immaterial. I can not con- [fol. 697] ceive how the Commission could make an order in this case that would apply only to Swift or could make any order without the recognition that under Section 3 of the Act exactly the same provision would have to be made for every other packer in this area.

Therefore, it seems to me it is quite immaterial to ask witnesses whether or not they made inquiry which can only go to the question of whether they can make some special arrangement here or the Commission would require some special arrangement for Swift. It is obvious it would not, and I suggest that that is entirely immaterial.

Exam. Diamondson: Your position is stated on the record.

Mr. Smith: Yes, sir.

Exam. Diamondson: Will you answer the question?

The Witness: The answer to the question is no.

By Mr. Rynder:

Q. As I understand it, the number of cars you have for the Omaha Packing Company and which would be changed to the new delivery for your road, would amount to less than one a day, substantially less than that, is that correct?

A. Well——

Q. Well, I believe you said 209 cars, didn't you?

A. That is right. Of course, please understand it might not work that way.

Q. You spoke of making 74 trips into the stockyards dis- [fol. 698] trict in a certain period and 47 directs to the stockyards. I suppose that was to the unloading chutes and you were making a percentage of one to the other of

60 per cent? Does that mean that generally you segregate other freight and send it to the stockyards area and send it down with a separate switching crew?

A. Not necessarily. It does not always work out that way. We make our trips direct to the chutes depending on the time in which we have to handle the stock, the amount of stock we have to handle over there, whether or not we have any business to consolidate with the stock, etc. It is a different picture every day.

Q. Do you know how many cars of livestock you averaged in your 47 direct movements to the chutes?

A. I don't have those figures available but it varies. We may have a trip with five cars and there might be another trip with 35 cars.

Q. Do you often get anything as high as 35?

A. We have sometimes received that much in shipments, yes.

Q. That would be rather unusual, wouldn't it?

A. Yes, it would be.

Q. And you often run down there with not more than three to five cars?

A. We have made trips with that few cars, yes.

Q. Is it my understanding that you attempt to bring stock [fol. 699] from points in Oklahoma into the U. S. Yards without a feed in transit?

A. I stated in the record some shipments, yes.

Q. That is a rather unusually long haul without feed in transit, isn't it?

A. We make the schedule.

Q. In other words, you have established a schedule from points in Oklahoma to the U. S. Yards of less than 36 hours, is that correct?

A. That is right.

Q. How many miles would you say that is from the points you are thinking of?

A. Kansas City is 451 miles.

Q. Yes, but that is not Oklahoma.

A. Well——

Q. I was asking about a schedule from Oklahoma and not from Kansas City.

A. Well, I cited these cases coming from Oklahoma. One case is from Wichita.

Q. I was asking you if that was not a rather long run without feeding and watering the stock, and I asked you the distance from the Oklahoma point and in response to which you gave me the distance from Kansas City.

A. Well, I don't have the timetable here to give you the exact distance to Oklahoma City, but if I had the table, I [fol. 700] could tell you.

Q. Have you established such a schedule for a competitive purpose or some reason of that kind?

A. Well, I might say yes.

Q. You spoke also of getting livestock to the chutes at the yards as I got it, in view of the free time for the morning market. That would be something different from the 36 hour law I take it, is that right?

A. Well, we have to get the stock chuted too within the law and it is also to our interest to get it there in time for the morning market.

Q. As to a delivery direct to Swift & Company, you know that stock like that would not be on the market nor be offered for sale, don't you?

A. I assume that the stock is yours.

Q. You spoke of the inadequacy, I believe you used that term, of the Chicago Junction facilities? Now if we compare your movement down there of a carload of perishable freight and a carload of livestock, would the only substantial difference be the requirements of the Federal 28 and 36 hour law as to livestock?

A. Well, we would have to move the perishables very promptly, too.

Q. But it does not run into any Federal law that says it has to be unloaded within 36 hours?

[fol. 701] A. You mean the perishables?

Q. The perishables.

A. Well, there is this much about it: If you do not handle perishables promptly you are confronted with a lot of claims on it.

Mr. Rynder: Mr. Examiner, I don't think that is an answer to the question.

Exam. Diamondson: He can answer the question.

The Witness: Will you please state the question?

Exam. Diamondson: He wants to know if you are con-

fronted with a 36 hour limit as you are on livestock in connection with perishables?

The Witness: I told him no.

By Mr. Rynder:

Q. Now, do you find the facilities down there adequate for the prompt delivery of perishable freight in that area?

A. Well, we are confronted with the same delays, setting out perishables as we are of stock or setting out perishables as we would be if we were handling stock.

Q. But you do not undertake to avoid the transportation and delivery of the perishables, do you?

A. How is that?

Q. You do not try to avoid the transportation over your line and the delivery to the stockyards area of perishable freight?

A. Try to avoid it?

[fol. 702] Q. Yes, I say you don't try to avoid it?

A. No, we have to handle it.

Q. Do you consider the inadequacy of a carrier's facility a proper grounds for denying a service that might otherwise be proper?

Mr. Smith: That is objected to as not proper cross examination nor calling for any statement of facts by the witness.

Exam. Diamondson: The objection will be sustained.

Mr. Rynder: That is all.

Mr. Smith: That is all.

Exam. Diamondson: The witness is excused.

(Witness excused.)

Mr. Smith: I have here now, if you please, the copies of Exhibits 29 and 31 of which yesterday we did not have sufficient copies.

Exam. Diamondson: Exhibit 31 has been offered and received.

Mr. Smith: I would like to offer Exhibit No. 29.

Exam. Diamondson: Exhibit 29 will be received in evidence.

Mr. Kaylor: Exhibit 29 will be received by the Illinois Commerce Commission.

(Defendant's Exhibit No. 29, Witness Parkhurst, was received in evidence.)

Exam. Diamondson: You may proceed.

Mr. Belnap: Mr. Examiner, the defendant carriers have [fol. 703] finally agreed to stand aside so that I might call witnesses on behalf of the Chicago Livestock Exchange, the Chicago Traders Livestock Exchange, the interveners whom I represent.

I will call Mr. Park.

[fol. 704] H. R. PARK was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. Will you state your name?

A. H. R. Park, P-a-r-k, Room 726 Exchange Building, Union Stock Yards, Chicago Zone 9.

Q. What is your position with the Chicago Live Stock Exchange, Mr. Park?

A. I am now and have been for some 29 years, coming May this year, traffic manager of the Chicago Live Stock Exchange.

Q. Will you describe briefly your experience and what you do in that position?

A. Well, for some eight years prior to 1911 I was employed by some several different railroads in and about the St. Louis area and Chicago to a certain extent in the operating departments.

From 1911 to 1919 I was with Morris & Company, packers of the Union Stock Yards in the transportation department. Since May 1, 1919, I have been with the Chicago Live Stock Exchange in the capacity stated.

Q. What are your duties and what do you do?

A. My duties are multitudinous. The bosses are here. I have to do with the operations of the market as well as the traffic end of it. My duties are to see as nearly as it is possible that the market maintains as good a position from a traffic viewpoint in regard to service as well as rates and

[fol. 705] rules and regulations with other markets and other points of competition.

We take care of the Government reports, that is, the reports required by the Federal Government from our members. We take care of the filing of the tariffs carrying the rates charged for commission and we keep in touch with general matters of the market.

Q. Are you familiar with the business carried on by your members and the way they do that business?

A. I think so.

Q. Have you prepared for introduction an exhibit which consists of a number of pages, the last one being 41-A?

A. Yes.

Mr. Belnap: I would like to have that exhibit identified with the next exhibit number.

Exam. Diamondson: That document will be marked Exhibit No. 43.

(The document referred to was marked as Defendant's Exhibit No. 43, Witness Park, for identification.)

By Mr. Belnap:

Q. Mr. Park, what is the Chicago Live Stock Exchange, and in answering that question, will you please make such explanations as are necessary of pages 1-A to 6-F of your Exhibit No. 43?

A. The Chicago Live Stock Exchange is an association of livestock market agencies buying and selling livestock on [fol. 706] the Chicago market subject to the provisions of the Packers and Stockyards Act of 1921 and the rules and regulations of the Department of Agriculture issued in harmony with the provisions of this law.

The Exchange was organized under the laws of the State of Illinois as a corporation not for profit.

Q. Will you please address yourself to the pages I have indicated of your exhibit and tell us what are shown thereon?

A. Exhibit 43, pages 1-A to 6-F constitutes what might be called a picture of the members of the Chicago Live Stock Exchange. For instance, in the first column is the name of the livestock market agent; the second column is the name

or names of the members of the Chicago Live Stock Exchange who were associated with that particular firm; and in the last column is the number of employees of that particular firm shown.

Q. In the—in addition to the members, that is?

A. Yes. The number of employees in the third or last column on the page are separate and apart from the individuals shown in the second column.

Q. How many members are there in total?

A. 225 members of the Chicago Live Stock Exchange engaged in the business of handling, buying and selling of livestock and they have 191 employees.

Q. Will you please describe the business carried on by [fol. 707] your members?

A. The buying and selling of livestock on commission, briefly.

Q. How do they carry on that business?

A. The livestock is consigned by the producers, the feeders, or the farmers by truck or by rail to the commission firms in Chicago of his choice. The carrier makes delivery to the Chicago Stock Yards Company where the livestock is unloaded at the unloading chute pens and then later is delivered by the Stock Yards Company to our members who drive the stock to the sales pens where they are placed on feed, water and rest and when necessary sorted for sale purposes.

Expert salesmen then offer the livestock to potential or prospective buyers from time to time as the day passes on until finally a sales transaction is agreed upon between the salesman and the buyer. Following that our member drives the livestock to the scales where they supervise the weighing of the stock that the buyers have bought.

Q. Are your members regulated by any Governmental agency?

A. They are. They operate under the supervision of not only the Chicago Live Stock Exchange in the first instance, but also the Packers and Stockyards Administration of the Secretary of Agriculture.

Q. What is the extent of that regulation?

A. Well, it is very thorough. The Department of Agriculture has rules and regulations issued under the Act re-

[fol. 708] quiring the maintenance of certain records and the retention of certain records for such period of time and the reports from time to time and the keeping of a very strict accounting of the funds the pass into the hands of the market agencies and the disposition of it and all of that sort of business. Does that answer your question?

Q. Not entirely, sir. Are the charges which are made in connection with the charge on this business, that is the charges made against the shippers of livestock, regulated or fixed by the Secretary?

A. I would say that our people and the other markets are the same. In other words, the livestock sold on the public market is sold under rules and regulations that are issued by the Secretary of Agriculture in harmony with the Packers and Stockyards provision and they require what the law itself makes necessary, reasonable rates and they fix those rates and determine what they will be.

Q. You say "they", but who does that?

A. The Packers and Stockyards Administration, and they supervise the accuracy of the scales upon which the livestock is weighed.

Q. Are the rates of commission shown in a published tariff?

A. Yes.

Q. What is the relation of your members to this livestock about what you are talking, that is, the livestock that is [fol. 709] moved into the yards by rail?

A. The so-called scale tickets——

Q. No, I am talking about the relation of your members to the transportation into the yards? Are they the consignees of the livestock?

A. Oh, yes, that is right. They are the consignees of the livestock consigned to the Chicago livestock market for sale and they pay the transportation agencies charges accruing covering the movement of the livestock from origin to destination.

Q. The handling of the livestock too?

A. Yes.

Q. Do they act as agent and factors for the producers of the livestock?

A. They do.

Q. Do your members themselves perform the weighing of the livestock?

A. They do not.

Q. Who does that?

A. The weighing of the livestock is actually performed by the Stock Yards Company employees.

Q. That weighing is regulated by whom?

A. By the Packers and Stockyards Administration.

Q. At what point does the livestock pass out of the possession of your members and into the possession of the buyers?

[fol. 710] A. When the livestock is driven over the scales after it is weighed.

Q. Then what do your members then do with respect to the transaction?

A. They then having sold the livestock, send the scale tickets that they receive from the Stock Yards Company, covering the weighing of the stock to their office with information on that scale ticket as to who bought the livestock and the price, and, of course, the weight is stamped on there by the Stock Yards Company.

Q. Then what do they do with respect to completing the transaction?

A. Well, the office force then takes over and they then figure out how much money there is coming from the buyer and they send him a bill and they figure out how much money is coming to anyone who has had anything to do with the handling of the livestock from the farmer to the market, such as for instance the transportation agency and the Stock Yards Company for feed and yardage and insurance, if any, and they set aside and credit those accounts with the funds so that they may be paid and they send the shipper the net proceeds or the amount that is due him after paying the cost of marketing.

They send him his check that day. The remittance is made to the man in the country upon the day that the [fol. 711] livestock is sold.

Q. Who are the buyers of the livestock so sold?

A. Well, there are a number of different categories or classifications or groups on the buying side of the market. We have at Chicago the large packers in the first place,

the three large packers located here or rather the four large packers as we classify them. They have order buyers here and then we have smaller packers and the independent packers and small slaughterers or city butchers.

You could break down the group that buy in Chicago of which there are a great many and these people absorb a quantity of the livestock that arrives for sale. That is one category.

Q. What do they do with the livestock, the people of that category?

A. They slaughter it and sell it.

Q. At Chicago? They drive it to their slaughtering houses?

A. Yes, that is right. The livestock to those packers located upon the grounds of the stockyards or immediately adjacent thereto and it is generally driven by that packer's employees from the scales around through the alleys and runways and over the viaducts to the packinghouse. Some of them that are located a little bit away from the area of the stockyards have the animals transported by truck from the stockyards to their plant.

Q. What other categories of buyers are there?

[fol. 712] A. Well, there are order buyers who purchase a substantial volume of the livestock in the Chicago market. The order buyers are individual buyers who act as agents or representatives for packers or slaughterers who are located away from the Chicago market.

For instance on the eastern seaboard or Charlestown, South Carolina, or some point in Ohio. We ship livestock all over the United States, so to speak, purchased by order buyers.

Q. What other categories?

Exam. Diamondson: Those shipments are loaded, are they not?

By Mr. Belnap:

Q. Yes, tell us how does the order buyer handle his stock?

A. The livestock that is shipped out and which is purchased by these order buyers, he first gets the order in

the morning and he orders his car when he knows he is going to ship and then when he buys his livestock and takes delivery of it off the scales, he or a stockyards employee drives it to the loading pens where that car has been kept for the loading of the stock and he arranges for the billing out of the stock and furnishing to the railroad company agent the information needed to carry the stock to the consignee in the east and make delivery. Does that cover it?

By Mr. Belnap:

Q. What other categories are there?

A. We have a group of dealers that buy and sell for their own account on the Chicago market. They are largely [fol. 713] confining their activities to the Chicago market, although some dealers buy at Chicago and ship to places like Lancaster, Pennsylvania, and sell there on consignment.

Q. Are there still other categories of buyers?

A. Yes, there is a group of dealers too who handle feeder cattle. They buy feeder cattle and they pick them up in small lots of one or two head, cattle that are available for movement to the country for further finishing. Then in addition to that is another distinct group which are the feeder buyers who buy for feeding.

That is, some of that is performed by order buyers and some by market agencies and some of the feeder buyers themselves come in and buy the livestock that they feel they can use to advantage by feeding for three or four months or six months or a year and utilize their corn and roughage, or rough stuff and the materials on their farm.

Q. Do your members offer the livestock which they handle in the manner which you have described, frequently without discrimination to buyers in all of those categories?

A. I could say definitely, yes, indeed, sir. They not only do that, but they make such efforts as they can to take such action as it is advisable to encourage buyers to come to Chicago market to purchase their livestock.

Q. Mr. Park, is there any community of interest as between your members and the pat-ons for whom they act [fol. 714] as agents and factors?

A. I would say there is a closer community of interest,

Mr. Belnap, between the livestock market agency than there is between any other two people or two groups of people who act as agents and principal for the reason that our people or our members are salesmen who come in contact with their patrons and they have actually been in contact with them for years. Many of our members sell livestock for individuals whom that particular market agent's parent or father sold livestock for that particular farmer's father and there are instances where the grandfather sold stock for the farmer's grandfather. There is a long period of years and they have had that relationship for many, many years and because of the satisfactory service rendered, they have continued.

These people in the country are not acquainted with the details that are available at the market as to trends and conditions and packer demands and that sort of thing. The commission merchant is. The man in the country will want to know about his corn. He might say, "I have 10,000 bushels of corn and I have got so much of this or that, and so what will I feed my cattle?" They will talk with each other and advise whether to buy light feeders or heavy feeders and whether to buy this kind of cattle or that kind of cattle and where to buy them and they will put them to feed and the salesmen as a rule are thoroughly acquainted [fol. 715] with the market demands and what it requires in the way of feed and material and care to make the particular animal that will sell to the best possible advantage on the Chicago market.

So they advise him and advise with him from time to time between the time the feeding operation is started until the animals are finally disposed of and they are advising with them as to what to do and how to do it. Generally they sell them upon their request and inform them what day or what month they should be marketed.

I don't think there is a relationship between a lawyer and his client or a doctor and his patient that is tied as closely and where there is as much trust in existence as there is between the folks for whom our people sell the livestock.

Q. Do your members maintain extensive mailing lists so as to keep their patrons currently informed of all of the trends in which they might be interested? That might

be something that would protect their well being in the production and marketing of their livestock?

A. That is true, and keep them advised by the radio. The Chicago Live Stock Exchange broadcasts the prices each day with the information and trends and market conditions and what it is advisable to with the livestock that is on the farm.

Q. Is there any community of interest between your members and their patrons in respect to the price at which [fol. 716] livestock is sold?

A. Well, of course, that is the very meat of the cocoanut. If the agent is to continue to serve his client he must render satisfactory service because that man in the country has a number of outlets and a number of market agencies in Chicago that he can patronize and there is the very keenest rivalry and competition prevailing not only between the individuals selling the livestock, but between him and other outlets to see that the price he receives is the very highest that can possibly be obtained on that day's sale.

Q. Is there any community of interest in respect to the preservation of flourishing central markets at which this livestock could be sold freely and openly to everyone?

A. You must understand for a livestock market to be a livestock market it must have a buying power or it must have individuals seeking to purchase livestock in sufficient number to establish and create and bring into existence and maintain buying competition. Buying competition makes a public market. There is no public market unless there is a sufficient group of individuals there seeking livestock that creates competition between them.

When an individual sells his livestock to one man and there is no other outlet, he can get nothing other than what that one individual will pay him, but when he sends it to the market and particularly to the Chicago market, the [fol. 717] the salesman works it out and he may have a car of livestock or one animal for that matter in which 40 buyers are interested, but to one of those buyers that car of livestock is worth 50 cents a hundred more than any of the rest of them, and the reason for that is that that buyer has a particular outlet for that car and so the individual patronizing the public market has all of those advan-

tages in securing prices that he could not possibly secure where that competition is not available.

So it is to our interest, to answer your question, if we are to live and we are to thrive and flourish, we must have the buying competition. Does that answer your question?

Q. Do I understand from your answer that among the buyers on your market as it now exists there are many characters of demands for livestock in so far as kinds of livestock or grade of livestock is concerned?

A. That is right. If in Chicago some individual wants to purchase some particular grade, he gives some cogitation to his purchasing. He can always figure out that he can get whatever he wants in Stebbins Hardware or in Marshall Fields on certain things and whenever he needs any of those things he will go there and get them. That is the way the Chicago market is when compared with other markets so far as sources of supply for the packers are concerned. They know they can get it at the Chicago Stockyards market, that is, they can get anything in the way [fol. 718] of a meat animal and they can and do get it here and they come here for it.

Q. Is this diversity of supply and demand of importance in respect to the prices which producers receive?

A. It is of the utmost importance because the prosperity of the livestock industry depends on the level of the prices.

I might say in passing that the livestock portion of the agriculturists of the country are as a general proposition the most prosperous of the different members of agriculture. Their prosperity or lack of prosperity depends upon the level of the prices that are secured from the sale of livestock and that level itself is determined throughout the country, if you please, largely through the prices secured by the market agencies on the Chicago market as Chicago is either definitely the price fixing point for the United States of livestock or it is a most important factor in every sales transaction whether it be in another market, at some direct buying point or some buying transaction between two individuals anywhere in the country.

Q. The evidence thus far introduced indicates that there is received on the Chicago market livestock of two cate-

series, one category which has been referred to as salable livestock or market livestock and the other category has been referred to as the directs which are consigned to packers and they use the facilities of the Union Stock Yards and Transit Company in taking delivery of that livestock? [fol. 719] A. Yes.

Q. In which category are the transactions with respect to the sale and purchase of livestock which makes Chicago the principal determining market?

A. In the salable livestock.

Q. Why is that?

A. Well, the livestock that we call salable livestock is livestock that has been consigned by the man in the country who is the producer and has brought the animal to the point of marketability for sale and they are sold on the open competitive public market to the highest bidder.

The other livestock that has been classified and called direct purchases, is livestock that the packer consignees have purchased in the country or at some other market, but largely in the country at direct buying stations and it largely consists of hogs, both at direct buying stations, small auction rings and such places as that and it is consigned to some packer direct and that evades the public market and the price fixing machinery of the public market because of the interception by that packer in the country of that livestock that otherwise would come in and benefit the public market and the patrons of the public market and the livestock industry as a whole.

Q. Are the prices at which the market livestock is sold known publicly or are their confidential prices entered [fol. 720] into between two persons privately?

A. There is not a transaction in the Chicago stockyards or any other public market that is not open. It is like living in a glass bowl. Every record, every move or every transaction is in the open. Anyone can hear of it. There is no secret of what is done.

During the war regulations we had more individuals coming into our office getting information about this and that, but they could get any information they wanted as it was there and it was open and available to the public.

Exam. Diamondson: Would this be a fair statement: that direct shipments are bought on private sales at private prices so to speak?

The Witness: That is true.

Exam. Diamondson: And the market sales are made on the open market and they really set the prices on the livestock, is that a fair statement?

The Witness: That is correct. That is a proper and fair and direct statement.

By Mr. Belnap:

Q. Mr. Park, is the condition of your market or the ability of your market to perform its proper function in the economy of livestock production and marketing, dependent in anywise on the railroad service rendered at Chicago?

A. I would say that the Chicago market is and has been [fol. 721] for some 83 years definitely the outstanding public livestock market of the United States and because of the volume and the transactions brought about by the buying power it has had more to do with the fixing of prices than any other market due to the fact that Chicago is located at the gateway between the areas in the west where we say about two-thirds of the livestock is produced and the areas, industrialized areas of the east where two-thirds of the livestock produced in the United States is consumed. The reason for that is each of the railroads coming from the west end here in Chicago and each of the eastern railroads start here in Chicago and that has produced an in and out rail service that has been very good. It has been good up to the start of the war, Mr. Belnap. It has not been so good since the start of the war and it has not been good in the last two or three years, and it has hurt the market because of the retarded movements.

Q. Why is the matter of railroad service, good railroad service, so essential to your market?

A. Well, the individual patronizing the public market and particularly Chicago, aims at shipping to arrive for sale on a certain market day. For example, the Santa Fe man put it very properly, Mr. Clousing, in that the early market and the free time that he had left was so much from the early market. In other words, they are all consigned to arrive early in the morning. The buyers I might say, 200 or 300 of

[fol. 722] *of* them go out into the market, at the opening of the market which is 7:00 o'clock or 7:30 in the morning, with their orders in their pockets and as their orders are satisfied by purchases they retard or go home or go to their offices, so that the man consigning the livestock to the Chicago livestock market, consigns it in order to have it available, if possible, for the opening market when the competition is as strong as it can be.

That statement, of course, is a general statement. It is not applicable every day. Sometimes the market is stronger on the close than on the opening. Sometimes it might be a dragging market and such as that, but generally speaking, it is essential and necessary that that livestock be available for sale just as early as possible.

It gives them an opportunity to put them into the sales pen and feed the cattle and give it rest and water and sort it, wherever it is necessary if it is to be sold in sorted lots. Does that answer your question?

Q. You have said that the market opens at 7:00 or 7:30 in the morning?

A. Yes, but there is no official opening of the market in the morning, but the trading or purchasing and sales start up at about 7:00 o'clock or 7:30 and earlier than that sometimes.

Q. Does the market have an official closing hour?

A. Yes, the Exchange rules provide that no sales except [fol. 723] upon feeders will be performed after 2:00 o'clock. In other words the deadline on the closing of the market is 2:00 p. m.

Q. Are most railroad schedules so set up as to permit the delivery of the livestock to market well ahead of the opening hour?

A. Yes, that is a fact.

Q. Is that true of all lines?

A. Well, railroad schedules have all been built and designed to get in there between 12 midnight and 6 o'clock in the morning.

Q. In the morning?

A. In the morning, between 12 o'clock midnight and 6 a. m. in the morning. We do have some schedules, however, that have established livestock due in at 9 o'clock, but the aim is to get it in there early in the morning.

Q. And most of it, I understand, is set up to permit that livestock to be in at the unloading chute not later than 6 o'clock in the morning?

A. That would be the idea.

Q. And you obtain that only when the railroad service is good, is that true?

A. We never obtain it because some of them come in after 6 o'clock, but as close thereto as it is possible to do it, is the ideal situation.

Q. When the carriers fail to make the schedules they have [fol. 724] set up and deliver the livestock later in the market period, say 11 o'clock or noon, do you in many instances file claims because of that delay?

A. That is right.

Q. Do you have quite a lot of claims, Mr. Park?

A. In the last few years there have been more claims than there has ever been before.

Q. How extensive are they under the conditions that you are now confronted with so far as railroad service is concerned?

A. Well——

Q. Are you able to answer that?

A. I am not able to give you any definite figures.

Q. Well——

A. It is rather extensive, I would say.

Exam. Diamondson: If a car was delayed and arrived after 2 o'clock for unloading, would you file a claim?

The Witness: Yes, a claim would be filed.

By Mr. Belnap:

Q. Is there any deterioration in the livestock itself wholly apart from getting into the market to get the most buying competition, but from the condition of the livestock itself? Is there any deterioration when it is delayed?

A. It certainly does not do the livestock any good delaying it any more than it does you and I any good if we are on a passenger train that is six, seven or eight hours late. It [fol. 725] tires them out and they do not look so good and they lose in weight and in hot weather they suffer acutely due to the condition. The hogs are rather perishable and

they die in large quantities if they are subjected to intensive heat for too long a time.

The same thing is true in cold weather in ten degrees or 15 degrees below zero if they are delayed, it hurts the animals. They have nervous systems and they suffer.

Q. Is there a definite loss in weight?

A. Yes.

Q. If the Swift——

A. The longer the animal is in transit the greater the loss is between origin weight and sales weight.

Q. If the Swift demand were granted and there was this interference with railroad operation resulting therefrom to which the railroad witnesses have testified, would that adversely affect the market?

A. I would say, Mr. Belnap, it would crucify the Chicago market if things came to pass as has been depicted here by these railroad witnesses. It would crucify the Chicago market?

Q. Why is that?

A. Well, I have stated rather briefly that the delays of the last few years have hurt the market and any increase in that would hurt the market. Another thing over and above, [fol. 726] in addition to the delays and Mr. Closing spoke of the schedules from the far out areas, we have schedules built up into the Chicago stockyards that start at 700 miles away. I am referring to Aberdeen, South Dakota, and Lincoln, Nebraska, Oklahoma City, and those points. They are on short time. They have to move them pretty fast and they do and they performed the rule and come right through.

If they had all of these additional interceptions and all of these stumbling obstacles, then instead of coming through from those points they would have to shorten the area from which they could bring livestock within 36 hours to possibly Kansas City, Omaha or St. Paul.

Exam. Diamondson: Or they could stop to feed and water and rest them enroute, couldn't they?

The Witness: That is right. I might say the longer time the livestock is in transit the greater the probabilities are and the more encouragement is there for the owner to dispose of that livestock through some other outlet or some other market. That is what made Chicago the world's

greatest livestock market, its ability to draw livestock to it from not all over, but from the principal parts of the western area.

By Mr. Belnap:

Q. With good railroad service?

A. With good railroad service, yes.

Mr. Kaylor: On that point of the shipments, have they [fol. 727] increased or decreased over the last two or three years?

Mr. Belnap: We will show that, Mr. Kaylor.

By Mr. Belnap:

Q. Mr. Park, I want to direct your attention to two circumstances in connection with railroad service. I want you to treat them separately. First there is the matter of delay of livestock so that the failure of railroads to make schedules that they have set up when they have set them up should give you delivery in time for the early market.

A. Yes.

Q. Compare that one first.

A. Yes.

Q. And secondly consider the matter of the railroads being compelled to lengthen their schedules so as to put extra feed, water and rest in the trip where one is not now required. Now, will you deal with those two things and deal with them separately and tell me the effect of them, if they come to pass, upon the public market in Chicago?

A. Well, the reasonable railroad service, Mr. Examiner, is the lifeblood of the Chicago market and the poorer the service is the less receipts will be received. The volume is the thing we need. We have got to have the volume in order to maintain the buying demand and the poorer the service the greater the probabilities are of suffering losses that the man will ship some other way to some other market or some other outlet or to a direct buying packer or something of [fol. 728] that kind. Does that answer No. 1?

Q. A part of it. Does it withhold stock from your buyers that they need?

A. That is right, the stock would not come to the Chicago market because no one is going to go back where he has

been mistreated if he can find some other place where he can dispose of it, even though he may be mistreated there, but he figures of the two evils, this is the best.

Q. As I understand you, the first circumstance which I direct your attention to would in your opinion lessen the volume coming to market because it would circumscribe your area where they could have moved to without feed, water and rest?

A. I will say again that is what I meant when I said it would crucify the Chicago market if things come to pass that these railroad witnesses have stated would come to pass if Swift & Company's complaint was favorably acted on by the Interstate Commerce Commission.

Q. Now tell us about what would be the effect of just the mere lengthening of the schedule?

A. That would reduce the volume and hurt the market because of the fact the livestock shippers ship for a definite market and he is taking a chance on the prevailing price two days away or three or four days away and the longer he is in transit from the time he ships until he hits the market, the [fol. 729] more the chances are or the more chances he is taking as to what the markets are going to. If he knows he can go through within 36 hours he knows he can load Saturday and be on the Chicago market Monday morning and he knows conditions and he has probably good reason to believe the conditions because he has had a report from his commission firm as to the estimated receipts on Monday. He has reason to believe that it will be a steady market.

If the stock is going to be fed, he will be delayed until Tuesday or Wednesday and that is taking that much more additional chances and that tends to discourage him. He will say to himself I am not going to take a chance on dealing with them but I will sell the stock over here because a bird in the hand is worth two in the bush.

Exam. Diamondson: In addition to that if there are unnecessary delays in transit, perhaps in the Ashland Avenue Yard and the stock arrives on a later market, what will be the results?

The Witness: That hurts the market.

Exam. Diamondson: That would injure the market also?

The Witness: Yes.

By Mr. Smith:

Q. Mr. Park, right there if the schedules were lengthened so that there was a definite change in the schedules which would involve from certain points which now are able to reach the market within the 28 or 36 hours, an unloading [fol. 730] for feed, water and rest, then the shipper would pay for that?

A. That is right.

Q. So that in itself would be a very severe deterrent, would it not?

A. That is right.

Exam. Diamondson: We will take a short recess.

(Whereupon a short recess was here had.)

Exam. Diamondson: The hearing will come to order.

By Mr. Belnap:

Q. Mr. Park, so that the record may be clear on the significance of these railroad schedules and possible delays, can you tell us in general the area from which the railroad schedules are now set up so as to permit a movement into Chicago without a stop for feed, water and rest?

A. Well, the area so to speak would range at this time up to about 700 miles as for instance Aberdeen, South Dakota, on the north, and Jamestown, North Dakota. It is Aberdeen on the Milwaukee, Jamestown on the Northern Pacific, and Union Pacific Grand Island; in that area; and down to Dodge City on the Santa Fe; Oklahoma City on the Santa Fe; around in that general area.

Before the other war, or before the war for quite a few years we had a schedule where livestock was brought into Chicago from Denver, Colorado, 1052 miles to Chicago, within 36 hours over the Union Pacific and the Burlington and that train or those stock trains were so handled [fol. 731] that that stock also moved from areas this side of Denver in Nebraska and Colorado to Chicago within 36 hours. During this war that service was abandoned as was also the service from Oklahoma City, but since the war the service has been put back to Oklahoma City, to

Wichita, to Dodge City and these other points so that generally speaking the description of the area can only be very general.

Q. That is enough. Now beyond that area the schedules contemplate one stop for feed rather than rest, do they not?

A. Yes, and some points located in Montana, Idaho and Western Colorado may have two stops.

Q. Those stops where they are arranged on the schedule are at the expense of the shipper?

A. Yes.

Q. Even with a stop for feed, water and rest, does the time element result in deterioration of the stock even from the standpoint of weight, appearance, or quality?

A. Whether it is contemplated by the schedule or whether it is brought about by delay causing a failure to make the schedules, the unloading of livestock in transit at any time is not good for the livestock.

Q. Why? Tell us the facts?

A. It causes a depreciation. Livestock is handled at unloading points of railroads by individuals who are not as expertly trained in the caring of the livestock and car- [fol. 732] ing for the livestock as are the individuals in public markets as well as by the Stock Yards Company and market agencies and such as that. They drive the stock out rather hurriedly and the feeding performance is something that must be complied with. They drive the livestock out and run them to the place where they are going to be fed and then they feed them and they generally give them the minimum, which is very small, and they reload them and all of that does not help the livestock.

Q. How does it hurt them?

A. It hurts them.

Q. Well, what is the hurt?

A. It depreciates the value and causes extensive shrinkage and causes the animals to arrive at the market footsore, leg weary, gaunt, and presenting what Mr. Hayes over there would call a disheveled appearance. The hairs would be rubbed the wrong way and they do not present the appearance, if they were treated properly and gotton through in good shape.

Q. Will there be more livestock so affected if the railroads are required to revise their schedules so as to shorten the area from which they can make the run without the stop?

A. That is right. They undoubtedly would reduce materially the movement of livestock from those areas to the Chicago market and the railroad companies would lose that business because that business moves by rail when they can bring it through and when it does not move [fol. 733] by rail it will move by truck to the nearest outlet, the shortest haul possible, because all of the short hauls are moved by truck and so the rails would lose that movement.

Q. When there is a delay not contemplated under the schedule, the stock does not arrive here until 10 or 11 in the morning, are you familiar with the fact that that does happen presently?

A. That is right.

Q. Where does that delay occur, so far as you know?

A. It occurs every place between the loading station and the Chicago stockyards.

Q. Do you have any direct knowledge or experience with the delays presently encountered coming through the Ashland Avenue Yard?

A. Yes, the last year or so it has been particularly bad. The delays in the Chicago terminal have been very bad. For instance there are no end of instances where caretakers or owners or shippers of livestock have come into my office and said to me, "I have got two cars of stock on the Rock Island, they left Blue Island at 5 o'clock this morning and I rode over on a street car and here it is 10 o'clock and my stock is not here." Or another fellow will say the same thing about Bensenville. They got in at 6 o'clock in the morning and here it is 10 o'clock, and can you find my stock.

Well, I get hold of these folks who have been testifying [fol. 734] or some of their assistants and finally we locate the stock, but that does not always help to get the stock over in time. The man is losing that because the delay of the shipment encountered results in him missing the morning market. In those instances the man was at the outer yard in ample time to get his stock to the stock-

yards with any kind of reasonable handling, but instead he has been delayed and I imagine the delay is at the Ashland Avenue Yard, or that the Ashland Avenue Yard is responsible for the great portion of the delay.

Q. Do you file claims when livestock meets the conditions that you just described?

A. That is correct if the shipper has a loss on account of the delays.

Q. Even though it is only delayed until 10 o'clock or 11 o'clock in the morning?

A. Yes, if he has a loss.

Q. Is there a substantial movement presently of livestock into Chicago by truck?

A. Yes. About half of our entire volume comes in by truck.

Q. If additional delays, over and above those now experienced are encountered between the outer yards and the Chicago stockyards, would it in your opinion have any tendency to produce a further diversion of the livestock from the nearby areas to truck movement?

A. Yes, indeed. In fact this service I have spoken of as being bad in the last year is very noticeable in our [fol. 735] receipts. There is a constant tendency of the shipper, the farmer or the feeder to abandon the railroads.

As a rule these stock men are railroad minded and are inclined to favor the railroad if at all possible. If the service is bad they will tend to get away and unfortunately too often when they get away on a few trips they do not go back and the railroads would lose and are losing that traffic and if such a situation came about, brought about by the necessity of the change in the operation, it would lose the railroads a tremendous volume of business.

Q. Some of the railroad witnesses have testified as to the manner in which they must handle livestock cars with switch engines. They mention they must move them to rest rather than kick them down and—kick them down an empty track and let them run?

A. Yes.

Q. Do you have any knowledge of the effect on livestock when cars are handled other than gently?

A. Well, it hurts the livestock. Any rough handling hurts the livestock.

Q. Do you have any knowledge of it and if so what is your knowledge?

A. Well I can state to you, Mr. Belnap, the more handling livestock receives, jumping and jerking and jarring, [fol. 736] the greater the possibilities are that they will —that there will be dead animals, bruised animals, crippled and hurt animals that will definitely have a lesser value. Dead animals have no value except to the rendering works, and the crippled and injured and bruised animals will sell at a lower price, such handling as a rule hurts the balance of the animals by making them, as I have stated before, worn out, footsore, leg weary, tired, and gaunt. They show a depreciation or deterioration in their appearance in the sales pens and these expert salesmen and expert buyers know that by looking at the animals and the animals are punished in price, and, of course, it causes an excess of shrinkage to them too over and above the enormous shrinkage.

Q. Do you come directly into contact with that situation at all because of the claims you file, Mr. Park?

A. Yes, that is right, constantly.

Q. Are you ready to describe the rest of your exhibit? If so, will you begin at page 8-B and state sufficiently about it so the significance of the data is understood?

Exam. Diamondson: That is 7-A.

The Witness: That is page 7-A to 10-D inclusive. That gives you a picture of the total number of salable livestock. The first one is cattle, next calves, third hogs, fourth sheep, received at the Union Stock Yards starting in 1922 down to and including 1947.

[fol. 737] Column 2 gives the total number of cattle shipped from the Chicago Stock Yards.

Column 3 gives the percentage of the shipments from the market of cattle in each of the years shown. For instance, the six year average 1922 to '27 was 27.7; the five year average 1930 to '34 was 31.3 per cent of the cattle received at Chicago purchased largely by order buyers or others. The big packers also buy cattle and ship them

out to the east; and go down now until you see the 1947 figure which is 39.3.

Now, you might question the 45 and 46 percentages but those are not normal, Mr. Examiner, if you please, due to the O.P.A. and the black market movement and all of that sort of business that just gummed up our whole operation in the cattle industry.

8-B is the same identical thing on calves; 9-C the same thing on hogs; and 10-D is the same thing on sheep.

Q. Let us look at the hog page just a moment, Mr. Park. As to hogs, has the public market suffered a substantial lessening of the salable livestock received?

A. Yes. You will note back in the six year average from 1922 to 1927 we received 8,000,000 hogs, over 8,000,000 salable hogs in Chicago. In 1947 we received a little less than 2,000,000.

Q. The last three years it has been less than 2,000,000, has it not?

[fol. 738] A. That is right.

Q. Do these pages have this significance; that they illustrate the extent to which the Chicago public market provides a supply to packers located to the east and south thereof?

A. Yes, exactly.

Q. Now as such a source of supply, is the Chicago market today of even less consequence than it was in former years? I am speaking particularly of the hog page?

A. That is true.

Q. Has the volume of hogs supplied to the packers away from Chicago decreased even more rapidly than the supply of salable livestock at the market?

A. Definitely.

Q. Is that because the buyers of these hogs must have a volume in order to fulfill their requirements as to various types and grades of animals that they need?

A. That is right. You understand there are a couple of thousand packers located east of here and all of them are in the market for hogs, cattle, or sheep or all three, and they want hogs and they have before them when they start operations in the morning, the market receipts at all points. When we had 8,000,000 or 5,000,000 hogs in Chicago, they would telephone their man who is repre-

senting them in Chicago to buy some hogs. Now we only have 2,000,000 hogs and they are not so apt to do that, but they will look somewhere else for them. Sometimes [fol. 739] they won't get them at all.

Q. In your judgment would a lessening of the volume of salable livestock brought to Chicago further discourage the order buyers coming here for their hogs?

A. Just as true as two and two is four.

Q. I understand that in column 1 of these pages you deal only with the livestock in the category of the market or salable livestock?

A. That is correct.

Q. You also have directs, haven't you, in the yards?

A. Yes.

Q. Directing your attention to 1928 will you tell us what the total volume of livestock of hogs received at the stockyards was, salable and directs combined?

A. 1928?

Q. Yes.

A. 1928—

Q. That figure as such as not shown in that form in this exhibit and that is why I am asking you to give it.

A. In 1928 we received a total of 2,144,996 hogs.

Q. Now will you tell me in what year prior to 1928 there was a greater volume of hogs received at the public market?

A. Well, in 1924—

Mr. Rynder: I did not quite understand that. Did he say in 1928 there were only 2,000,000 hogs?

[fol. 740] By Mr. Belnap:

Q. Did you say hogs shipped?

A. I have given you the wrong figure.

Mr. Rynder: This figure shows 7,000,561.

By Mr. Belnap:

Q. Maybe I did not hear your answer. I thought you answered my question. I asked you as to the total number of hogs, salable and directs combined, received at the Union Stock Yards and Transit Company facilities for the year 1928?

A. The figure should have been 8,539,405. I gave you the number of hogs shipped instead of the number of hogs received.

Q. Now I am asking you, Mr. Park, to identify the years prior to 1928 in which the number received was greater than that and tell us the years and the number.

A. In 1924 we received 10,443,000; 1923, 10,460,000; 1919, 8,672,000;—do you want me to go farther back?

Exam. Diamondson: That is not larger than 1928, is it?

By Mr. Belnap:

Q. I asked you to give me all of the years prior to 1928 in which the number received was greater than in 1928.

A. The 1928 figure was 8,539,405; in 1924 there was 10,443,174 received. That comes within the greater, doesn't it?

Q. Exactly so.

A. 1923, 10,460,000; 1919, 8,672,000; 1918, 8,614,000; 1916, 9,188,000; 1898 there were 8,817,000.

[fol. 741] Q. That is far enough back, Mr. Park. Do I understand you to state that only in those years were there a greater number of hogs received at the Union Stock Yards and Transit Company facilities than were received in 1928?

A. That is right.

Exam. Diamondson: That is directs and salable?

By Mr. Belnap:

Q. That is directs and salable? The total supply at the stockyards?

A. That is right.

Q. Now have you completed your comments on the first four pages of statistics in your exhibit that is pages 7-A and — pages 7-A to 10-D?

A. Yes.

Q. Just run through the rest of this briefly, if you will, please?

A. Pages 11-A to 14-B show for cattle, calves, hogs and sheep the total number slaughtered under Federal inspection at Chicago; the total number of salables received at

the U. S. Yards, and the percentage of the latter to the former.

Q. Do the pages indicate the extent to which the Federal slaughter under Federal inspection at Chicago, drew cattle to Chicago as a source of supply?

A. Yes.

Q. Page 13-C covers the hog situation, does it not?

A. Yes.

[fol. 742] Q. What does that page indicate?

A. It indicates back prior to 1930 there were more hogs received at the Chicago Stockyards than were slaughtered at the Chicago Stockyards.

Q. Slaughtered in Chicago under Federal inspection?

A. That is better, yes. When I say slaughtered in Chicago Stockyards, I should say slaughtered in Chicago, but most of them are in that area.

Q. This is Federally inspected slaughterhouses, is it not?

A. That is right.

Q. Proceed.

A. In 1930 to 1934 the percentage of the salable—the percentage of the available supply of the total Federally inspected in the City of Chicago dropped 72½ per cent. It dropped further in the next five years average and further in the following five years average, and in 1947 it was still lower than any previous figure of the salable receipts in Chicago as it represented only 48.1 per cent of the total Federally inspected slaughter in the Chicago area.

Q. What information is shown on your pages 13-A to 18-B? How does that differ from the information you just described?

A. These four pages give forth four classes of animals, cattle, calves, hogs and sheep; the total number slaughtered in the City of Chicago Federally inspected and non-inspected and that means city or state inspected.

[fol. 743] The total in the Chicago area is given and then we are comparing the total salable receipts at Chicago here with that figure by showing in the third column the percentage or the total salable that was available to the total slaughtered.

Exam. Diamondson: What is the explanation of having more of them slaughtered than received?

The Witness: If you will pardon me, Mr. Examiner, if you will refer to page 13-C, back in the five year average ending in 1929 we received a great many more hogs in Chicago than were slaughtered in Chicago and that excess or surplus supply moves to the east and in fact a part of the total moves to the east and then you get down to 1947 where the packers slaughtered 4,000,000 hogs in Chicago and we had 2,000,000 on the market. You can see——

By Mr. Belnap:

Q. The Examiner asked you for the explanation.

A. Exhibit 9-C shows that we shipped only 14½ per cent of our salable receipts from Chicago and the packers had available but did not purchase the other hogs. In other words——

Q. You are talking about page 9-C?

A. That is right.

Q. The Examiner wants to know the explanation of why there are more hogs slaughtered in Chicago than are received for sale on the public market. What is the explanation?

A. The answer is they are intercepted by the direct buy- [fol. 744] ing packers out in the country to evade the market. Does that answer it?

Q. That is the explanation, isn't it?

A. Yes.

Q. Well, that answers it.

A. I am not asking you if that is the answer you want, but if that gives you the information you are seeking.

Exam. Diamondson: Mr. Belnap, these figures are all drawn from what public documents?

By Mr. Belnap:

Q. What is the authority for all of this data?

A. It is down at the bottom, United States Department of Agriculture, Bureau of Agricultural Economics.

Mr. Rynder: If I may inquire, does that bureau also publish the figures as to Federally inspected and non-Federally inspected? Do they get the non-Federally somewhere?

The Witness: I don't know that they publish it, but they have it available and this was secured from their office in the Chicago stockyards from the Bureau of Agricultural Economics in the Department of Agriculture.

By Mr. Belnap:

Q. Now as I understand it, your pages about which you have last talked, 15-A to 18-D differ from the preceding four pages only in that you have added non-Federally inspected slaughter in your basis, in column 1?

A. That is right.

[fol. 745] Q. What is shown by pages 19-A to 22-D, inclusive?

A. This shows the yearly slaughter in the City of Chicago under City inspection. In other words, this shows the slaughter in Chicago other than Federally inspected and compares that with the Federally inspected in Chicago.

Q. It shows the makeup of how you got your total figures?

A. That is right.

Q. Will you please take up pages 23-A to 26-D?

A. Those four sheets make a comparison of the total number of salables received at U. S. Yards; the total number of directs received at the U. S. Yards and the total number received other than at the U. S. Yards, direct, and the total number received in the City of Chicago, U. S. Yards as well as elsewhere, direct, on cattle with the total number of salable and directs received in the City of Chicago, U. S. Yards and elsewhere.

Q. Now you are describing all four comparisons in one sentence, aren't you?

A. Yes, in one chapter.

Q. Let us take them up one at a time. Page 23-A, what is represented by your base figures in column 1?

A. That is the total number of salable and directs received in the City of Chicago and that includes Union Stock Yards as well as elsewhere, anywhere else.

Q. Well then——

[fol. 746] A. That is the base figure.

Q. On all four pages, you use the same base figure in column 1, do you not?

A. Yes.

Q. Then you compare various breakdowns of the total on the various pages?

A. Yes.

Q. Which portion of the total do you compare with the total on page 23-A?

A. The salables received at the U. S. Yards with that base figure.

Q. When you come to 24-B, what do you compare the base figures with?

A. The total number of animals received direct.

Q. When you come to 25-C, what do you compare the base figures with?

A. The total number received other than U. S. Yards.

Q. That is pages 24-B and 25-C are confined in column 2 to the directs in each instance, are they not?

A. That is correct. One is the directs at the Union Stock Yards and the other the directs other than the Union Stock Yards.

Q. Then page 26-D?

A. That compares the total number received in the City of Chicago as well as the U. S. Yards direct. In other [fol. 747] words, it is 24-B and 25-C combined.

Q. And the four pages that you just talked about relate to cattle?

A. That is correct.

Q. Which species involve the greatest of these movements of directs?

A. Hogs.

Q. What pages do we find the story for hogs on?

A. Page 31-I to and including page 34-L. May I say that is the same identical comparison of hogs in the same way that I described the comparison of cattle?

Mr. Smith: Has the witness stated what governs those inspections? That is, whether a particular animal slaughtered is ~~inspected by~~ the City or by Federal authorities?

Mr. Belnap: No, he has not covered that.

By Mr. Belnap:

Q. Can you tell us about your slaughtering figures, which were in the previous pages of your exhibit, as to what is the difference between the Federally inspected and other than Federally inspected slaughtering?

A. I don't understand the question. One is slaughtered in what we call a Government inspected house.

Q. Which is?

A. The Federally inspected, and the other is not.

Q. Let us stop at that. What is required to have a Federally inspected house?

[fol. 748] A. The requirements are very strict. They have got to have certain killing floors and certain machinery and a certain degree of sanitation and cleanliness and then they can ship interstate. The man who slaughters non-Federally inspected can not ship across the state lines and he is not subjected to severe requirements of the Federally inspected operator.

Does that explain it, Mr. Smith?

Mr. Smith: Yes. I think so. I wondered to what extent that might include how much is interstate and how much state, but I suppose it would not be a very large amount?

The Witness: Very small.

By Mr. Belnap:

Q. The state and interstate that you refer to pertain to the movement of the products?

A. Of the products, that is right.

Q. Now, if you will turn to page 34-L, the significance of that page is that it shows the growth of the movement of the directs in the case of hogs when they are directs received by the packers?

A. Yes.

Q. That tells the story there?

A. Yes.

Q. You apparently do not have 1947 figures?

A. Yes, I have them. They are probably not on the sheet that you have, but everybody else has them.

Q. Do you have any further comments on the matter of [fol. 749] the movement of directs?

A. No.

Q. It shows in recent years, the last three years, a substantial increase, does it not, over the prewar situation?
A. Yes.

Mr. Rynder: Substantial increase in what?
Mr. Smith: In directs.

By Mr. Belnap:

Q. That is the increase in terms of percentage of the total?
A. That is right. Mr. Examiner, I might mention again as I did once previously that the 1945 and 1946 figures are not representative because of the O. P. A. rationing and ceiling prices which confused the whole operation of the livestock industry to the extent that you can not tell anything.

Exam. Diamondson: You have already explained that on the record.

By Mr. Belnap:

Q. Mr. Park, you told us as to the effect of the deteriorated railroad service on the volume that you received or that is likely to be received at the Chicago Public Market?
A. Yes.
Q. Now if you were not to consider the railroad service or assume to the contrary of what the railroad people are saying, that is, that the granting of the Swift demand will permit them to continue an efficient railroad service, so as to center your whole attention on the granting of [fol. 750] the Swift demand apart from the railroad service, what in your opinion would be the effect of that upon the volume of livestock received for sale on the public market at Chicago?
A. Well, I think the granting of the Swift complaint would put right in our front yard or in our backyard a competitor that originally was one of our partners and one who was responsible for creating and bringing into existence and maintaining the market for a great many years, the founder of Swift & Company, G. F. Swift. G. F. Swift is a tradition in the U. S. Yards, having started

there with his little red wagon, and he helped to build up the yards. His people who are operating the place now are trying to put a competing point in there that would hurt our market seriously.

Q. By "hurt" do you mean in your opinion it will tend to reduce the volume of salable livestock received on the market?

A. Yes. This market which we helped to build up with the founder of Swift & Company has been built up through the securing of the volume of both the buying and the selling and now they want to take advantage of this location to our disadvantage and necessarily lessen the cost of getting their livestock apparently to that plant and the advertisement would be that it is located at the front door of the stockyards and if it were located there, it would hurt us very seriously and it would reduce the volume and hurt the market and hurt the livestock industry [fol. 751] as a whole by injuring the price establishing market in the United States.

Q. In making that answer, Mr. Park, have you given any consideration to the obvious fact that if the Swift demand is granted the rate and practice must be extended to all packers; that it can not be confined only to Swift?

A. I can not conceive that if it were to be granted to Swift & Company that the other packers would not immediately demand it and be entitled to receive it. So it would go back to where we started. The stockyards at Chicago which came into existence in 1865 to get away from that sort of business, would have a flock of yards all around and it would put it all back again in that same chaotic condition.

Exam. Diamondson: It is your opinion that the other packers would ask for the same sort of a setup as Swift?

The Witness: Yes, I think it stands to reason that they would.

By Mr. Belnap:

Q. Do you as a man who has had some experience with tariffs, Mr. Park, have any idea or can you conceive of any way that the rate and practice that Swift demands

could be treated exclusively for the use of Swift & Company by some publication of a tariff?

A. I don't see how it could be and I might say if you will permit me I was all through the 17,000 case and the rate was fixed at that time and the market of livestock was not contemplated by anyone as that requested in the [fol. 752] Swift complaint and this would be immediately reflected in an increased rate for all of our patrons.

Mr. Rynder: Mr. Examiner, I should like to object and move to strike any statement of the witness as to what the rates in the Western Livestock Case was intended to cover. We were parties to the case. I was in the case myself.

Exam. Diamondson: On the record,

The objection will be overruled, Mr. Rynder, and the witness' statement received for what it is worth.

By Mr. Belnap:

Q. Mr. Park, at the time the rate was fixed in Docket 17,000, was there any such terminal handling at the Union Stock Yards in Chicago such as would be required if the Swift demand would be granted?

A. There was no such handling in Chicago.

Q. Since the 17,000 case, you have prosecuted, have you not, a formal complaint case involving terminal deliveries, of charges for and at the stockyards?

A. Yes.

Q. What is the number of that case?

A. 24,847.

Mr. Smith: And reported in Docket 219?

The Witness: 219 I. C. C. 131.

[fol. 753] By Mr. Belnap:

Q. Well, at the time that case was decided, was there any such terminal handling and delivering of livestock at the Union Stock Yards such as would be required if the Swift demand be granted?

A. Thank goodness, there was not.

Q. Please refer again to your exhibit and tell us what is shown by page 39-A and the authority for those figures?

A. 39-A is a statement showing the origin of receipts that includes salables and directs to the Chicago Stock Yards during the year 1947 by rail, by states. For instance, in 1947 we received 229,749 cattle from Iowa; 543,065 hogs originated in Iowa.

Q. Does that sheet give some indication of how much of the traffic is interstate traffic.

A. Yes.

Q. Could you be sure that all of the livestock shown as originating in Illinois is interstate traffic?

A. Not necessarily, because of the fact that there is a certain volume that moves from some westerly point as a feeder to a feeding point to the State of Illinois for feeding and finishing and then is reforwarded the balance of the through rate. If it travels on the original waybill from the origin point, then that original western origin state would be shown in here and if it traveled on new billing, it would be shown in Illinois. That is a small fraction, in my opin-
[fol. 754] ion, of the total.

Q. Does this page 39-A of your Exhibit 43 indicate that the preponderance of the livestock received at the Chicago Union Stock Yards comes from the west and it will be brought in by western railroads.

A. That is right.

Q. Does this page also show the great size of the area?

A. Yes.

Q. For which this market is serving?

A. Yes.

Q. Which is served by this market, is that right?

A. That is right.

Mr. Rynder: I take it that is in cars?

By Mr. Belnap:

Q. These data are in what units?

A. In heads.

Q. What is shown by page 40-B?

A. The same identical information for salable receipts in Chicago by States and also by heads.

Q. This is a truck movement, is it not, on 40-B?

A. Yes.

Q. And the movement which is not involved in the case?

A. Yes.

Q. But the data on page 39 covers the rail movement which is involved?

A. Yes.

[fol. 755] Q. What is shown by your page 41-A?

A. Destination by states and by cars and by truck of all shipments out of Chicago during the year 1941. That information is not available now for any years subsequent to '41. In other words, Mr. Examiner, if you please, prior to 1941 the Stock Yards company maintained a record of the destination of various states of all of their shipments and they do not do that any more since the war started.

Q. Does this page indicate the size of the area for which the Chicago public market stands as a source of supply?

A. Yes.

Q. In 1941, that is for the year 1941?

A. Yes.

Q. Have you an opinion as to whether this is fairly representative of present day conditions?

A. I am quite sure it is.

Q. In so far as the territory to which the outbound shipments moved?

A. Yes.

Q. Do you consider these as shipments from Chicago?

A. Yes.

Q. Where were these railroad cars and trucks loaded?

A. Chicago Stock Yards.

Q. All of them?

A. Yes.

[fol. 756] Exam. Diamondson: We will recess at this time until 2:00 o'clock, p. m.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 757] Afternoon Session

Exam. Diamondson: The hearing will be resumed.

Mr. Belnap: Mr. Examiner, it occurs to me that the record might be aided if I supplied for it the most recent copy

of the Directory of the Meat Inspection Division, Production and Marketing Administration, Live Stock Branch of the United States Department of Agriculture.

I have here in my hand a copy of the document under date of 1946. I am not sure whether this is the latest one or not. It is a public document, purely a directory. I would like permission to furnish it, the latest available issuance of the directory, to be furnished within, say, twenty days.

Exam. Diamondson: Any objection to that, Mr. Rynder?

Mr. Rynder: Could I see it?

Mr. Belnap: Yes.

Mr. Rynder: I don't think I have any objection.

Mr. Belnap: It will indicate the stock yards in Chicago and the federally inspected.

Exam. Diamondson: That may be done within twenty days, Mr. Belnap.

Mr. Belnap: Thank you. I have completed my inquiry of the witness.

Exam. Diamondson: Cross examine.

[fol. 758] Mr. Rynder: Any examination from the other side?

Mr. Gladson: I have one question I want to ask him.

H. R. Park resumed the stand and testified further as follows:

Direct examination (continued).

By Mr. Gladson:

Q. On page 6-E of your exhibit, Mr. Park, you show that the Livestock Exchange, commission men's exchange has 225 members. Can you tell me approximately how many producers in general terms ship to those commission men during the course of a year?

A. It would be impossible to give you, Mr. Gladson, the actual number but I would say several hundred thousand, possibly half a million.

Mr. Smith: There is one question I would like to ask.

By Mr. Smith:

Q. Mr. Park, you said, as I understood your testimony, that if the complaint here were granted that it would reduce the amount of salable livestock on the Chicago Market but you also stated that a reduction in the amount of salable livestock might be caused by a good many different factors, and so I would like to ask you this specifically:

Is it your opinion that the granting of the relief sought here would reduce the amount of salable livestock on the Chicago market for the reason, among others, that it would encourage the further increase of direct purchases and shipments to this market?

[fol. 759] A. I think that is true, Mr. Smith. Any facilitating of this movement of livestock, anything that tends to encourage it by making it more profitable or less expensive or anything of that kind would contract,—would tend to contract or reduce the volume coming to the market for sale.

Mr. Smith: That is all.

Mr. Quasey: I have a question, if the Examiner please.

By Mr. Quasey:

Q. Mr. Park, when you mention about the weighing of livestock, I don't know that I caught from your testimony any statement as to whether the livestock is fed and watered before it is weighed.

A. Yes, Mr. Quasey. If I did not state it,—I think I did, but if I did not, it is watered and weighed by our members.

Mr. Belnap: Watered and fed.

The Witness: It is watered and fed and rested before it is weighed by our members.

By Mr. Quasey:

Q. And, generally, the feeding and watering takes place when,—after it is unloaded?

A. That is right, and delivered to our people.

Q. I mean is it done immediately thereafter or at some later time?

A. No, it is done immediately that it is delivered into the possession of our members, who then drive it, as a rule, from the unloading chutes' pens to the sales pens and it is

almost immediately thereafter that the animals are given [fol. 760] water and feed.

Q. I have one more question and that is with respect to the testimony here concerning the possible delay at the Ashland Avenue yards. Now, is there any special significance to livestock in cars being delayed between drags of other cars, particularly during the summer time?

A. Yes. Hogs particularly,—it apparently injuriously affects any species of livestock, but hogs are peculiarly and particularly susceptible to heat in the summer time and unless adequately watered they suffer and die. We have had instances just a few years ago, for instance, where they had a clog-up and congestion down there that delayed an awful lot of shipments of hogs and we had several hundred hogs die just due to what we are talking about, because cars were held between other strings of cars and alongside other buildings, where they couldn't get any air, and with the excessively intense heat prevailing,—it was an awfully hot day,—it produced a good many dead hogs.

Mr. Quasey: Thank you.

By Mr. Gladson:

Q. Who furnishes the water, Mr. Park, that these hogs and animals drink?

A. The Union Stock Yard & Transit Company.

Q. That is included in the yardage charge?

A. Yes.

Q. And the Stock Yards also supplies the feed for a charge?

[fol. 761] A. That is right.

Mr. Gladson: That is all.

Exam. Diamondson: Any further questions? You may cross examine.

Cross-examination.

By Mr. Rynder:

Q. Mr. Park, in the early part of your testimony I believe you were describing the activities and functions of what I may term the commission men at the yards. I understood

you to say, amongst other things, that they paid the freight on these animals. Now, that is true in the first instance, is it not?

A. That is right.

Q. But isn't this what actually happens: Aren't the transactions in the purchase and sale of livestock by the commission men out there generally cash transactions within the same day?

A. They are what you call cash transactions but the money is rarely paid by the—or is generally paid by the packers within twenty-four hours.

Q. Now, either before or after receiving payment from the packer doesn't the commission man make out what is known as an account sales to go back to the shipper of the livestock?

A. That is correct.

Q. And if I am correctly informed, on that account sales he shows as one item the amount for which that specific lot of livestock was sold.

[fol. 762] A. That is right.

Q. The gross amount?

A. Yes, sir.

Q. Then he shows separately the freight charges paid by him, the feeding charges, if any, paid by him, his own commission fee; that is correct so far?

A. Yes, sir.

Q. Are there any other items?

A. Occasionally insurance, transit insurance.

Q. Now, those expenses, including freight charges, commission fee, yardage, are totaled and then deducted from the gross amount of the sales?

A. Yes, sir.

Q. And the balance is remitted to the shipper or producer?

A. Yes, sir.

Q. So that as soon as that transaction is ended, while the commission man has paid the freight charges in the first instance, they have been deducted from the amount remitted to the producer and it is the producer who bears them?

A. That is correct.

Q. Does the commission man obtain a permit from the

Secretary of Agriculture to operate in that capacity on the yards?

A. Let me call it a permit. You may call it a permit. We call it a registration?

Q. Registration?

[fol. 763] A. Yes, sir.

Q. And he is bound under the terms of the law and regulations to do certain things which you have described and has to put up a bond for faithful performance of those duties and the remittance of the proper amount of money to the shipper of the livestock; that is true, isn't it?

A. That is correct.

Q. The commission men whom you represent are not engaged in buying or selling on their own account, are they?

A. They are not.

Q. If that is performed by any yards agency, that is a different agency?

A. That is correct.

Q. You say you are familiar with the filing of the tariffs by these commission men and I believe you said you have filed them for them.

A. That is correct.

Q. Could you take any typical kind of a shipment and tell me approximately what the amount of their commission is? I don't want to go into too much detail. I believe it varies, and so forth.

A. Mr. Rynder, may I ask you to describe—you take the shipment and then I will tell you what the commission charge would be.

Q. Well, it has been said here that a typical cattle ship-

[fol. 764] ment would be 20 or 25 head. I believe it has been said that a typical shipment of hogs single deck might be up to a hundred. Would that be right? Take either one of those or both.

A. Well, on the 20 cattle the commission charge would be $18.75.

Q. 20 cattle $18.75?

A. Yes, sir. And the one hundred hogs would be $26.75.

Q. The yardage would vary in accordance with the scale of yardage charges that has been testified to heretofore?

A. Yes, sir.

Q. The feeding would vary in accordance with the amount fed and the kind of feed furnished; is that right?

A. That is correct.

Q. Do you happen to know at present the charge per hundred pounds for hay or per bushel for corn?

A. No, I do not.

Q. You could not give me an estimate exclusive of freight charges of the amount that the producer might pay in order to have his carload marketed through the facilities of the Union Stock Yard & Transit Company, could you?

A. Well, I am sorry, Mr. Rynder, but I do not have such information here available. If it is desired to secure something like that, I will ask Mr. Belnap and I presume it could possibly be secured.

Mr. Belnap: Isn't there a yardage tariff here?

[fol. 765] Mr. Smith: Yes, it is in the record.

Mr. Belnap: There is a yardage tariff in the record I understand, Mr. Examiner, and Mr. Park has given the commissions.

Mr. Rynder: Yes, I know that is in the record. I don't know what the present feed charges are. That is not in the record.

Mr. Belnap: We will supply that at the hearing on Monday. Will you make a note of that, Mr. Park?

Mr. Rynder: Well, then, maybe we can obtain a total at that time of what might appear to be a normal total marketing cost there aside from freight charges.

A. That is right. You will have it. You have the yardage charges already in the tariff.

Q. Let us just multiply head by cents.

A. That is right, and you have the commission charges that have been mentioned. If you haven't, we will give you whatever you want. Then you will have the feed. You will have the three outside of transportation.

Q. Yes, and if you can give me a guess at that time as to how much corn might be fed to a hundred hogs or how much hay might be fed to twenty cattle.

A. There will be the president of the Exchange or someone else that will give you that, I think, a little more accurately.

Mr. Smith: May I ask a question there about that feed, [fol. 766] Mr. Rynder?

By Mr. Smith:

Q. How long after these animals come in and are weighed are they slaughtered? I suppose that varies greatly.

A. That varies daily. Sometimes daily and most of the times the next day.

Q. Well, where they are slaughtered the same day they are fed in those instances, I take it, just for humanitarian reasons, are they?

A. They are fed for humanitarian reasons, Mr. Smith, and also to just take care of the stock. That is humanitarianism, of course, and to see that they weigh as much as reasonable, well, in selling them to the packer.

Q. Everybody knows they have been fed?

A. Yes.

Q. And that is taken into account, of course, in the bid?

A. That is right.

Exam. Diamondson: If they are held over before slaughter for the second day, are they fed again?

The Witness: If held by our people, yes, sir. If held by the packers, Mr. Examiner, I don't know but I think they are. I wouldn't know definitely.

By Mr. Rynder:

Q. Now, the members of the Chicago Livestock Exchange do act as the agents or factors or whatever you want to call them for the man who consigns livestock in their care for [fol. 767] sale. That is right, isn't it?

A. Yes, sir.

Q. Having been consigned to them, they have the choice of determining to whom it will be sold, on what bid it will be sold and matters of that kind in which they are acting for the shipper?

A. That is correct.

Q. I notice that you say your exhibit is submitted on behalf of the breeders, growers, feeders and farmers of livestock, patrons of members of the Chicago Livestock Exchange. I take it that is because your members choose to

take this position in this case on behalf of those people for whom they are acting, is that right?

A. Well, we have assumed that responsibility from instructions, advice, requests, appeals and petitions submitted to us by the livestock farmers, feeders, producers and shippers of livestock throughout many years, as you well know.

Q. Well, this particular complaint has not been pending during those many years and did you take it up with these individual breeders, growers, feeders and farmers to determine whether you should represent them in opposing this specific complaint?

A. Well, I talked to farmers, feeders and producers about this particular complaint and it has been their advice that it would be very bad for the industry if Swift & Company [fol. 768] were granted the favorable action.

Q. How many? Five hundred thousand?

A. No, I wouldn't say. Possibly a dozen, fifteen or eighteen. I haven't kept any record of them.

Q. Have they read the complaint?

A. No, not to my knowledge. They had my version of what it contained.

Q. They had your version of it?

A. Of what it contained, what you were seeking to accomplish.

Q. I understood you to say that the Chicago Livestock Exchange broadcast throughout the day information as to livestock prices, trends and other information that you thought might be interesting or helpful to the producers or shippers. Is that correct?

A. Yes, sir.

Q. Information of that kind is also broadcast during the day by a number of other agencies, is it not, in this same general territory?

A. I don't know to what extent it is broadcast by other people, Mr. Rynder.

Q. Don't you know that the Department of Agriculture itself does a fairly nice job of that daily in this corn belt territory and in perhaps others?

A. Radio broadcasts?

Q. Yes.

[fol. 769] A. The Department of Agriculture?

Q. Yes.

A. I didn't know that.

Q. You did not?

A. No.

Q. Now, Mr. Park, do your figures show that approximately half of the receipts at the Chicago Stock Yards are so-called directs?

A. Approximately, yes, sir.

Q. Approximately?

A. Yes.

Q. Or a little bit less, maybe?

A. Yes.

Q. I note by reference to page 34-L of your exhibit 43 that you show the receipt of directs at the Chicago yards as 57.3 per cent of the total for 1947. Is that right?

A. Mr. Rynder, 34-L shows in the second column the total number of hogs received in the City of Chicago, U. S. Yards, as well as elsewhere directs, and that that during 1947 was 57.3 per cent of the total number of salable and directs received in the entire City of Chicago, U. S. Yards and elsewhere.

Q. Well, the only difference between your reply and my question was the inclusion of the elsewhere than Chicago?

A. Yes, sir.

Q. And that elsewhere would include such places as the [fol. 770] Omaha Packing Company, the deliveries on team tracks and perhaps certain others?

A. That is right.

Q. Have you in perhaps the same bulletins of the Department of Agriculture noticed the national average for that same figure for the latest possible year?

A. I haven't noticed it recently.

Q. Do you happen to know——

A. I have noticed it, of course, over a period of years so many times.

Q. Do you happen to know that for the country at large the Department reports it as 65 per cent, or slightly more than the percentage at Chicago?

A. I imagine that is correct. I am not sure. As I say, I don't know.

Mr. Smith: May I ask, Mr. Rynder, if you will be good enough to tell me, did your figure include directs delivered

at various points in the country at which there was not a posted public stock yards?

Mr. Rynder: You mean my figure?

Mr. Smith: Yes.

Mr. Rynder: My 65 per cent?

Mr. Smith: Yes.

Mr. Rynder: I can't answer that at this time, although I hope to have it next week. I have amongst my papers the [fol. 771] bulletin in which that is published and I think in some way the Department connects that for the entire U.S.A.

Mr. Smith: I understood that.

Mr. Rynder: I mean by all methods of marketing.

Mr. Smith: Yes. So that you have the impression, which you will verify or disqualify, that that 65 per cent includes those that would arrive at various points throughout the country at which there was not posted markets as well as those at which there were posted markets?

Mr. Rynder: That is my understanding.

The Witness: And that percentage is, according to my recollection, the per cent of the federally inspected hogs purchased direct, confined to federally inspected slaughter.

By Mr. Rynder:

Q. But even as to Chicago your figures would tend to show that something more than 50 per cent of those who were selling livestock for shipment to this market have decided not to use the services of the commission men whom you represent. Would that be right?

A. No, I couldn't answer it that way because perhaps a man may come to the Chicago market this week and go to the Omaha Packing Company next week and alternate. He may use it some time and not the other.

Perhaps I made a mistake in speaking of the number of men, but at least the total number of livestock marketed represent that proportion at Chicago.

[fol. 772] Mr. Belnap: You are speaking of hogs, are you not, Mr. Rynder?

Mr. Rynder: I am speaking of hogs.

A. That is the figure so shown.

Q. Yes.

A. I think it is true. I can't say the number of those hogs your purchased at other markets, so that it does not necessarily mean that they were consigned by farmers, feeders or producers to that market, but that those that you purchased through what we call Swift dominated markets, that would not be a farmer, feeder or shipper direct to your plant.

Q. So that is the true number except so far as directs credited to us here may have been purchased on another public market?

A. That is right, or possibly in the country at some direct buying station where the shipper did not necessarily know it was the Omaha Packing Company, but he sold to the direct buying packer there.

Q. But at least he did not send it on to the commission man at Chicago.

A. Unfortunately for him and us both.

Q. That percentage of directs even to Chicago has been constantly growing over the years, hasn't it?

A. Unfortunately, yes.

Q. Is it your idea that out there in the country where these hogs are bought there doesn't exist competition for their pur------

[fol. 773] A. I would say that there is competition of a character but that it is not at all anything like the competition that is available at a public market; that it is infinitesimally small.

Q. Then the people who market a majority of the hogs in the U. S. A. have adopted a less favorable method of marketing them, is that right?

A. In my humble opinion.

Q. Mr. Park, if I understood your direct testimony correctly you said somewhere that Chicago fixes the price for these various species of livestock, is that right?

A. That is what I said. I said it either fixes it or played a very important factor in the determination of livestock values.

Q. Yes.

A. Livestock prices and livestock values.

Q. By that do you mean to say that some commission man

or group of commission men can fix a price for livestock at which it will sell at a certain time?

A. I meant to convey, Mr. Rynder, that the prices secured by our members at Chicago are used by your concentration stations and everybody else as a guide to what they will pay in purchasing. Not necessarily that they all pay it, but the Chicago price, they use that as a guide.

Exam. Diamondson: It does not fix the price. It is merely used as a guide, is that correct?

[fol. 774] The Witness: Yes, sir.

By Mr. Rynder:

Q. It would be more correct to say that Chicago is one of the principal m-rkets at which prices are registered.

A. You may say registered if you like, but I would say fixed, determined.

Q. What I am getting at is this, Mr. Park: I have long outlived my usefulness and I know that you are still comparatively young, but I think both you and I here can remember six cent hogs and ten cent hogs and fifty cent hogs or twenty cent hogs and perhaps up to the recent peak, whatever it was.

Mr. Day: I don't think Mr. Park will remember fifty cent hogs.

Mr. Rynder: Fifteen.

Q. Would you say that a number of factors other than commission men have something to do with those price levels?

A. Oh, indeed, but I said before and I will say again that before your people or any of the other people sell at any point livestock they take into consideration what the prices are at Chicago and the people at Chicago don't do that. They go about it and inquire about the unknown prices that they receive in the sale of livestock and that is the only place where that is true.

Q. Mr. Park, do you happen to know what our buyers do take into consideration before they bid in Southern Minnesota or interior Iowa?

[fol. 775] A. I think so. I think you will agree that the

first thing they do is to find out what the livestock is selling for in Chicago.

Q. No. If you are asking me if I agree to that, I have been told that they are advised what the products can sell for in the East.

A. Of course, that is a factor necessarily, Mr. Rynder.

Q. And that they are given leeway on a certain margin there, dependent on the present selling price of products. Now, would you say that the supply of hogs at a particular period, a particular time, particular season and, indeed, maybe a particular day has something to do with the price paid at a specific market?

A. Yes, sir, often a particular hour, but the Chicago price is always a determining factor and what it is is passed on.

Q. If there happened to be a large oversupply at Omaha one day and a short supply at Chicago, that might affect the prices in both markets on that day?

A. Yes, sir.

Q. Now, so far as seasons go and leaving out abnormal war conditions or something like that, would you not expect a lower price during the heavy hog runs in the fall and early winter and a higher price when they are scarce?

A. That is right.

Q. And do you think that the matter of full employment [fol. 776] by people of the United States at good wages has something to do with the price of hogs?

A. Necessarily so.

Q. Mr. Park, is Chicago still the top market in numbers on all species of livestock?

A. It is not, no, unfortunately.

Q. On what is it tops, if any?

A. What is that?

Q. On none?

A. Sir?

Q. On what is it the top market in numbers, do you know, if any?

A. Definitely so on cattle.

Q. It is on cattle?

A. Yes, sir.

Q. How about hogs?

A. I don't know. I think it is tops on hogs but I am not sure. I haven't seen the 1947 figures.

Q. It seems to me I read at certain times that other markets exceed Chicago in the total number of hogs marketed per year.

A. I see that once in a while myself.

Q. And how about sheep?

A. It is not the tops on sheep.

Q. What is the top market on sheep,—Denver?

A. I don't know.

[fol. 777] Q. You don't know?

A. No.

Q. But Chicago is not?

A. That is right.

Q. Mr. Park, would you be good enough to look at page 9-C of your exhibit 43?

A. Yes, sir.

Q. If I am correct there, the number of salable livestock received at Chicago declined from 10,304,216 in 1944 to slightly less than two million in 1947,—I mean salable hogs.

A. That is right.

Q. Have you any idea what brought about that decline in the receipt of salable hogs at Chicago?

A. Well, I imagine, Mr. Rynder, the available supply throughout the country over a period of years cuts a figure; and the numbers of the direct buying packers entering the market, intercepting the hogs in the country, is quite a factor.

Q. Yes. Well, have you ever heard of selling to packing plants in the interior?

A. Yes, sir, that is quite a factor.

Q. And that has been a factor, hasn't it?

A. Yes, sir.

Q. And you would hardly expect the interior Iowa packer to come to Chicago and buy his hogs and take them back again would you?

[fol. 778] A. I would not. I would like to have him, but I don't think there is any chance at that.

Q. Would you think it unnatural that the Chicago packer, facing that situation where his packing plant was located, might seek to supplement his supply by competing with the interior Iowa packer in his own yard?

A. Mr. Rynder, I think definitely that you could secure

all of the hogs you have required throughout the years on the Chicago market had you not gone out into the country and intercepted them.

Q. That is your construction of it?

A. That is my honest, humble opinion, yes, sir.

Q. Leaving them all to be intercepted, let us say, by the interior Iowa packer and running our own Chicago plant without a sufficient number, is that it?

A. Well, if you draw that conclusion from my answer that is your prerogative, but I did not so state. I stated exactly the opposite, that I have said and I do say that had you not evaded the market by going out and intercepting hogs in the country the hogs would have come to Chicago and you could have purchased your supply here and not created this indecent expense on the industry by establishing all these concentration stations throughout the corn belt.

Q. Do you know that Swift & Company, at least, for the purpose of going out and competing with the interior Iowa [fol. 779] packer in the purchase of hogs has established substantial plants in that teritory so as to compete with them as packing plants in their own territory?

A. That I do know, yes, sir.

Q. The total number of salable cattle received at the Chicago Yards has been cut almost in half since 1922, has it not?

A. Now you are talking about 7-A?

Q. 7-A, yes.

A. In 1922 it was 3,858,000. Last year it was 1,933,000. So the statement that you made is correct.

Q. Yes. And on sheep, page 10-D, if I read your exhibit correctly, the amount has gone down from 3,640,000 to 672,000. Is that right?

A. 10-B?

Q. 10-D.

A. That is correct.

Q. Now, it has also been true, without going into all the details, that there has been a substantial reduction in the number of livestock of all species slaughtered in the Chicago plants over this same period, has there not?

A. This exhibit I think will show that.

Q. It shows that?

A. Yes.

Q. From those various standpoints the position of Chicago as a packing house center has certainly not been im-
[fol. 780] proving in the last twenty years or so, has it?

A. Well, Mr. Rynder, whatever the figures show. What particular page of the exhibit were you talking about?

Q. Well, I am thinking generally of reduction of receipts, Mr. Park, reduction of federal slaughter as to all species. They have both gone down?

A. That is correct, yes, sir.

Q. Am I correct in understanding from some figures you read that the truck receipts at the U. S. Y. & T. Company are now slightly greater in head than the rail receipts?

A. Are you talking and referring to pages 39-A and 40-B? Will you look at them, please?

Q. I think you gave these from a year book in answer to a question by Mr. Belnap and what I got down was livestock by rail in 1947 3,071,874 and by truck 3,576,351.

A. Well, Mr. Rynder, pages 39 and 40 of this exhibit will, I believe, give you the information you are talking about. I don't know what you are talking about, but if you get those two——

Mr. Rynder: Off the record a minute.

(Discussion outside the record.)

Exam. Diamondson: Back on the record.

Mr. Rynder: Mr. Examiner, if you will indulge me a minute off the record I think maybe I can show Mr. Park the figures he was reading and what I mean.

[fol. 781] Exam. Diamondson: Yes.

(Discussion outside the record.)

Exam. Diamondson: Back on the record.

Mr. Belnap: While you are waiting might I inquire of Mr. Park one thing, Mr. Rynder? The Examiner inquired was there any explanation on the record as to why in respect to cattle, calves and hogs the receipts by truck were larger than by rail. I don't know whether Mr. Park knows but I was going to inquire of him whether or not the rail difficulty and the experience with that rail service

at the present time and under present conditions was in part responsible for that?

The Witness: That is true. There has been a tendency in the last year of shippers previously shipping by rail to go to trucks, but the answer,—of course, I presume you want it over a long period of time,—is just the tendency has been away from the rail and to the truck. Some of the markets like Sioux City, for instance, and some of the others, 95 per cent of the receipts are by truck. Chicago receives a larger percentage by rail than any other market except Denver, where the long hauls are. Chicago is a rail market as well as a truck market, but the trucks you will realize are popular on short hauls and there is a tremendous production of livestock within a short area, a short distance of Chicago and so it has just gradually grown as the good roads have grown and the trucks have improved.

[fol. 782] Exam. Diamondson: It depends a good deal on the location of the stock yards?

The Witness: Yes, sir.

Mr. Belnap: Does the efficiency of the railroad service have anything to do with it, Mr. Park?

The Witness: Yes, sir, definitely so.

Mr. Kaylor: Is that answer made without regard to rates for transportation?

Mr. Belnap: I didn't hear you.

Mr. Kaylor: Mr. Park, is that answer without regard to freight rates?

The Witness: Mr. Kaylor, I don't quite follow just what your question is.

Mr. Belnap: As to whether the freight rates influence it, Mr. Park, the difference between truck and rail costs.

The Witness: Oh, yes, but I would say the service is more important to the producer and feeder and farmer than the rates. That is a margin, of course, beyond which they won't go, but I mean the main thing is the service.

By Mr. Gladson:

Q. Mr. Park, didn't Swift & Company and the other big packers first go to the country and buy large numbers of directs in 1928? I am talking about hogs now.

A. Well, I think the figures, Mr. Gladson, show that there was an impetus in the direct movement of hogs along about that year.

[fol. 783] Q. Wasn't that the first year they bought a large number of directs in the country?

A. I am not familiar enough with the circumstances to say yes or no on that because I don't know.

Q. Can you tell us whether there were plenty of hogs on the Chicago market in 1928?

A. Yes, sir, there was and has been.

Q. Aren't there definite limitations to the hauling of livestock to market by trucks? Isn't distance one of them?

A. That is true within certain bounds. We can truck livestock for five or six or seven hundred miles to Chicago but they are the isolated movement, so the answer is that the most of the livestock that comes by truck comes to Chicago from a definitely circumscribed area, which would be 175 to 200 miles, generally speaking.

Q. Doesn't density of traffic or congestion of city streets have a deterrent effect on the movement of trucks hauling livestock?

A. Yes, sir.

Mr. Gladson: That is all.

By Mr. Rynder:

Q. Whatever the causes may be it is a fact now that approximately 50 per cent of the receipts at the Yards move in by truck?

A. In that neighborhood is correct, yes, approximately.

Q. Yes. And those truckmen are not affected by alleged [fol. 784] congestion in the Ashland Avenue yards or the 36 hour law or contracts between the Junction and the Stock Yards, are they?

A. That assumption is correct, according to my understanding.

Mr. Smith: I don't understand that. What do you mean when you say they are not affected by congestion at Ashland Avenue when the witness testified within five minutes that they were affected by that, in that they got more business because of that congestion? I don't understand.

Mr. Rynder: I mean a truck doesn't have to back his load into one of the tracks constituting the Ashland Avenue yard of the Chicago Junction.

Mr. Smith: He may have that load because of that congestion, as I have understood this witness.

Mr. Rynder: I know, but in getting his load to market he doesn't have to even go over around Ashland Avenue, does he?

Mr. Belnap: I will stipulate that the trucks do not use the rail facilities.

Mr. Rynder: That is about all I am saying. I thought Mr. Smith disagreed with that.

By Mr. Rynder:

Q. And he can take his truckload to any place that he pleases, can he not?

A. I presume the owner would have something to say about that. He can take it wherever the owner wants him to take it.

Q. That is right. If the owner wants him to bring it to the pens of the commission men, he can take it there?

[fol. 785] A. Yes, sir.

Q. If the owner wants him to take it into our place on Ashland Avenue, he can take it there?

A. Yes, sir.

Q. And there is no regulation or law yet that prevents that free choice on behalf of hogs or other livestock arriving by truck?

A. So far as I know there is no such law forbidding it.

Q. I thought I understood you to say that generally claims were made and paid when livestock was delivered late by rail at the Union Stock Yards. Is that right?

A. It is not right.

Q. What is the fact in that connection?

A. I said that the shippers filed claims when the shipments were delayed and they had losses.

Q. Now, what would occasion a loss, a change in the market from day to day?

A. A change in the market from day to day, a loss in shrinkage, a loss in weight caused by shrinkage, excess shrinkage of the animals, depreciation in the appearance

of the animals, animals being bruised, injured and crippled or killed.

Q. Would all that happen because a shipment happened to get in here at four o'clock in the afternoon instead of ten in the morning?

A. It could.

[fol. 786] Q. It could?

A. Yes.

Q. Merely on account of delay, even though it was handled properly?

A. Well, generally, Mr. Rynder, when they are delayed there is some other handling occurs, but that could happen but I hardly think entirely by the delay unless such as I mentioned in answer to Mr. Quasey's question, extremely hot or extremely cold and the animals were permitted to remain in the sun alongside of other cars with no water and such as that.

Q. Now, on the direct shipments you know, do you not, that no claims are filed on account of loss of market?

A. No, I don't know that because I have filed them myself for the Omaha Packing Company for one day.

Q. In other words, the Omaha Packing Company has purchased a carload of hogs consigned to itself, intended to be slaughtered in its plant, and it made a claim because they got in late that day and thereby lost a market?

A. I didn't say anything about shipments that you are talking about. I am talking about a shipment where the shipper consigned it to the Omaha Packing Company and it is delayed and there is an animal killed, or bruised, injured or crippled and he files a claim through the Chicago Livestock Exchange against that railroad.

Q. Now you mention an animal crippled or injured.

[fol. 787] A. I mentioned delay, shrinkage, market losses. The same identical conditions face the animals everywhere as occur to the livestock coming to the Chicago market.

Q. In the nature of things that would be very difficult to prove, wouldn't it? I am talking about injury to the animal now, Mr. Park.

A. Mr. Rynder, your loss in the market, that is something that can be ascertained. If the shipment arrives too late, if it arrives in the afternoon instead of in the morn-

ing, the Chicago Drovers' Journal is the official paper for the Chicago Stock Yards and that is used by your folks down there in determining your values. That governs how much of a loss there is. If the market is 25 cents lower the next day, then the railroad is liable for 25 cents market loss.

Q. Even though the man received the same price?

A. I wouldn't know. There is no way in the world that I would know what he receives as compared to what he would have received, but he will tell me that he received a price 25 cents or something like that lower than he would have gotten had he gotten that in on time. That is all I am talking about, something that I know.

Q. You do not attempt to investigate whether he has a valid claim or not?

A. I take his word for it. He gives me the home weights and his shrinkage and information as to what his normal [fol. 788] shrinkage is. That is furnished the railroad.

Exam. Diamondson: The railroad does not pay without investigation, does it?

The Witness: I beg pardon?

Exam. Diamondson: The railroad would not pay a claim without investigation?

The Witness: Absolutely not, sir, they would investigate it, but I am stating about claims that they have investigated and found negligent handling and liability on the shipment and I have done it on shipments to the Omaha Packing Company.

By Mr. Rynder:

Q. Are you familiar with the ordinary livestock contract under which livestock moves by rail?

A. Reasonably so.

Q. Doesn't it contain a provision that the carrier does not guarantee any schedule, but shall be held only to transportation with reasonable dispatch?

A. That is contained in the livestock contract.

Q. Yes.

A. That is true, it does contain such provisions, but the courts have overruled that so many times that it doesn't mean anything.

Mr. Kaylor: Am I to understand that if there is a difference of 25 cents in the market that you could file a claim on 20,000 pounds if you had 20,000 pounds in there?

The Witness: Yes.

[fol. 789] Mr. Kaylor: That much?

The Witness: That would be $50.

Mr. Kaylor: There would be that much loss on account of delay in shipment?

The Witness: Yes.

Mr. Kaylor: Would that be loss of a market?

The Witness: Yes.

Mr. Kaylor: I was wondering. Those claims after investigation by the railroads,—are they carefully investigated?

The Witness: I think so. I would think altogether too careful. They take so much time to complete their investigation before they talk settlement.

Mr. Kaylor: That, of course, would be equal to your freight charges in some instances.

Mr. Smith: Do you collect many of those claims, Mr. Park?

The Witness: Yes, quite a few, Mr. Smith.

By Mr. Rynder:

Q. Might I ask how often you have filed a claim on behalf of a shipper to the Omaha Packing Company location at 2320 South Halsted?

A. I couldn't tell you definitely just how many times. Quite a few times.

Q. It wouldn't be very often, would it?

A. Well, you mean by that once a year? That is such an indefinite question.

Q. But normally the amount that he was shipping would [fol. 790] not be received in connection with a commission merchant?

A. What is that?

Q. I say normally the man that was so shipping would not be employing in connection therewith a commission merchant, would he?

A. Well, this is how we get in on it, Mr. Rynder.

Q. And I was about to add, and you file claims for the commission merchant?

A. That is right. This is how we get in on it. Here is a shipper who ships part of his stock to the Omaha Packing Company and part of it to the Chicago market and he has a loss on the shipment to the Omaha Packing Company. He sends it along just like he does his claims on the shipments to the Chicago market. He sends them in to the Chicago Livestock Exchange.

Q. Does the market sometimes go up from day to day instead of always going down?

A. Mr. Rynder, in each one of my answers I have been very careful to say "where he had a loss claims are filed". There wouldn't be any loss if the market went up sufficiently high to offset his excessive shrinkage.

Q. Mr. Park, you have spoken about your difficulties in recent months or perhaps for the past several years due to inadequate railroad service, have you not?

A. I said the last year or so the service has been—I said [fol. 791] that during the war the service was not as good as it had previously been and that after the war it improved some and then it got worse and it has been bad the last few months or year, possibly a little longer.

Q. If your recollection goes back that far, was your railroad service better and more adequate in the twenties, when you received as much as ten million hogs per annum but practically none by truck, than it has been in recent months or the past couple of years?

A. I would say it was better then than it has been recently.

Q. Mr. Park, you spoke of knowing what the Commission had in its mind in the decision in the Western Livestock case, which, I believe, is at 176 ICC 1. You were aware that the Omaha Packing Company delivery was being made at the time of that decision, were you not?

A. Mr. Rynder, if the Examiner got the impression that my testimony was in harmony with what you have said, namely, that I knew what was in the minds of the Commission, then I will apologize to him and to the Commission because I know nothing whatever occult. I know something about this business we are talking about and that is not in

the minds of the Commission. I do know that I was in all of the hearings except a few in California and that the evidence placed in that hearing and no doubt used as a factor by the Interstate Commerce Commission in determining [fol. 792] the rate level included no evidence as to handling livestock at the Chicago Stock Yards into a plant such as you propose to erect in the northwest corner of the Stock Yards.

Q. I asked you if the Omaha Packing Company location was not there at the time and livestock deliveries being made to it at the time?

A. That is true, yes.

Mr. Rynder: That is all I have on cross examination, I believe.

Exam. Diamondson: Any further questions?

Mr. Day: I would like to ask him a question.

Mr. Belnap: I have one question on redirect.

Redirect examination.

By Mr. Belnap:

Q. Mr. Park, Mr. Rynder had you emphasize the growth over a period of years of the volume of hogs which moves to Chicago in the form of directs. Does that volume represent the elimination of an equivalent amount of buying competition on the Chicago market?

A. Yes, sir.

Q. Does that in turn reduce the attractiveness of the Chicago market to producers who want to do business at a public market?

A. Yes, sir.

Q. And does the loss of that buying competition then adversely affect the volume of the salable stock in the market?

[fol. 793] A. Yes, sir.

Mr. Belnap: That is all I have.

Exam. Diamondson: Mr. Day, do you have a question?

Mr. Day: Yes.

By Mr. Day:

Q. Mr. Park, can you state how many trucks it would take to equal the livestock in one carload?

A. I couldn't say, Mr. Day. I wouldn't know.

Exam. Diamondson: Well, could you approximate it?

The Witness: Oh, there are some——

Exam. Diamondson: Of course, we all realize there are trucks of different sizes.

The Witness: It all depends on the size of the trucks. There are some trucks that will hold almost a carload, and then there are some that it would take five or six trucks to carry a carload.

By Mr. Day:

Q. Isn't it a fact, Mr. Park, that on the trucked livestock you show in your exhibit a very substantial portion reaches the stock yards with, say, from three to ten head of stock in it?

A. Not a substantial portion of it, Mr. Day, but there is some that come in there that way.

Q. Well, the ordinary producer who owns his own truck ordinarily does not bring more than that, does he?

A. Well, there are very few producers that own their own truck that bring livestock into the Chicago market.

[fol. 794] Q. Then wouldn't the situation as I have described it be true in this territory near Chicago, say within 50 to 70 miles of Chicago, 50 to 75 miles of Chicago?

A. Well, this area closely adjacent to the City of Chicago is more a trucking and gardening business than it is livestock production and raising. When you get out——

Q. I refer to counties like Will County.

Exam. Diamondson: How about 200 miles, within a radius of 200 miles?

The Witness: The trucks coming to the Chicago market are pretty constantly loaded down. The ODT had rules and regulations on that, at least had quite a study of it and they haven't gotten—it just don't pay to handle a couple of head in a truck.

By Mr. Day:

Q. Your exhibit indicates that more than two-thirds of the trucked livestock into the Union Stock Yards originate in the State of Illinois.

A. Yes, without looking at it I would say that is correct.

Q. I figure 2,458,192 head out of a total, I assume of 3,575,099 head. You were asked about the interior Iowa packers. There were five of them originally, were there not?

A. I couldn't answer that, Mr. Day.

Q. Well, you were in the Interior Iowa Packers case, were you not?

A. Yes.

[fol. 795] Q. The John Morrell case?

A. If you ask me how many packers there were in the John Morrell case then I couldn't tell you that without checking on it. In the neighborhood of about five, or something like that.

Q. Some of those have been absorbed by the big Chicago packers, haven't they?

A. I don't know about that.

Q. You don't know about the Iowa packers?

A. I know Swift has taken over the packing house at Des Moines and possibly at one or two other places. Armour has taken some of them, Wilson has taken over some of them.

Q. And Wilson took over the Sinclair Company at Cedar Rapids, did it?

A. That is correct.

Q. Do any of the other large Chicago packers maintain concentration stock yards for buying hogs in Iowa?

A. Do you mean besides Swift & Company?

Q. Yes.

A. Yes, Armour does, I think Wilson does. I don't know. I had better not answer that. Some of them do and some of them don't, but I don't know.

Q. You don't know about that?

A. I am not familiar with that.

Mr. Day: That is all.

Exam. Diamondson: Any further questions? Do you [fol. 796] want to ask any further questions, Mr. Ryader?

Mr. Rynder: I don't think so.

Mr. Belnap: At this time I offer in evidence exhibit 43.

Exam. Diamondson: It will be received.

(Exhibit No. 43, Witness Park, received in evidence.)

Exam. Diamondson: The witness may be excused. We will take a short recess.

(Whereupon a short recess was had.)

Exam. Diamondson: The hearing will be in order.

THEODORE FUNK was sworn and testified as follows:

Direct examination.

By Mr. Quasey:

Q. Will you state your name, residence and occupation?

A. Theodore Funk, from Bloomington, Illinois. I am a farmer and cattle feeder, livestock feeder.

Q. How long have you been engaged in livestock farming and feeding?

A. I have had actual operation of our farm since I graduated from the University of Illinois in 1927.

Q. Mr. Funk, is it a fact that your ancestors have been engaged in livestock farming and raising for a good many years?

A. That is true. My family have brought livestock to the Chicago market since before it was an organized market and my grandfather and his brothers were instrumental in [fol. 797] consolidating the yards into one yards. My great grandfather was in the Senate and I believe presented the bill that made it possible to consolidate those yards into one yards.

Q. That consolidation you refer to is one which is represented by the Union Stock Yard & Transit Company as of the present date?

A. That is quite right.

Q. Will you briefly describe the extent of your livestock operations?

A. I operate about 2400 acres of land and we feed, and have for the past several years, fed from two to five thou-

sand cattle a year and from two to four thousand sheep and several hundred hogs.

Q. Do you raise or buy your feeder livestock? Let us first take up the cattle.

A. Most of our cattle are bought. However, at various times we have run a herd of cows on our place, as high as five hundred cows.

Q. Where do you buy your cattle?

A. Most of them are bought in the Southwest, in the states of Kansas, Oklahoma, Texas, New Mexico, a few at times we buy from Colorado and Wyoming and up in the Dakotas and Montana.

Q. Do you buy these animals as calves or do you buy them at various ages?

A. We have fed all ages of cattle.

[fol. 798] Q. What about sheep and lambs? Where do you buy those?

A. Most of them are bought in the Northwest, in Oregon and Washington, Idaho, also out of Wyoming and Montana; that is for the lambs. Yearlings are bought in the Southwest, in Texas and New Mexico.

Q. All of this livestock that you buy for your operations, will you tell us how it is transported to your farm?

A. They are shipped in by rail.

Q. What about your hog operations?

A. We buy most of our hogs as feeding hogs. Most of them are bought locally. However, at various times we have bought them in the St. Paul market, also out of the Kansas City market, out in the country of Missouri.

Q. Where do you ship fat animals that are ready for market?

A. Most of our animals are marketed at the Chicago market. However, at various times we have shipped to Indianapolis and Pittsburgh.

Q. You have been identified with the livestock business a great many years, Mr. Funk. Do you have an opinion as to whether or not the Chicago market is considered as a price guide for livestock?

A. I think it is considered as a price guide for livestock among the producers and has been ever since my knowledge of marketing livestock. I know even in our trades among

the farmers in my community and also in places throughout [fol. 799] the West one of the things they want to know before any trade is consummated is what the Chicago market is doing that particular day.

Q. Now, as I understand you the Chicago market is recognized as a guide by yourself and the various livestock producers that you come in contact with in connection with the purchase of your hogs for feeding, which is in the nearby area around your farm, and also it is true with respect to your experience in your transactions on the other markets and ranches in the western states you named.

A. That is quite true.

Q. Now, would a decrease in the volume of livestock on the Chicago market affect the interests of livestock producers in your opinion?

A. In my opinion it would have a very definite detrimental effect to the interest of the livestock producers.

Q. Would you briefly state why you consider that to be true?

A. Well, in the first place, a market to be effective has to have a large volume of livestock. That large volume will attract numerous buyers. If that volume is decreased substantially, the buyers will look elsewhere for their livestock and we all know that the more buyers we have for any particular animal or any particular carload of animals, it means that we will get all that their various outlets warrant them paying for the livestock.

[fol. 800] Q. Now, Mr. Funk, is the time in transit to market of any concern to the livestock producer? We will consider this where livestock is shipped by rail.

A. The time in transit bears directly upon the net returns that any producer will get from his livestock because the less time that it takes for the livestock from the time it leaves the producer's feed yard until it is over the scales and sold, the greater will be his total weight and his net returns as that is a generally conceded fact by the producers.

Q. Is it also the matter of concern that the time in transit has as bearing upon the condition of the livestock upon arrival at the market?

A. Yes, sir, it has a direct bearing upon that.

Q. What would be the effect if the time in transit to the Chicago market was lengthened, especially if the delay took place within a distance of a few miles of destination?

A. Well, we all know that the sooner livestock can be unloaded after they reach their destination the better appearance they will have, the more bloom they will carry and the less weight they will lose. Especially is this true in the summertime when it is extremely hot, or in the winter time when it is cold. As long as livestock are moving in their common carrier, why, they do not suffer as much, but when they have to stand in a car or track before being unloaded, that is where your greatest loss takes place.

[fol. 801] Q. Now, what you have been saying here, do we understand that that applies to these particular species, namely, cattle, hogs and sheep?

A. Yes.

Q. Would the lengthening of the time in transit to Chicago by rail tend to divert livestock to the trucks?

A. There is no question but what it would divert a tremendous amount of livestock, especially if the delay was such that they had to feed these cattle en route. Our figures show that on shipments that we have made where the cattle have to be unloaded and fed at one time our shrink would amount to practically twice as much as it will if they can get through without an unloading while en route.

Q. And that is notwithstanding the fact that when they were unloaded they were fed and watered and supposed to rest, is that correct?

A. That is correct.

Mr. Quasey: That is all. You may ask him, Mr. Rynder, or if there is any more direct.

Exam. Diamondson: You may cross examine.

Cross-examination.

By Mr. Rynder:

Q. Mr. Funk, are you an officer of any agricultural or livestock association?

A. Yes, sir. I am president of the Chicago Producers Commission Association.

[fol. 802] Q. President?

A. Yes, sir.

Q. I am not too well informed about them, but I believe they are a cooperative organization that acts as commission men on the Chicago market and others.

A. That is true.

Q. And other markets?

A. No, the Chicago market only for our Chicago Stock Yards.

Q. Chicago market only?

A. Yes.

Q. They receive no commission on or from direct sales, I take it?

A. No.

Mr. Rynder: That is all, thank you.

Exam. Diamondson: I don't believe I quite understood you when you said that the shipments of feeders were shipped in by rail, whether you meant to the Stock Yards or to your farm.

The Witness: I meant to our farm.

Exam. Diamondson: Any further question? You are excused.

E. McAdams was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. State your name.

A. E. McAdams.

Q. What is your business?

[fol. 803] A. Livestock commission merchant; director of the Livestock Exchange.

Q. With what firm are you associated?

A. John Clay & Company.

Q. Of the Chicago office?

A. Of the Chicago office.

Q. Does that firm have offices on other markets?

A. They are located at ten of the leading markets in the country.

Q. Will you name those, please?

A. Chicago, St. Louis, Omaha, Kansas City, Ogden, San Antonio, Denver, Fort Worth, St. Joe, Sioux City, Iowa.

Q. What has been your experience in the livestock commission business or allied activities?

A. My experience has been the handling of their cattle here at Chicago and other leading markets. I have been in the Chicago market about 22 years.

Q. On what other markets have you operated?

A. I have been on the St. Paul market, Omaha market and the Sioux City market.

Q. For a total period of how long?

A. I have been with the firm 35 years.

Q. Have you also engaged in the feeding of livestock in your own interest?

A. Yes, I have been.

[fol. 804] Q. Mr. Park told about the amount of commissions, I think he said it was $18.75, on a 20 head load of cattle. So that we may have some idea as to the significance of that figure, will you please compare it with the value of the cattle?

A. Well, for instance, we sell a car of cattle that would weigh 1400 pounds per head, we will say there would be 20 cattle in this car and they sold, for easy figuring, at say 30 cents a pound. Some of you fellows will have to figure out what that would be.

Mr. Belnap: Mr. Rynder is our mathematician. That is $8400.

A. $8400, all right. Well, we get for selling this cattle 95 cents a head for the first 15 head and I think 90 cents a head for the ensuing number. Is that right, Mr. Park?

Mr. Park: Yes, sir.

The Witness: That would be how much?

Mr. Park: 95 cents for the first 15 head, 90 cents per head for the second 15 head and 85 cents per head thereafter.

The Witness: For that one car of cattle, then, we would get a commission of how much?

Mr. Belnap: $18.75, according to Mr. Park's figures.

A. $18.75 is what we would get for selling that car of cattle and that would be what per cent?

Q. Well, now, wait a minute. Less than one-fourth of one per cent I am advised by Mr. Park.

[fol. 805] Do you give the producer value received for the commission he pays you?

A. We feel that we have always given more service than we have been paid. In other words, we do not feel at any time we have obtained too much for the work that we render.

Q. Now, Mr. Park has described in general the movement of the livestock after it comes into your possession. Would you fill in his story by telling us a little bit about the services that you render for this $18.75?

A. Well, the livestock is brought to the stock yards, to the Stock Yards & Transit Company either by truck or rail and from there our employes take it to our sales pens.

Q. Do you have pens assigned to you in the yards?

A. We do. We then place the livestock in pens that are suitable for the size of the shipment. We feed them all the feed they will consume, give them all the water that they can also consume. We classify this livestock. We classify it so that it will suit the purchasers who may be wanting to buy various weights, flesh or classes of cattle. After this stock is classified we show it to all of the buyers on the market.

Exam. Diamondson: When you say "classified", do you mean you put them in different pens?

The Witness: Yes, sir. We sort them in various lots so as to make them as attractive as possible for all of the [fol. 806] buyers. We try to sort them and make them put up the best appearance. We try to sort them so that we can also make the highest sales on them.

By Mr. Belnap:

Q. Will one load often have a number of grades of cattle in it?

A. Very often. We have had shipments that may constitute twenty-five cattle that might even belong to twenty different owners. On the other hand, we may have a consignment that may have twenty head that belongs to one owner. However, regardless of whether they belong to one owner or various owners, we classify them so as to make it best for any purchaser that might be interested in buying

any part of them so that we can sell any part to all and every buyer.

We work these cattle out thoroughly on the market. Some of them we may sell to an early buyer, we may sell part of them late in the day, after they have been given a chance to be sold to Armour, Swift, Cudahy, local dealers, eastern order buyers, farmers, receivers or feeders or whoever may be interested. We even at times have an individual that may want to buy one to kill to put in a locker. We also give him an opportunity to purchase that animal.

Our objective is to uphold a free and open market and give everyone a chance to purchase them. We make no preference. Everyone has an equal opportunity to purchase the number and the kind that he desires to buy.

[fol. 807] Q. Mr. McAdams, is it important that you have sufficient time to allow the stock to take water and feed and rest before they are offered?

A. Yes, that is very important. Livestock coming off of a long run naturally are tired. They may rest for a little while and will need more time to fill than livestock that comes a shorter distance. Therefore, we give them every opportunity to fill and in some cases where livestock comes a long distance we will often give them two days to fill.

Q. Would that be true, however, of the livestock that can come to you within the limits of the 36 hour period?

A. That is not generally the case. It may be a case rarely.

Q. Is it important that you are able to take possession of the livestock early in the day?

A. That is very important for we have packers and shippers who are desirous of making a purchase as early as possible. Now, for instance, some packers on a morning may wish to buy all the supply they can obtain so that they may drive it to the packing house to be slaughtered that day. So if this livestock arrives early,—and you are aware of the fact that we people get out on the market very early in the morning; we start trading just the minute it is light enough that we can see this livestock. We start trading and when there are exceptionally broad demands and when most people are wishing to make large purchases, they are also out there early.

[fol. 808] We give these people an opportunity to buy the

stock. We like to have it at our pens early so that we can take advantage of the early buyers for in most cases they are the better buyers. A good many wish to purchase early, especially order buyers, so that they can wire their clients and let them know that they have a purchase made that will be leaving for their destination that day.

Mr. Smith: May I ask a question there, please?

By Mr. Smith:

Q. When you get this stock in early and a buyer comes and makes a bid, is that bid good for a while so that you take it and can compare it with later offers that you might have, or do you use your best judgment at the moment as to whether to accept that offer and run the chance that you might be able to improve it later or reject it right on the spot? How does that work?

A. We either accept it or reject it.

Q. You cannot take the offer and have it good for a while? You have got to act on it at once?

A. Not unless the buyer says that is a standing bid.

Q. And ordinarily what is the fact as to that?

A. We know from experience whether or not we should take that offer.

Q. No. I mean ordinarily is it a standing offer that is made or is it an offer that you just have to accept or reject right there?

[fol. 809] A. Well, as a general rule the buyer will make an offer and if it happens to be a particular class of cattle that the supply of that kind is not too large and it is a class that is of popular demand we can figure that there will be several people that would like to make the same bid. However, if we work these cattle out and later on find that we cannot beat that bid we go back to the man that bid first and give him the refusal. If he is then filled up we go to the next man who makes the bid.

Q. There is really quite a lot of dickering involved in a good many of these shipments; isn't there?

A. There is a lot and there is a lot of difference in the bids. They vary sometimes from one to three dollars a hundred and we people must be the judges as to whether to accept those bids or to go further with them.

By Mr. Belnap:

Q. Do you have some figure in your own mind at the time you start to offer your livestock as to what it ought to bring?

A. We must have because we ask the price. A man that comes into our yard, for instance, he will say, "What do you want for this car of cattle"? Well, we make an asking price and then they bid us their price.

Q. And how do you arrive at the price which you are going to ask?

A. How do we what?

[fol. 810] Q. Arrive at the price which you ask?

A. Well, I could take all day trying to tell you how I arrive at that. We do not very often price them the same to all buyers. To some buyers you price them close, to some buyers you price them for considerably more than you expect to get for them. He may make you a bid that might be more than you expected him to pay, or it might be less or it might be around where the value of the livestock is.

Q. Do you keep yourself informed as to the conditions present at all times in the production of livestock, how fast stock is moving?

A. That is something we have got to do in order to be a success in this business.

Q. Is the matter of the feeding and watering and resting of the livestock important in respect to the price you are able to obtain for them?

A. Would you repeat that question, Mr. Belnap?

Q. Yes.

Exam. Diamondson: The reporter will read it.

(Question read.)

The Witness: Yes, it has a good deal to do with the appearance of the livestock and the appearance of the livestock is what the value is based on both by the buyer and the seller. So, therefore, proper handling and the feeding plays an important part; proper handling and the feeding, placing in [fol. 811] particular pens, even as to positions in their alleys or in a group of cattle, all plays an important part as to what kind of a sale you might make with this livestock.

Q. Now, are you able to answer the question addressed to Mr. Park as to what it costs you to feed the livestock now

as an item of deduction in your account settlement with your patron?

A. Yes. We have a system. We feed our smaller pens 100 pounds of hay; the next size pens that hold a full load of cattle we generally feed 200 pounds of hay. We have what we call catch pens that we will feed 25 to 75 pounds of hay. We have larger pens that we will feed more hay. There is also various types of cattle from various territories and at various seasons of the year that we feed more or less. The appetites of livestock, like a human being, also change with the weather and also the type of feed that they may be getting at home.

Q. What is the cost of the feed is what I wanted to get at?

A. The cost of hay, if I am correct, I think would be around $2.25 per hundred. That is the general run of hay that is fed on the market to commercial livestock.

Q. Can you state that in terms of this carlot of cattle you spoke about a while ago?

A. When we refer to these thirty dollar cattle or cattle selling in that neighborhood or in that bracket we refer strictly to corn fed cattle on long feeding. That type and grade of cattle would receive, if they were in one lot, from [fol. 812] a hundred to 150 pounds of hay. The point in filling that load of cattle would be the amount of water that they consume.

Q. What is the significance of that?

A. This is also quite interesting. For instance, if a load of livestock would get into the Chicago market and, as you know, a feeder has the privilege of paying off the car weights or else paying for the sale weight and therefore take advantage of the shrink which is allowable, which I think is 500 pounds per car. He may unload them off the car, water the livestock and if it is a 1400 pound load of cattle those cattle off cars might shrink 10 per cent. That would be 140 pounds.

Q. That is, from what point to what point does that shrinkage occur?

A. Well, we will say a car of cattle that had its origin four or five hundred miles away. However, after being fed and watered those cattle might pick up 60, 70, 80 pounds of that weight.

Q. Is there any effect on your business or the price you receive or the returns to the producer if your livestock does not arrive on schedule, if it arrives later in the morning?

A. I might say that a load of livestock is a good deal like a suit of clothes coming from the cleaners. When it arrives with the car bloom it puts up its best appearance. By being held over in pens that are foreign to this particular load of [fol. 813] livestock or fed the feed that we might feed it or the water that it is not used to, it will not thrive like it would in its own native yard, so we find that livestock gotten in at a good time are not as tired, not worn out, they will carry most of their natural appearance, they will take a normal fill, they will stand up on their feet so there is no need of getting them up every time we go to show them. They will handle nicely, they will make a presentable appearance and, naturally, we like to have this livestock and get it at an early hour so that they will put up that kind of appearance.

We, of course, have got to serve these feeders. The best results that we can give them makes it possible for us to get their continued patronage.

Q. If the livestock arrives late is it sometimes necessary to carry it over?

A. Late arrivals, if they arrive too late or the trade may be filled up on these particular kinds of livestock, in those cases it forces us to carry them another day or else we may have to take the tail end of the market, which may not be as good as the early market and in most cases our early market is our best market.

Q. When you do have to carry it over does that add to the expense of your patron?

A. That is an added expense to the patron.

Q. Do you have to feed them?

[fol. 814] A. We do.

Q. That is over and above this initial feed you give them?

A. We feed them the first feed that we have in the pens prepared for our livestock and then if they have to be carried over we must give them additional feed.

Q. Is it your experience that when you carry livestock over there is additional shrink?

A. That could vary. However, stale cattle do not put

up the appearance that fresh cattle do and buyers discriminate against stale cattle.

Q. They bring a lesser price?

A. That is right.

Exam. Diamondson: Do you have to tell the prospective buyers that the cattle have been held over a second day?

The Witness: They ask us. Sometimes we look up in the sky. Sometimes we tell them. Sometimes we let them do their own figuring.

Mr. Kaylor: You don't hold them over two days, is that it?

The Witness: Sir?

Mr. Kaylor: In other words, they are sold within the two days?

The Witness: Well, there is livestock that has been held more than two days. As a general rule we try to effect a sale the first day if we can and if we cannot we try to make it the second day. Naturally, if the man in the country ships [fol. 815] a load of cattle to Chicago market to arrive on Monday it is his intention to have it sold on a Monday, and if it can't be sold on a Monday then, of course, we try to effect the sale the next day.

By Mr. Belnap:

Q. Mr. McAdams, is it desirable in your business and usually helpful to your patrons to be able to bring their livestock into the market within the 36 hour period so it does not have to be stopped for feed, water and rest en route?

A. Yes. Anyone that has raised livestock, raised or produced livestock knows this. Livestock will shrink, a natural tissue shrink, about as much per head per day as they will gain per day when they are on full feed, so we feel, and it is true, that the minute livestock leaves its own natural surroundings, from then on it shrinks some way or other and this shrink, naturally, affects its appearance.

Q. That is a continuous process, is it not?

A. Oh, that is natural, yes.

Q. That is, this shrinkage continues even though the livestock is stopped for the feed, water and rest?

A. That is true.

Q. Do you find in your business——

A. Now wait. May I interject this? You may recover some of that shrink for a period but the tendency for livestock,—as I said before, when they leave their home [fol. 816] grounds they naturally shrink. There are so many different factors that enter into that.

Q. Do you find that a large part of your volume comes from the area which can be reached under present schedules without a stop for feed, water and rest?

A. We get livestock,—our firm, we are a nationally known firm and we get livestock from pretty near every state in the Union. There are times when we will get a majority, a major portion of our livestock from local states and then again we may get them from far western states, even east and southeastern states.

Q. Well, I asked you about the predominant portion of the volume. Does that come within an area that can be reached under schedules of 36 hours or less schedules?

A. I would say the major portion of it does.

Q. If, as a result of putting in effect the things that Swift demands in this case it were necessary for the railroads to modify their schedules and to stop for feed, water and rest the livestock from areas which now comes through without that stop, would that affect your volume and your business?

A. That would affect our business in this way: Generally when they load their livestock they plan on the day their livestock will arrive here, feeling that they are going to hit a good market. Now, if their livestock has got to be unloaded it would change that schedule and bring it in on a [fol. 817] later day and they wouldn't want to take a chance. They will make a shipment to arrive here on a certain day, thinking that they are picking a good day and if they have got to speculate as to what day they will come in in a good many cases they will patronize other markets or other outlets.

Q. If they don't want to take the hazard of the market.

A. That is right. They realize if they have got to be unloaded that it is going to have an effect upon shrinkage and appearance.

Q. Mr. Park or one of the witnesses mentioned the fact that prior to the war livestock from the Denver area could

be moved through to Chicago on schedules which did not arrive at night and permitted them to stop for feed, water and rest and that that is no longer true. Did you experience any change in your volume of business in that area when that reduction of schedules was made?

A. Yes, our firm especially experienced quite a decline, for in the Colorado area we sell as many or possibly a good deal more cattle out of that area on the Chicago market than any other firm there and we used to have what we call hot-shot trains that used to bring that stock in within the 36 hours, which brought us a considerable amount of business. However, of late livestock out of that territory has taken as much as five days to get here.

Q. What has that done to the volume of the business?

[fol. 818] A. That has naturally cut the volume of business.

Q. Do those people patronize other markets?

A. Yes, sir.

Q. Other outlets?

A. Yes, sir.

Q. Is it important to the public market to have diversified buying demands and a substantial volume of buying demand?

A. Oh, absolutely. Our market lives on the volume, as the volume brings the buyers to our market. Buyers are not going to go to a market where they cannot get their supplies. We also notice days when we have large receipts we have many more buyers than on days when we have light receipts.

Q. Do you look upon the Chicago market as a price determining market?

A. I don't think there is any question about that. As stated before, we have ten other markets and in the course of a day I may talk to those ten markets and will advise with our salesmen at those points regarding our market here, so naturally they look to our market for guidance.

Q. You have heard a substantial amount of the testimony that has been offered in this case, have you not, Mr. McAdams?

A. Yes, I have.

Q. Is there any other phase of the matter on which you

would like to present any facts in relation to what you have heard up to this time or have you covered the subject?
[fol. 819] A. Well, I have tried to cover it as thoroughly as I could.

Mr. Belnap: That is all I want to inquire about.

Exam. Diamondson: You may cross examine.

Cross Examination.

By Mr. Ryder:

Q. Mr. McAdams, this increase in the time schedule from 36 hours to five days from Denver and that region to Chicago was not solely due to the congestion in the Ashland Avenue yards of the Chicago Junction, was it?

A. Not being a railroad man it would be hard for me to answer that. I will say this, that I have had on a good many occasions farmers, feeders, ranchers, whoever they may be, accompanying livestock come down to me in the yards or up to me in the office early in the morning and inquire when this livestock is going to get to our pens and maybe jump all over me as to why they are not at our pens and it has been common for them to say, "That bottleneck out there, we have been standing around there for six or seven hours and wondered when we are going to get in". Now, I didn't know the bottleneck that they were referring to until after I inquired and they stated it was right there at the edge of town or at the edge of the Stock Yards.

Q. This increase I was talking about according to your statement was from 36 hours to, I assume, 120 and you do not assume that it was left at the Ashland Avenue yards for three and a half days, do you?
[fol. 820] A. No, sir.

Exam. Diamondson: That was just an extreme case that you cited, was it not, Mr. McAdams? That is not the usual running time from Denver to Chicago market, is it, five days?

The Witness: We have a railroad man here, I believe, that could answer you the time. I don't know. I know they used to come in prior to the war in 36 hours.

Mr. Belnap: Well, even now you don't experience five days as a regular routine, do you, from Colorado?

The Witness: Not as a regular thing, no.

Mr. Smith: Can we put this on the record, Mr. Examiner? Mr. Park says the schedule now is about 60 hours and includes one feed unloading and rest of the animals. As soon as you get over the 28 or 36 hours, why, then, of course, you have an increment of time which does not concern the actual movement over the railroad but is the period of rest of the animals, is that not true?

The Witness: Well, I would assume that if they have a 36 hour release on them that that would apply to the length of time they are in the cars. Now, they may be stopped at a feeding station where, I understand, they must be unloaded and fed for five hours. Now, they may be there longer waiting for some train to pick them up and bring them on to the market.

Mr. Smith: Yes. In other words, once you assume there has got to be an unloading for feed and rest you cannot always assume there will be a train ready to pick them [fol. 821] up just at the expiration of the statutory five hour limit and carry them on.

The Witness: I wouldn't think so.

Mr. Rynder: No more questions.

Exam. Diamondson: Any further questions?

Mr. Kaylor: Just one.

By Mr. Kaylor:

Q. I don't know, you may have explained what I would like to know, but after these cattle are brought in and you as a buyer start out there, we will assume, at seven o'clock in the morning, when is that job completed?

A. Did you say what time would we complete selling them?

Q. Yes.

A. Well, we start out on big days as early as six o'clock. If the livestock is unloaded and in our pens we will start to sell them just as soon as any buyer wishes to purchase them. Now, they may be sold at 7:30 or 8 o'clock, they may be sold at 11 o'clock; that just depends upon the market and upon the buyers.

Q. Well, is it about a six hour market then, would you say?

A. The market closes at two o'clock. We cannot make any sales on fat cattle after two o'clock. Stocker and feeder cattle we can sell as late in the day as we can do business.

Exam. Diamondson: Any further questions?

By Mr. Gladson:

Q. Well, as a practical matter, Mr. McAdams, when is [fol. 822] the market over?

A. When does the market open?

Q. When is it over?

A. It is over at two o'clock.

Q. I know that is the time you quit trading, but as a practical matter.

A. Well, on average run days we would say eleven o'clock.

Mr. Gladson: Thank you.

Exam. Diamondson: You are excused, Mr. McAdams.

Leo R. Miller was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. Please state your name.

A. Leo R. Miller.

Q. In what business are you engaged?

A. I am a livestock buyer.

Q. Where?

A. Union Stock Yards in Chicago.

Q. Do you hold an official position in the Chicago Traders Livestock Exchange?

A. Yes. I am President of the Chicago Traders Livestock Exchange.

Q. What is the Chicago Traders Livestock Exchange?

A. An organization of dealers and order buyers buying and selling livestock and in some instances just buying

livestock on the Chicago public market, confining their [fol. 823] livestock interests mostly to that market.

Q. Have you prepared an exhibit showing a list of your members?

A. I have, Mr. Belnap.

Exam. Diamondson: That will be exhibit No. 44 for identification.

(Exhibit No. 44, Witness Miller, marked for identification.)

By Mr. Belnap:

Q. What is your exhibit 44, Mr. Miller?

A. Exhibit 44 is a list of the members of the Chicago Traders Livestock Exchange and the number of employes other than Chicago Traders Livestock Exchange members employed by firms shown.

Q. How many members are there of the Exchange?

A. 327.

Q. And in addition they have how many employes?

A. 64.

Q. Are these firms and individuals regulated by the Secretary of Agriculture?

A. All registered with the Department of Agriculture, Secretary of Agriculture, under the Packers and Stock Yards Act of 1921.

Q. And are their fees, charges and commissions fixed by the Secretary of Agriculture?

A. Yes, their commission rates are fixed by the Secretary.

[fol. 824] Q. Will you please describe your membership according to the various categories, that is, the types of business which they do?

A. Our membership is divided into about four groups. The first and largest group are the cattle and calf dealers, of which there are 124. The second largest—

Q. Just tell us what they do.

A. The cattle and calf dealers?

Q. Yes, what is their business?

A. They buy and sell cattle and calves on their own account.

Q. On the Chicago market?

A. On the Chicago public market. Do you want me to elaborate on that?

Q. Well, enough so that we know what they do.

A. Well, the primary function of the dealer on any public market is to buy particular weights or classes of livestock, consolidate the lots of livestock large lots of livestock, re-sort or sort and reshape and resell to the local buying interests on that market who are usually in the market for a particular kind of livestock best obtainable in their experience at the Chicago public market.

Q. Is it important to those people to have a large volume of livestock on the market and a lot of various grades and classes of livestock?

A. Most important. Their business rests on their ability to sell special lots of livestock, particular lots of live- [fol. 825] stock graded as to weight, quality, sex and very often breed. In a livestock market where the volume is as large as we have in Chicago, that is permitted.

Q. That is, they have that opportunity?

A. They have that opportunity. They have a high degree of selectivity I might say.

Q. Would any lessening in the volume tend to deprive them of that opportunity?

A. Yes, it would limit their opportunity of filling the orders that they now have and interfere quite a great deal in their business operations.

Q. Now, what is your next category and tell us about how they carry on their business?

A. Then we have 72 hog dealers. These men operate substantially the same as the cattle dealers. In fact the dealers, I might say, operate much alike in all species.

Elaborating on the hog dealers I might cite a few examples of their function on a posted public livestock market. We have interests on the Chicago public market who buy hogs of special weight, quality and are only able to obtain those weights on a public livestock market and very often because of the high degree of selectivity that is required and the closely sorted livestock that is needed to fill their particular orders these packers go to the dealers to perform this function.

[fol. 826] The dealers provide support to a livestock market, dealers in all species. They buy livestock when it is marketed in great volume, very often preventing by this action lows in livestock values or lows in livestock markets that could be very, very badly reflected in the price received of livestock throughout the country.

Q. What is your next category?

A. The order buyers. The order buyers are—

Q. How many of these?

A. There are 32. They are of all species, too. They are known, too, as market agencies and, of course, registered with the Department.

These men buy livestock on commission. They are not dealers and they do not deal in livestock, of course. They buy principally for Eastern slaughterers or slaughterers anywhere who favor the Chicago market for their livestock purchases.

I might say, too, that the dealers and order buyers together provide a greater part of the stimulus that makes the Chicago public market the place where true livestock values are established because of the high degree of competition. These order buyers take the place of the buyer that the Eastern slaughterer might have to have on the posted public market if they were not there and would necessitate additional cost to the slaughterer and they provide a very worth-while service.

[fol. 827] Now, how many packers will the order buyer commonly represent?

A. I have some figures here from their records. The figures I have here show the order buyers on our market to represent 920 slaughterers.

Q. Located east and south of here?

A. East and south, particularly or I might say more so in the east than in the south.

Mr. Smith: Would they represent any local packers?

The Witness: They could but offhand I don't know of any that do.

Mr. Smith: The local packer ordinarily uses his own buyer?

The Witness: That is right, he has a buyer on the market, although—excuse me, please, may I answer that?

By Mr. Belnap:

Q. Go right ahead.

A. I believe there have been times when the local order buyer on a market has represented a local packer.

Q. Some of the smaller ones?

A. I would say yes, it has been done.

Q. Some of the smaller ones?

A. Yes.

Q. Is the Chicago market an important source of supply for the nine hundred odd packers for whom these order buyers buy?

[fol. 828] A. Yes, it is. I think their experience over many years of patronizing the Chicago public livestock market has taught them that their needs or their wants, their livestock wants can be best filled at this market and it is for that reason and it is because of the highly organized handling of livestock from the feeder or from the countryman to the slaughterer in the east that these men patronize our market, these slaughterers.

Exam. Diamondson: Do these order buyers buy stock on any other market than the Chicago market?

The Witness: I would say they do rarely.

By Mr. Rynder:

Q. You are speaking, of course, of the Chicago buyers.

A. The Chicago order buyers.

Q. You are not attempting to suggest there are not order buyers in Omaha, Kansas City, and so forth?

A. No. They confine their activities to the Chicago market.

By Mr. Belnap:

Q. That is, your members do?

A. That is right.

Q. But there are order buyers on other markets?

A. Yes.

Q. That is what Mr. Rynder's questions went to.

A. That is right.

Exam. Diamondson: My question went to order buyers that are members of this Chicago Traders Livestock Exchange.

[fol. 829] Mr. Belnap: I understand those people primarily do business only at Chicago.

A. Only at Chicago, but I will qualify that, if I may, Mr. Examiner. Very rarely it happens that an order is unable to be filled on the Chicago market and one of our order buyers may know a man in the far west or a nearby public market and he calls him and maybe transfers this order to him. What the arrangement is I don't know, but he does not himself buy the livestock. He transfers the order through.

Q. Now, is it important for order buyers to have an adequate and diversified supply of livestock on this public market?

A. The salable supply of livestock on the Chicago public market is most vital to the interests of the dealers and order buyers operating on this market. They depend solely on that salable supply to provide the merchandise with which they do business.

Q. Would it do them any good if this livestock came into the Stock Yards and went over in some private facility of Swift & Company?

A. It would not.

Q. Now, are the order buyers concerned with or affected by the inbound railroad service to the Stock Yards on this market livestock?

A. I think to a great extent.

Q. Why?

[fol. 830] A. At present a highly organized and really efficient,—a reasonably efficient method of bringing our livestock in has allowed the order buyer to facilitate his buying and in that way to have his stock moved out of here in a reasonable time to the seaboard states that he services and it is for those reasons that his business interests lie very much in seeing that these salable supplies of livestock arrive on the Chicago market without any delay beyond what is encountered occasionally under the present organized setup, and even the occasional delay experienced at this particular time and with this setup has often caused

loss, undue losses to his customer and sometimes a loss of orders to the market agency or order buyer himself.

Q. Is it important to the order buyer and his patrons to have stock available at an early hour in the morning?

A. Very important. The order buyer receives his orders from the eastern slaughterer or principal as early as six o'clock in the morning. As a general rule he knows by 7:30 and at the latest 8 o'clock what he needs to fill his eastern orders or southern or whatever it happens to be. He then goes out on the market, is able to spend a reasonable time surveying the salable stock, bidding competitively with all other interests operating at that particular time.

Q. Including Swift & Company?

A. Everybody. Buying his cattle and getting his orders [fol. 831] filled in time to notify the slaughterer in the east that the livestock will be on its way in the usual time, thereby fitting in with the organized slaughter schedule of his principal.

Q. Now, if he is not able to confirm at a reasonable hour in the morning the fact that he has been able to purchase the livestock what does his eastern principal then do?

A. As a general rule they need the livestock. They will fish around and buy wherever they can, usually at some other public market and to their disadvantage as a rule.

Q. Well, anyway Chicago loses the business?

A. They sure do.

Q. Your member loses the business?

A. That is right.

Q. Now is it important to have that livestock in the pens early and sold early in so far as getting it out of the yards and getting it shipped east is concerned?

A. I think it is very important.

Q. Why?

A. I have called the district agency and I find that they have just a peak load, an extreme peak load of livestock going out of here eastbound, and we would have for eastern slaughterers on one day there close to 500 cars. Now, to buy 500 cars of livestock efficiently, competitively, and to keep your customer in competition with his competitor you [fol. 832] must have time; to give the railroads reasonable time to spot the cars, provide facilities for sending that

livestock east must also be considered and your orders to the district agency should be in there and in their hands no later than 12:30.

Q. That is the order for cars?

A. For cars.

Q. What is the district agency you refer to?

A. That is a combined agency of all the eastern railroads who supply transportation facilities for these slaughter cattle going east.

Q. Does the order buyer take care of the moving of that livestock and the loading of it after he has bought it?

A. He supervises it to the extent that he follows it through. He doesn't always take it to the chutes himself, although in many cases under the present setup or tariff schedule he can and does, but in nearly all cases in the interest of his principal he follows the slaughter cattle through or his purchases through until they are safely loaded on the cars or safely placed to be loaded on the cars.

Q. Is it practicable for the order buyer and the smaller eastern packer for whom he buys to do the job efficiently and economically at a variety of country buying stations?

A. I don't think that is possible.

Q. Why?

A. There is no opportunity of selectivity. If a man [Vol. 833] wants a prime load or two loads of a particular kind of cattle——

Q. Or hogs?

A. Or hogs or other species he knows from experience the volume of livestock marketed at the Chicago public market in nearly all instances will have that class of cattle in its salable receipts. He has had experience at buying points. I believe every buyer of livestock knows about buying points; they should. And he knows that this order cannot be filled there. He might send an order down there for a particular kind of livestock and get a load of livestock that would be so far away from his particular wants that it has discouraged him from using those places for their livestock purchases.

Q. The larger packer can handle those hog round lots, can't he?

A. That is right. They can and do.

Q. Now, have you any other category of members?

A. We have 34 stocker and feeder buyers.

Q. What do they do?

A. Stocker and feeder buyers are both dealers and market agencies. They buy and sell stocker and feeder cattle on their own account and also fill buying orders for market livestock on a commission basis. The big percentage of their business, though, is done as a dealer.

The function of the stocker and feeder dealer is to buy the lighter weight cattle weighing as a rule from five to [fol. 834] seven hundred pounds, in some instances lower and higher weights than that, assemble them, sort them and sell them to the countryman to be taken back to the corn belt area for fattening. If the stocker and feeder buyer were not present on the Chicago public livestock market to perform this function, these cattle would no doubt be sold to a slaughterer for a lesser price.

Q. In the case of both sheep and cattle are there many animals which can go to a packer for slaughter or can go back to the feed lots for further finishing?

A. Oh, yes. The stocker and feeder business is quite an important business.

Q. No. I say both as to sheep and cattle do you have animals come on your market who could be and are sold to a packer or who could be and are sold to a feeder?

A. They are usually sold to a feeder.

Exam. Diamondson: How do the feeder cattle or other livestock move out of the stock yards to the feeding lots? Generally by rail or by truck?

The Witness: By both methods, by truck and by rail. I think a big percentage moves out by truck. I am not too sure.

By Mr. Belnap:

Q. Mr. Miller, I was trying to direct your attention to what I have heard referred to as two-way cattle and two-way sheep. What does that term mean?

A. Two-way cattle and two-way sheep?

[fol. 835] Q. Yes, or didn't you tell me about it?

A. I don't think so.

By Exam. Diamondson:

Q. Mr. Miller, you referred to an eastbound movement, to a peak movement of 500 cars in one day from the stock yards to eastbound or southbound slaughterers.

A. Approximately. 499.

Q. Based on your experience what would you say would be about an average daily movement of livestock out of the Union Stock Yards for these eastern and southern packers?

A. 60 per cent of that.

Q. About 60 per cent of 500?

A. 60 per cent.

Mr. Belnap: About 300 cars.

Exam. Diamondson: And this order buyer, he has to order the car and supervise the loading of the stock into it?

The Witness: He does. He does not assist in the loading of the stock but he is there in the interest of his principal to see that the livestock that he bought is sent on to his customer.

By Mr. Belnap:

Q. Mr. Miller, what time of the day is the livestock loaded out usually?

A. It depends upon the destination, of course. I think most of it is loaded out—it depends upon the movement, too. If there is a heavy movement I think they try to load out a train as quickly as possible and it is——

[fol. 836] Q. You mean early in the afternoon?

A. Early in the afternoon, or at least by five o'clock, and then they can reset and re-spot their cars and perform the same movement again.

Q. If there is any delay in the livestock coming in does that make a delay on the outbound movement?

A. I believe it disorganizes the whole movement. I am certain.

Q. Is the public market very largely dependent on the railroad service both in and out?

A. Is it competitive?

Q. Dependent.

A. Oh, dependent? Very much so.

Mr. Belnap: That is all the questions I intend to ask.
Mr. Day: I have just one question, Mr. Belnap.

By Mr. Day:

Q. Mr. Miller, I think you stated the time they ordered cars for outbound loading was at 12:30?

A. 12:30.

Q. Isn't it actually 11:30?—I mean isn't it actually 1:30?

A. I believe that should be changed, yes, sir. If I said 12:30 I will change it to 1:30.

Mr. Day: Thank you.

Exam. Diamondson: You may cross examine.

Cross-examination.

By Mr. Rynder:

Q. Mr. Miller, you were just saying that the functioning [fol. 837] of your business and these of your associates is largely dependent upon the railroads getting livestock in in time, didn't you?

A. Yes, sir.

Q. If I am correctly informed about half the livestock now arrives by truck, doesn't it?

A. I believe that is true.

Q. And, of course, that 50 per cent does not depend upon when the railroad train gets in?

A. Hardly.

Q. Mr. Miller, were you here during the testimony of the preceding witness, Mr. McAdams, of John Clay & Company?

A. Yes, I was.

Q. Did you hear Mr. McAdams tell what an excellent and fine piece of work his people do for the man who ships livestock to him for sale?

A. Yes, and I can corroborate it.

Q. They sort it out into grades and according to what they think will be good for the prospective buyers and all the things he mentioned.

A. That is true.

Q. After they have done that then does the first category you have mentioned, your cattle and calf dealer, come in and

resort them again because Mr. McAdams has not done that right?

A. No. Mr. McAdams has done a very good job but live-
[fol. 838] stock is sold in mixed lots very often. It depends upon the condition of the market, the opportunity to gain in that way the biggest dollar for your shipper.

Q. Well, now, about the biggest dollar for the shipper. We will say Mr. McAdams has functioned and functioned well. Then your cattle dealer, the first category you described, comes along and he buys it from Mr. McAdams. Now, he is buying that in the hope of making a sale at a profit, is he not?

A. Yes, he is.

Q. And any profit that he may make out of it will not go back to the producer of the livestock, will it?

A. No.

Q. What the producer will get will be the price at which Mr. McAdams sold it to your cattle dealer.

A. That is right.

Q. And the cattle dealer hopes to make a profit or else he couldn't afford to be in business.

A. That is right.

Q. He may sell it to almost any possible buyer at a later time, I take it?

A. Yes, and he might carry it over until the next day and a big percentage or a good percentage of the cattle purchased by the dealers is handled in that manner.

Q. And if he guesses correctly on the market he may make a profit and if he guesses wrong he may take a loss?

[fol. 839] A. That is true.

Q. But that is something that affects only his own private pocket book.

A. That is right, but this is what adds up to a highly competitive market.

Q. Yes. Now, I take it everything I have asked you about the cattle and calf dealers as such would apply to hogs, except it is a different species?

A. Substantially so, yes.

Q. They operate in the same way?

A. Pretty much in the same manner.

Q. For the same purposes?

A. For the same purposes, yes.

Q. Now, you have spoken of the necessity of an adequate salable supply of livestock on the Chicago market. You have no opportunity to, so to speak, get a crack at the directs on the Chicago market, have you?

A. No, we haven't.

Q. None of your constituents, order dealers, order buyers, or others, can possibly put their hands on that livestock that comes in there consigned direct to a packer at the market.

A. That is not salable livestock.

Q. No.

A. That is not competition.

[fol. 840] Q. So does it make much difference to you whether that livestock is in the pens in the Stock Yards or in Swift's facility at 2320 Halsted Street or at some other place in the city?

A. Yes, it makes a great deal of difference.

Q. Why?

A. I believe it should come to the Chicago public market or to a public market. That is in my interest.

Q. But no matter which location——

A. It is in the interest of the members of the Chicago Traders Livestock Exchange.

Q. No matter which destination it reaches you and your associates cannot deal in it or obtain it or in any way handle it.

A. No, we cannot, except hope that the direct seller can see the error of his ways and consign it to the public market.

Exam. Diamondson: Your answer, as I understand it, is that you cannot have any interest in those direct shipments.

The Witness: No, we cannot.

Mr. Belnap: He cannot deal in them.

The Witness: I mean because it is a direct shipment.

Mr. Belnap: He is adversely affected, as he said, if he can't deal in it.

Exam. Diamondson: That was the question Mr. Rynder was asking.

By Mr. Rynder:

Q. Well, Mr. Miller, an earlier exhibit, 29, purports to [fol. 841] give the direct receipts on various species of livestock on the Chicago market by some 21 packers, and I observe that in addition to Armour and Wilson there appear to have been a number of direct hogs brought in for Agar, Miller & Hart, Illinois Meat Company, T. Brennan, H. C. Bohack, Russell Packing Company, William Davies, Peerless Packing Company, Bronx Meat Company and others.

Do you assume that those gentlemen who operate those packing houses and have to prosper or fail through the operation of those packing houses are unable to obtain through your method the kinds, grades and qualities of livestock that they desire to use in their packing houses?

A. Would you repeat that, please?

(Question read.)

A. Well, all that you mentioned buy livestock on the Chicago public market.

Q. They do, but it seems they also buy a number of directs. Are you aware that Swift also buys livestock on the Chicago market?

A. Swift does.

Q. Would you say from your own knowledge whether there is any larger buyer on the Chicago market?

A. Oh, yes.

Q. Who?

A. Agar for one.

[fol. 842] Q. Agar?

A. Yes.

Q. Of all species?

A. No, I couldn't answer that. Agar doesn't buy cattle I don't believe.

Q. They don't?

A. No. I am quite sure that Agar buys more hogs. I am almost certain that Miller & Hart buys more hogs than Swift & Company and if I am not too far away Illinois Meat buys more hogs than Swift does.

Q. On the Chicago public market?

A. On the Chicago public market.

Q. I observe each one of those you have mentioned has apparently brought in a substantial number of directs?

A. They buy direct livestock, too.

Q. Do you assume that they don't know how to conduct their affairs when they are doing it?

A. I wouldn't know, I couldn't make any assumption on something that I am not too well acquainted with but this I do say, that we would not forgive Armour, we would not forgive Swift if the incoming livestock that we are interested in is impeded in any way.

Exam. Diamondson: What do you mean impeded in any way?

The Witness: If the proposed relief or whatever you wish to call it; the petition is granted and because of the [fol. 843] testimony I have heard in this past week, if this condition is changed, delivering these direct purchases to the slaughterer's plant, you have the testimony of five or six or seven competent railway witnesses here, you have the testimony to prove that the incoming salable livestock will be impeded or interfered with and when that takes place we would lose patrons to the Chicago market, as has already been demonstrated, I believe, and in that way the interests of the members of the Chicago Traders Livestock Exchange are injured.

By Mr. Rynder:

Q. I take it from that same remark that Swift may be entitled in connection with livestock it owns to service equally good with that of livestock which may be consigned to a commission man on the Exchange, is that right?

A. Not if it interferes with the rights we seem to feel that we have in the salable receipts at the Chicago Public Stock Yards.

Q. I think we understand each other on that. We as the owner of the stock are not entitled to equal treatment by the railroads.

A. I am not defending you, Mr. Rynder.

Mr. Belnap: Mr. Examiner, he is trying to question the witness on a pure matter of law, as to what a man is entitled to under the Act. He obviously is not competent to talk

about the law on the subject and he should not be asked that kind of a question it seems to me.

[fol. 844] Exam. Diamondson: Do you have any further questions?

Mr. Rynder: No.

Mr. Smith: I have a question, please.

By Mr. Smith:

Q. You agree with Mr. Rynder, as I understood you, that where your clients or your members buy and sell this livestock that whatever profit they make goes to you and not to Mr. McAdams' clients who are the producers. Did I correctly understand that?

A. That is right.

Q. But might it not very well be that the very fact that your members are on this market that they have actually and potentially the effect on it that enables Mr. McAdams to get a better price from the people that he sells to for the producers?

A. I think that can be very easily proven, that the prices offered by the dealers and order buyers on the Chicago public market has raised the level of that market much more than the profit, much more to the countryman I might say than the profit the dealer might have taken off of it.

Exam. Diamondson: Are there any further questions?

Mr. Belnap: I offer exhibit 44 in evidence.

Exam. Diamondson: It will be received.

(Exhibit No. 44, Witness Miller, received in evidence.)

Exam. Diamondson: Let the record show we are going to adjourn at this time until 11 o'clock Monday morning in the [fol. 845] Chicago Livestock Exchange Building, ninth floor.

(Whereupon, at 5:15 o'clock P.M., February 28, 1948, an adjournment was taken until 11 o'clock A.M., Monday, March 1, 1948.)

[fols. 846-847] Ninth Floor, Exchange Building,
Union Stock Yards,
Monday, March 1, 1948,
Chicago, Illinois.

Met, pursuant to adjournment, at 2:00 o'clock P. M.

[fol. 848] PROCEEDINGS

Exam. Diamondson: The hearing will be resumed.

Mr. Quasey: I will call Mr. Swanson.

D. L. SWANSON was sworn and testified as follows:

Direct examination.

By Mr. Quasey:

Q. Mr. Swanson, will you state your full name and where you reside?

A. David L. Swanson, 7838 South Oglesby Avenue, Chicago, Illinois.

Q. What is your occupation?

A. I am manager of the Chicago Producers Commission Association which is located at 615 Live Stock Exchange Building, U. S. Yards. I have been manager since April 19, 1926, which is nearly 22 years.

Q. What was your prior experience?

A. I was the first manager of the Producers Commission Association in Indianapolis, Indiana, which opened on May 15, 1922. I was manager there for four years until I came to Chicago in April, 1926. Prior to that, I was with the United States Department of Agriculture as an assistant in marketing livestock and meats. I started the reporting of the wholesale meat trade in Chicago in April, 1919, and continued in that capacity for one year.

Then in April, 1920, I transferred to the Hog Department [fol. 849] in Chicago, reporting that market for two years until I went to Indianapolis Producers in April, 1922.

As a boy and young man, I was brought up in the wholesale and retail meat business in Galesburg, Illinois. Starting in working in the retail market afternoons after school and on Saturdays all the way through highschool and college, gave me good experience in meat retailing.

After graduation, I spent four years as buyer, credit man and meat-cutter in the S. R. Swanson & Bros. Meat Market.

Other experiences of mine include two years attendance at law school, and service in the Marine Corps in World War I.

Q. What is the Chicago Producers Commission Association?

A. The Chicago Producers Commission Association is a cooperative livestock marketing organization. It is organized under the Capper-Volstead Law and is a non-stock, nonprofit organization. It has about 40,000 members and patrons, of which around 35,000 are members.

The Chicago Producers handled and sold 14,821 carloads of livestock in 1947. This was 12.92 per cent of the total salable receipts on the Chicago market, and was about 1500 cars more than the total of the next three highest firms combined. The sales value of the live stock was $70,797,304.02. Of the 14,821 cars, there were 2215 rail cars, and 12,606 by truck.

Q. What is the basis you used to convert trucked in live-
[fol. 850] stock to car lots?

A. We use the basis like the other producers agents throughout the other markets all through the country of 25 cattle for an approximate carload; 75 calves; 70 hogs; and 115 sheep or lambs for a single deck.

Q. Continue, please.

A. Most of the livestock comes from the immediate Chicago trade territory, although receipts did come from 27 different states. Illinois sent in 11,758 cars, Iowa 1427 cars, Indiana 738 cars, Wisconsin 178 cars, Nebraska 114 cars, Kansas 93, Washington 84, Missouri 78, Ohio 72, Oklahoma 65, Colorado 43, Michigan 37, Montana 31, New Mexico 22, South Dakota 14, Minnesota 13, North Dakota 12; Texas, New York and Wyoming eight each; Kentucky eight, Utah five, Idaho three; California, Tennessee, Oregon and Pennsylvania, one each.

Exam. Diamondson: Now that includes the converted trucks?

The Witness: Yes, it does. This is just the salable livestock. We also purchase livestock for feeder, not slaughter livestock, but feeder livestock for our patrons, but this is not included in here.

By Mr. Quasey:

Q. You may continue.

A. The average consignment of livestock is less than

one-sixth of a carload and the average amount per owner per year is about one-third of a carload, showing how many odd head in small bunches as this business comes in nowadays.

[fol. 851] Q. How is the Chicago Producers organized?

A. The Chicago Producers is organized on the basis of being able to handle a large volume of business of all sizes and variety of consignments. We have a cattle department, hog department, and office. In the cattle, hog and sheep departments, we have salesmen, assistant salesmen, head alley men, and yard men. In order to have capable salesmen, it takes a period of training that usually runs into several years before a man becomes qualified. In other words, it requires years of training and experience, as well as the possession of judgment and trading ability before a salesman becomes capable to represent the members and patrons of the Chicago Producers Commission Association.

Q. Mr. Swanson, will you illustrate the operations and functions of a department of the Chicago Producers?

A. As mentioned before, we have a cattle department, hog department, and sheep department. For an illustration, I will take the hog department.

Most of the hogs arrive during the night and early morning. We yard some of these hogs at night, and most of the rest of them between six and eight in the morning. When the head alley man comes down to the alleys in the morning, the first thing he does is order the feed for the various loads of hogs.

At 7:30 a. m. the manager and the hog salesmen meet in our office for a sales conference. They go over the [fol. 852] estimated hog receipts for the day in Chicago, and the 12 principal markets. They compare the day's estimate for Chicago with the advance estimate released the day before and also compare the total receipts at the 12 markets with the receipts for the same period a week ago, and a year ago. They then receive a report from our night hog man as to the general quality and weight of the hogs that came in during the night.

The manager and hog salesmen review the previous day's market at Chicago, and the other principal markets.

They go over the meat trade reports, and estimate the effect the weather, holidays and competing foods may have on the demand for fresh and smoked pork. Likewise, they estimate the effect of weather and holidays on supply prospects.

They discuss the supply during the immediate past, the present supply that morning, including directs through the yards, and the prospective supply for the immediate future, which the Government supplies down here, but the other directs that come in through other points and not through the yards, we don't know how many those are at that time.

Q. When you say "down here" do you mean the first floor?

A. On the first floor of the Exchange Building.

Q. Of the Exchange Building?

A. Yes. The United States Department of Agriculture posts those direct that come through the U. S. Yards, but [fol. 853] the others we don't know anything about that at the time.

They also discuss the prices of the immediate past, with particular thought in regards to prices of the various classes, and grades during the entire marketing session of the previous day. It may vary during the day, however.

These factors and numerous others, the working of which will establish prices on that day, are analyzed by the salesmen.

After all of these factors are taken into consideration, and others of importance, the salesmen then decide whether the market should be higher, lower or steady on the various classes, grades and weights of hogs, and how much.

The manager and salesmen then go out to the hog market at about 8 o'clock. On the market we have four main classes of buyers: the big packers; the small local packers and killers; the order buyers, who buy for packers away from this market; and the traders.

The salesman when he gets to his alleys then instructs his assistant salesman as to any sorting that should be

done in order to sell the hogs to better advantage. He then proceeds to show his hogs to any buyer interested in purchasing them. When the salesman prices the load of hogs to a buyer, at a price he is willing to pay, the sale is consummated. This procedure continues throughout the day until the salesman has sold all of his hogs to the buyers in [fol. 854] a way that he considers to the best advantage of the owners of the hogs.

Throughout the day, the manager of the hog department contacts the different salesmen who are located in different divisions of the yards out here. He is also in communication with them by telephone so that he knows what is going on in all parts of the market. In making the rounds of the market, he contacts many buyers, and other sellers, besides the market reporters, both the Government and the market newspaper. This free and open interchange of information is an important factor in making possible fair prices.

Usually there is a difference between what the salesman asks, and what the buyer wants to pay. This is commonly referred to as bargaining margin. This bargaining margin varies since some buyers are willing to pay more than others. Where the prices actually land, is determined by the relative strength and information of the selling side, as pitted against the strength and information of the buying side.

Q. What do you mean by the term "strength" as you use it here?

A. Well, strength means the ability that the salesman and the hog manager have to analyze and interpret this information and in the light of their training and experience coupled with their trading ability to use it to the best advantage of the hog producers or the livestock producers.

[fol. 855] Q. Continue, please.

A. When a market has a large volume and a large variety of livestock—you have got to have both—such as Chicago has, in the hands of scores of experienced, capable salesmen, and they are able to compete on equal terms with the buying side, you have a marekt where the price levels

will land more fairly within the bargaining margin than you do where prices are left largely to the buyers.

Supply and demand does not automatically establish prices. It does establish and broaden limits of price levels, but supply and demand does not establish the actual price. All buyers every time must be forced to give all they can afford.

Numerous buyers represent demand, and the salesmen represent supply. Supply and demand meet with each sales transaction, and the price is recorded. Reporters, as well as buyers, and everyone interested in the hog market, release the information as soon as these prices are established. Thus, all over the country, the other markets and other places where hogs are sold, guidance is received from the action at Chicago.

Q. Now, Mr. Swanson, what you said here with reference to the operations of the hog department would apply also in connection with cattle and sheep departments, would it not, in a general way?

A. Yes, it would.

[fol. 856] Q. Is it important to packers to have volume in order to hold down overhead costs?

A. Yes, it is. The more nearly that packers can regulate their killing and processing operations so as to operate as near to capacity as possible, is to their advantage. This is true because it holds down their per unit costs of killing and processing.

For instance, a packer may think some livestock is a little too high in price to buy, but on the other hand, if he does not buy it, he knows that his operating costs per unit will go up that day. Frequently, he figures in the long run, he would rather handle that livestock with the opportunity of keeping more customers, and often assist in selling more of his other products.

Therefore, peak volume consistent to the general supply conditions, is highly important in holding down overhead costs for packers.

On price establishing markets, such as Chicago, capable salesmen are able to maintain more fair prices by being alert to the volume needs of the various packers.

Q. What is the effect of Chicago public market on stabilizing volume?

A. Uniform receipts consistent with demand conditions are highly desirable, and admittedly so by both the farmers and the buyers, processors and distributors of meat.

[fol. 857] Salesmen assist farmers in matching the flow of livestock to meet demand. This can only be done effectively from the public markets where information is freely disseminated to all parts of the industry.

Q. In that connection, Mr. Swanson, would you like to just explain a little bit more clearly just how you do that in your organization in regulating supply at times?

A. We have many calls from livestock producers wanting to know when they should bring their livestock in; when they should bring it in, whether they should bring it in tomorrow or the next day or next week. Naturally we try to get them in when we feel the demand is apt to be the most active so that it will result in a more even adaptation of the current supply to the demand.

Q. Thank you. What is the function of the Chicago livestock market in dealing with temporary and seasonal surplus supplies?

A. Temporary and seasonal surplus supplies of livestock frequently come to the Chicago market because the Chicago market, with its immense buying power, both actual and potential, is able to handle such surplus at more fair price levels than could be done at small markets, or moving direct.

Q. What will be the effect of a decreased volume on the open market at Chicago?

A. The effect will be a less desirable market.

Primarily because many buyers, who now buy regularly [fol. 858] at Chicago all or most of their supplies, would be forced to go elsewhere at great inconvenience and cost to them.

With fewer buyers at Chicago, competition would be lessened, price levels would not be as satisfactory, and this would adversely affect livestock producers.

Only by the maintenance of volume on the Chicago market, can buyers secure their wants and needs and only

their wants and needs, for the various classes, grades and weights of livestock.

Q. Will reduction of volume affect the efficacy of the Chicago Public Market in handling temporary and seasonal surplus supplies?

A. Yes, it will. The best use of the immense facilities for handling and storing at Chicago would be lessened considerably if volume were deflected from the Chicago market. The greater the volume at Chicago, the more effectively will temporary and seasonal surpluses from all parts of the country be handled, and the less violent will be the swing in prices.

Q. Is the time of arrival of livestock on the Chicago market of any importance?

A. Yes.

Q. Why is that so?

A. It is important that livestock arrive on the market early so that there is time for rest, feeding, watering, and sorting before the salesmen start to show them to the [fol. 859] buyers. This gives the salesman the opportunity to show their livestock to the best advantage. The most important thing is that it gives the livestock producer the opportunity of access to all of the markets, early market, middle markets, and late markets.

Many late arrivals must be carried over, resulting in some depreciation, as well as added costs for feeding and handling.

In conclusion, it is in the interest of livestock producers to have an effective livestock market at Chicago. The Chicago market must have high volume and sufficient action in order to determine fair livestock prices for those sending livestock there and also to be used as a guide throughout the entire livestock industry. The stabilizing effect of the Chicago market is a benefit to consumers as well as producers and processors. Anything done to decrease volume to the Chicago market and slow up its action would be detrimental to the public interest.

Q. Is that all?

A. That is all I have now.

Mr. Quasey: That is all on direct.

Exam. Diamondson: Any questions? You may cross-examine.

Mr. Rynder: No questions.

Exam. Diamondson: The witness is excused.

(Witness excused.)

[fol. 860] Mr. Belnap: Mr. Ashby.

A. C. Ashby was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. Please state your name.

A. A. C. Ashby. I live in Urbana, Illinois.

Q. What is your occupation?

A. Professor of livestock marketing at the University of Illinois College of Agriculture.

Q. How long have you occupied that position?

A. Almost 22 years.

Q. What was your experience prior to that time in the production and marketing of livestock?

A. For something over four years before coming to the University of Illinois I was the District Livestock Market Supervisor for the Packers and Stockyards Administration serving in Chicago, Cincinnati, Indianapolis, and in the Washington office.

For three years previous to that I was in commercial newspaper work and ten years previous to that I was in animal husbandry as a professor at the University of Nebraska and Washington State College and the University of Minnesota.

Q. What degrees do you hold?

A. I hold a Bachelor of Science and Agriculture degree from the University of Nebraska; Master of Science from the University of Minnesota; and a Doctor's degree of [fol. 861] Economics from the University of Illinois.

Q. What courses are you teaching at the present time at the University?

A. A course in livestock marketing.

Q. In connection with that course and your professional activities through these years, have you kept closely in contact with the marketing of livestock and the problems encountered in that field?

A. Continuously in contact.

Q. Do you make it your business to visit the country buying stations as well as the public markets?

A. Yes, I have kept in rather close contact with all types of marketing agencies, particularly in Illinois, but to a considerable extent over a wider area as well.

Q. Just where does Chicago stand so far as a market for slaughtering of livestock is concerned?

A. I would characterize Chicago as the national slaughter livestock market. It has long been recognized as the largest and most important slaughtering livestock market. It serves a larger area than any other market. It handles normally a larger volume of slaughter livestock than any other market.

Exam. Diamondson: In the United States?

The Witness: In the United States and the world as well, Mr. Examiner. It receives, I think, a greater variety of livestock consistently throughout the year. It presents [fol. 862] the greatest concentration of buying power of any livestock market in the country.

We have effective buying competition on this market. The entire market supply area of Chicago extends clear to the Pacific coast as well as the entire market demand area which extends clear to the Atlantic coast and they are influenced by Chicago's prices. I think it is safe to say that no other livestock market approaches Chicago in the breadth and strength of this price influence.

Q. Would you say that it is recognized as a price establishing market for livestock?

A. That is the experience I have had. It is the opinion that I have found in livestock circles throughout the country.

Q. Can you give some illustrations of how even distant areas look to Chicago as a place where prices of livestock are set?

A. There are two recent examples that I think of, both

of them by the way are in Government releases. The first was in the publication "Marketing Activities" which is issued monthly by the Production and Marketing Administration of the United States Department of Agriculture. This was the issue for December, 1947. It refers to a telephone request which had come into their Atlanta office from a bookkeeper at a little stockyards at Sylvania, Georgia, saying they had missed the broadcast of that morning's market and they wanted the hog market at Chicago because they used that in making up their local market for the day.

[fol. 863] The other was a release which is called "The Western Sheep and Lamb Contract Report" which is a mimeographed release from the Production and Marketing Administration and my copies come from the Chicago office here at the yards. This was dated February 10, 1948, and it was reporting on the early lamb situation in California and reported that buyers had displayed a cautious approach to the purchase angle except for a short period during the holiday season when fat lamb prices advanced materially at the midwest markets which, of course, includes Chicago.

Q. Does the variety of the Chicago livestock have some influence on the position that it occupies?

A. From the standpoint of buying competition, I think it has a great deal to do with it because different buyers require different sorts of livestock for their particular use and unless the market has a variety as well as volume it does not give the buyer the freedom in selection.

I might say in that connection I think it is axiomatic among livestock salesmen that no one buyer is ever the best buyer for all classes and all grades and all weights of livestock. So variety is important from the buying standpoint and it helps attract buyers that are so necessary from the selling standpoint.

Q. Dr. Ashby, in your experience do you find when the Chicago prices are influenced by conditions purely local to Chicago, that that is evidenced in somewhat corresponding [fol. 864] changes in prices at other markets?

A. I recall one occasion when that appeared to be the case. An instance on the market here where a strike was

pulled suddenly in four of the smaller packing plants here in Chicago. It did not affect the other packers on this market and it did not affect plants at other markets.

The day before the strike hogs were up 15 cents here at Chicago; they were up 14 cents at the seven leading markets outside of Chicago and the interior markets. That is central Illinois and southern Minnesota were up 15 cents. On the morning of the strike the hog prices on the Chicago market were off 25 cents; the seven other markets were off 24 cents; and the interior markets were off 25 cents.

As I recall it, the third day, which will be the second day after the strike was called, Chicago was up 15 cents and the seven other markets were up 16 cents and the interior markets were up 17 cents. It seems to me that that is an example of a purely local situation demonstrating the relationship of Chicago to prices at outside points.

Q. What did you find out about this matter from the information you gained in visiting the other markets and buying stations and auction markets in this immediate area?

A. Speaking more particularly from the State of Illinois, because I am more continuously in contact with the markets and the areas here. I have been maintaining contact [fol. 865] with the local markets and the local stockyards and packing plants in Illinois for almost 22 years. I have discussed prices, buying policies, buying practices, etc., with the managers of these points.

It is my observation that the local Illinois packing plants in the Chicago area base their livestock buying prices directly on Chicago and that is particularly true with regard to hogs, but it is also true of all other classes of livestock that they slaughter. I think a majority of Illinois local livestock markets or local stockyards as we call them, base their buying prices directly on Chicago and it is common knowledge that the packer's private buying yards here in Chicago claim to pay the same prices as are paid on the open market here at the Union Stock Yards. In fact I have never heard the claim even made that these yards make any attempt to set an independent price.

Q. Have you any comment to make on what Mr. Swanson

said as to this theory of demand and supply setting an exact price as against the setting of a range within which people are going to set the prices?

A. I think his description of the situation is eminently correct and I would agree with him. I might amplify it a little bit, but I would be taking time to add nothing more to the picture than what Mr. Swanson gave.

[fol. 866] Q. Is it important to producers of livestock in arriving at the exact price at which it is sold to have full information as to prices and to be represented by competent sellers or competent agents?

A. I think both are absolutely necessary. I think the greatest mistake that a great many livestock producers are making today is in assuming that they are competent to do their own livestock selling.

Q. Is it your experience that producers are effectively represented on this market?

A. Yes, I think they are.

Q. That is, you find that the commission people who handle that livestock for sale are experienced and competent?

A. I have been on many markets during the last 25 years and I think that the sales force for the marketing agents in Chicago are second to no other market in the country.

Q. Is the dissemination of current, adequate and complete information as to prices important?

A. Very important and very adequately done, I might add, from Chicago.

Q. Is such information available any place else other than at the public market?

A. I don't know of any place where it is available.

Q. Do you find that at the country buying points established by various packers they are represented by experi-

[fol. 867] enced buying personnel?

A. I have never known one that was not represented by experienced buying personnel, but I think probably the best answer I can give to that is a statement that resulted from a study by the U. S. Department of Agriculture a few years ago of buying stations, packer buying stations in Iowa.

They reported that there were only two stations where the buyer had less than ten years buying experience; 12 stations where the managers had from 10 to 35 years of experience; and two managers had 45 years active buying experience. I think the packers appreciate the importance of experience on the buying side much more thoroughly than the livestock producers appreciate the importance of experience on the selling side.

Exam. Diamondson: You don't mean to leave the impression on the record, however, that the packers do not have good buyers also?

A. They have the very best, Mr. Examiner. The point I was trying to make was that the packers appreciate the necessity of the best representation he can get. First of all he picks his men very carefully and he trains them very thoroughly before he allows them to assume any responsible buying position. He not only does that, but he schools these buyers and checks them constantly in their operations. If a buyer is not fitting in one place to the best advantage, they transfer him to another place.
[fol. 868] The point I want to make is as opposed to that we have a great many livestock producers who assume that they are competent to be their own salesmen and they do not appreciate the importance of expert salesmanship. I am glad you asked that question because I did not want to leave that impression on the record.

By Mr. Belnap:

Q. In your experience do you find there are less price irregularities on public markets when title of livestock is transferred at buying stations?

A. I think that is one of the important aspects of the problem. I would answer your question definitely yes, and the farther we get away from the public markets and the larger the volume of livestock that is marketed outside of the public market, the more price irregularities are we going to have. We will not only have more price irregularities but weighing and sorting, which, of course, is very closely associated with the matter of price.

Q. Do you consider that a strong, flourishing public market is essential to the livestock industry?

A. Very definitely. I think the central competitive livestock market is a necessity in our livestock meat industry and I would say also that no satisfactory substitute as yet has been brought forth and I would say the public market is invaluable on four counts. First, that it provides trained salesmanship that enables sellers to meet buyers on the basis of near equality as to information and bargaining [fol. 869] position.

Secondly, at the public market the livestock is put before many buyers enabling the seller to find the best buyer for each particular lot of animals.

In the third place, and I think this is very important, small packers and small buyers are able to operate on approximately equal footing with the larger buyers, a privilege that is seldom available to them in other types of livestock markets.

And in the fourth place the public markets furnish prompt and dependable information, market news in regard to prices, market conditions, volume of receipts, and this information is made immediately and continuously available during the trading day.

I would add that whenever the central market is undermined by reduced volume of slaughtered livestock consigned there for sale its efficiency will be impaired. Livestock selling will become more and more localized then and should that occur we may reach the point where no effective organized livestock selling service is left to livestock producers.

I think the public market, if you will excuse the addition, is very important. I think the continuance and the maintenance of a strong public market is quite as important to the welfare of the meat packing industry of this country as it is to the livestock producers.

[fol. 870] Q. Is good railroad transportation essential to a flourishing public market?

A. I would say it is absolutely essential.

Q. You were here last week, were you not, at the hearings we held downtown?

A. A considerable part of the time. I did not hear all of the testimony.

Q. Did you hear the testimony given by the railroad operating witnesses?

A. Part of them, I did not hear all of them.

Q. Based on that testimony, I would like to ask you a couple of hypothetical questions. If as a result of the granting of the Swift demand in this case it becomes necessary for the railroads which haul stock to this market to lengthen their schedules so as to circumscribe the area from which they can now bring livestock to Chicago within 36 hours, what in your judgment would be the effect on the Chicago public market and the volume of livestock consigned thereto for sale?

A. Well, I have had many years experience in the livestock business and some experience in actual shipping operations myself, and my opinion is that the first and the immediate effect on the shippers outside of the new 36 hour zone, whatever that may be, the immediate effect will be to discourage those men from starting for the market.

Q. Will they tend to seek other outlets for their salable [fol. 871] livestock?

A. I think unquestionably they would.

Q. Now, if we were to assume that the schedules are lengthened and the results which you just point to followed and in addition even under lengthened schedules the railroads find it difficult and on some occasions impossible to make early delivery at Chicago, that is in time to have the livestock to get into the sales pens for the early market, what do you think will be the effect on the market and on the volume of livestock consigned thereto for sale?

A. I think I would answer that in this way: that any time a shipper comes to market with a consignment of livestock and he encounters what he regards as unreasonable delays in getting that livestock spotted and unloaded, it discourages him from coming back to that market unless he is absolutely satisfied it is an exceptional condition and is entirely aside from the normal situation that he may expect. He may forgive it in that case.

Q. But if he encounters it in quite a number of instances what will he do?

A. He will divert his shipments to some other point, I would say.

Q. Is the continuation of a flourishing livestock market essential to livestock producers from the standpoint of giv-

ing them a competitive outlet where they always know they [fol. 872] can go with their livestock, and I am speaking now of all producers, including those who upon occasion may think they do better by selling direct?

A. I think there is no question about the answer to that question. Very definitely yes. Even the producers who do not patronize the public market recognize its value and they recognize it is a definite service to them and I would add that they recognize the necessity of its continuance because they appreciate they are going to be out on a limb if anything happens so that that market ceases to operate.

Q. Is the Chicago public market of any importance to the smaller packers located outside of Chicago to the east and south?

A. I think it is extremely important to them. I visited, myself, many of the smaller eastern packers and I know some of the operators quite well personally.

I would say that the Chicago market is very important to them as a source of supply and a dependable source of supply.

Q. Would they be injured or handicapped in competing with the larger packers if a flourishing public market is not maintained?

A. There is no question in my mind but what they would be seriously handicapped.

Q. Why?

A. For several reasons. First of all the small packer because of his volume of operations is not able to finance and maintain a large buying organization. He may have [fol. 873] one or two or three men who do all of his livestock buying for him. If he were forced to go to the country he is facing the competition of large buying organizations that have sufficient personnel; that have the facilities and resources that they can blanket the country and buy at every crossroad if necessary in order to get their supply. The smaller packer can never expect to do that.

Q. The statistics in this record show as to hogs that only about 45 percent of those which come to Chicago come as salable or marketable livestock. Now is the sale of that 45 per cent which comes to the Chicago market the sale that fixes and registers the prices on which other markets in

the country buying stations are dependent as you understand?

A. To a very large extent, I think so. I am not denying the operation of the supply and demand. I am agreeing with Mr. Swanson's statement and that is that supply and demand as it operates through the market and through buyers and sellers, that that stabilizes your price. I agree with him entirely. The supply and demand does not automatically set a price.

Q. That 60 per cent of directs and 40 per cent of market livestock in the case of hogs represents a trend as you know it and as the statistics indicate that in this case, that the market livestock has relatively decreased and directs have increased over a period of years? Can that situation get to the point where it is an unhealthy condition in so [fol. 874] far as the functions of this market in setting livestock prices is concerned?

A. Very definitely possible in my opinion.

Q. Would you elaborate on that?

A. Well, in the first place if your salable supply continues to decrease either in volume or in quality and either one can happen, you are going to discourage buyers from coming on the market. Just as soon as you restrict your buying demand you have restricted the ability of your salesmen to do an effective job of interpreting your overall supply and demand situation in terms of price on that particular day's market on your livestock.

I would just like to interject here this statement: I am not interested in raising a controversial question but I had an experience in St. Paul a few years ago and I was on that market for two days and I was making a talk. I had a meeting in the afternoon and after the meeting a fine gentleman came up and introduced himself to me and asked me to come over to his office the next morning for a little chat. He was Mr. Cushman, manager of the S. ft Packing Plant at St. Paul and one of the finest gentlemen I have ever met. He told me of an experience that had happened on that market a few months previously with 14 cars of hogs which came onto that market for sale. They were the property of Hormel Packing Company and they [fol. 875] had been purchased at a concentration point

out in Minnesota. After they had been purchased and had been loaded a strike developed suddenly at Hormel's plant and they diverted the car to South St. Paul for sale.

Mr. Cushman told me that these hogs created a sensation on the market because they were such excellent hogs, such excellent quality. He said that his head buyer called him up and insisted that he come down and see them. Any time a head buyer calls up a plant manager and insists that he come down to look at a bunch of hogs, you know that he has something to show him.

Q. Counsel for Swift & Comapny in the course of some observations he was making, characterized the charges which must be incurred by livestock sent to market for sale as parasitic charges. What are your views as to that?

A. I think that is a very unfair statement. I think the livestock producers spend money for no one thing in which he gets more value in return than the patronage for a strong market and the employment of a strong sales agency on that market. I think it is absolutely necessary that he have that and he must expect to pay for it.

Now, the unfortunate part of the situation is that the entire livestock industry of the country is benefitting from the service of the sales agencies on the market, but in the case of hogs, as you suggested, only about 40 or 45 per cent [fol. 876] are carrying the load. The other boys are carrying the gravy, but they are not helping to run the machine.

Q. Were you here when Mr. Miller testified?

A. No, sir, I am sorry but I had to leave.

Q. Well, Mr. Miller told of the people in his organization, the Chicago Traders Live Stock Exchange and among other things told of those who dealt in feeder livestock. I inquired of him about the importance of the operations of the people in that business in so far as two-way cattle and two-way sheep are concerned. Do you understand what I mean by those terms?

A. Yes, very well.

Q. Tell us first what the term means?

A. As I understand the term referring to cattle, that simply means cattle that are of a quality or character or a finish, that is, the amount of flesh that they are carry-

ing, that a packer can use them and at the same time they are of a type of cattle that a feeder can use to advantage to take back for further finishing in the feed lots.

Q. Sort of a marginal animal, isn't it?

A. Definitely marginal animal. They will go to the packer, the processor, or the feeder, according to who can see the most advantage in them for themselves.

Q. And from time to time is there a substantial volume of cattle which would be so characterized coming into this market?

[fol. 877] A. Yes.

Q. Which is the best from the standpoint of the economics of the livestock industry, to have those animals slaughtered or to have people who will buy them and send them back to the country for feed?

A. From the standpoint of potential meat supply it is more desirable that they go back to the country. On the other hand, however, if they are selling at a price so high that the country man can not take them and feed them further and at least break even on them, then they better go to the packing plants because there is no reason for the man taking them to the country to lose money on them.

But from the standpoint of the meat supply, I would say that it is desirable that they go back for further feeding and I think that is to the interest of the packer normally.

Q. There has been some mention in this record of practices in so far as watering and feeding livestock before it is offered for sale. I take it that when the livestock is fed or watered when it is offered for sale adds nothing to the flesh of the animal, does it?

A. What?

Q. I take it that when the livestock is fed or watered when it is offered for sale adds nothing to the flesh of the animal, does it?

A. It maintains the carcase weight that the animal has. From that standpoint I would say that it is a potential [fol. 878] insurance of retaining the carcase value that it has.

Q. That is as far as it goes?

A. Yes.

Q. Are we dealing in comparable figures if I make you

a comparison of prices on any given lot of animals, one where the price is applied to weights before the livestock was fed and watered and the other applied to weights of livestock after the livestock was fed and watered?

A. I don't think you are justified in comparing them at all because you are dealing in two different commodities.

Q. Will livestock that is fed and watered before sale pick up an appreciable amount of weight to which the sales price per pound would be applied?

A. Normally it will regain a part of the weight it has lost in transit from the feed lots to the market, yes.

Q. Of course that is not possible if the animal is weighed without being fed and watered?

A. No, you lose all of the shrinkage in that case.

Q. And is the amount of shrinkage so regained substantial?

A. In most cases I would say it is.

Q. What would it run, 2 per cent or 3 per cent, perhaps, in the case of hogs?

A. Well, I think I would answer that this way, Mr. Belnap: In talking with a packer buyer in different places at different times I find they pretty well agree that compar- [fol. 879] ing hogs that have been fed and watered before sale and slaughtered with hogs that are weighed right off the car or off the truck, the packer will normally expect 1 per cent higher dress yield on the hogs that are weighed off the car or off the truck. There is an appreciable difference.

Q. When you say yield, what do you mean?

A. I mean for instance this: I mean simply the number of pounds of carcase that hangs up on the rail in proportion to the number of pounds of live weight before the animal was slaughtered. We speak of dressing percentage of hogs for instance as yield is, the yield is 78 per cent on a certain weight of hogs and a certain grade of hogs today or it might be 77 or it might be 79.

Mr. Belnap: That is all on direct.

Cross-examination.

By Mr. Day:

Q. Mr. Ashby, the advantage of feeding these feeders is that the feeder can not only put additional weight on it, but he can look forward to getting a price several cents higher a pound than if the stuff were sold as a feeder?

A. In putting additional weight on the animal and feeding it for a longer period of time, he will normally raise the grade of the animal and put him in a higher class grade and he also hopes to get an increase in price.

Q. That is how you get the prime beef, isn't it?

[fol. 8801] A. Yes, when you get it.

Exam. Diamondson: Do you have any questions?

By Mr. Rynder:

Q. Mr. Ashby, in speaking of the importance of the public market as an aid to the smaller packer in purchasing in competition with the larger packer, could you tell me just what companies you had in mind when you mentioned the larger packers?

A. Well, when I speak of the larger packers I think of the big four first of all and then probably five or six of the larger interior packers and in my own mind I group those as the larger packers of the country, possibly there are ten of them altogether. I would have to count them up. I should not specify a specific number because it might be eight or nine.

Q. Would there be any objection to naming them?

A. What is that?

Q. Would you have any objection to naming them?

A. In my own mind I think of Armour, Cudahy, Swift, Wilson, Raft, Morrell, Hormel. That would be seven.

Mr. Day: How about Kingan?

The Witness: I would include Kingan as one of the larger packers.

By Mr. Rynder:

Q. One thing more. Mr. Belnap mentioned the relationship of 60 to 40 to the directs and salable receipts at the Chicago market?

A. Yes.

[fol. 881] Q. Does your memory go back to the time when that was much different?

A. Yes, I would say so, although in my early years I did not have a close contact with the Chicago market. I grew up in Nebraska and we seldom came as far east as Chicago.

Q. Can you say anything definite as to your recollection as to what it was?

A. I could not say anything definite just from memory.

Mr. Rynder: That is all.

Mr. Belnap: That is all I have.

Exam. Diamondson: The witness is excused.

(Witness excused.)

Mr. Belnap: Thank you very much, Doctor. Mr. Smith, I will call Mr. Welsh.

H. R. Welsh was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. State your name, please.

A. H. R. Welsh.

Q. Where do you reside, Mr. Welsh?

A. 3310 West 64th Place, Chicago.

Q. What is your business?

A. General agent, Stock Yards District Agency.

Q. How long have you held that position?

A. Since the first world war. My last position since [fol. 882] January 1, 1945.

Q. What was your occupation prior to that time?

A. Chief clerk to the Agency since August 24, 1918.

Q. What is the Joint Agency to which you refer?

A. We represent 22 trunk line carriers, two electric carriers and three switching lines.

Q. In other words, you are the agent for the railroads at this station?

A. Joint agents for all railroads.

Q. At my request did you prepare a tabulation of livestock arriving at this market on which the elapsed time from the loading of the stock until the unloading of the stock exceeded 20 hours?

A. I did.

Q. What period does that study cover?

A. It covers from January 26, 1948, to and including February 16, 1948.

Q. Did you show the results of that study on an exhibit?

A. Yes.

Mr. Smith: I would like to have that document marked with the next exhibit number.

Exam. Diamondson: It will be marked Exhibit No. 45.

(The document referred to was marked as Defendant's Exhibit No. 45, Witness Weish, for identification.)

By Mr. Smith:

Q. Did you show the results of that study on Ex- [fol. 883] hibit 45?

A. Yes.

Q. Approximately what percentage of the total shipments by rail are shown on this exhibit for the period covered by the exhibit?

A. 46 and a fraction: 46.2 of the total receipts during that period.

Q. May we understand then that for the period studied 46 and a fraction per cent of all of the livestock which arrived at this market by rail consumed more than 20 hours in transit?

A. Correct.

Q. So that all of that livestock had a margin under the Federal law between eight and 16 hours at the time it was unloaded?

A. That would be the margin, yes.

Q. You have shown as to each car of that livestock the data that is recorded at the top of each of these pages?

A. That is correct.

Q. And is there a separate page for each railroad for each day?

A. That is right.

Q. Is there any other comment that you should make on this exhibit, Mr. Welsh?

A. Nothing more than is contained in the exhibit.

Q. I notice that on some of these pages you have stricken [fol. 884] the consignee, is that correct?

A. That is right.

Mr. Smith: If your Honor please, I did that to avoid any possible criticism of the unnecessary disclosing of the names of the consignees. I may say in another exhibit we did show the packers who received that traffic or direct livestock shipments because I thought it was necessary for the Commission to decide this case to have that information, but it does not seem to me to be necessary for the Commission to have the names of the consignees of the various shipments here because I don't think it has any particular significance. I may say we will be glad to furnish them, however, if the Commission would desire to receive it.

I offer into evidence Exhibit 45.

Exam. Diamondson: Any objection?

Mr. Rynder: No objection.

Exam. Diamondson: The document will be received as Exhibit No. 45.

(Defendant's Exhibit No. 45, Witness Welsh, was received in evidence.)

Mr. Kaylor: Exhibit 45 will also be received by the Illinois Commerce Commission.

By Mr. Smith:

Q. Has it been your observation that in spite of any effort made to avoid violation of the Federal 28 and 36 hour law that such violations do from time to time occur, Mr. Welsh?

[fol. 885] A. I recorded some on page 6 where the confinement time of livestock exceeded the 36 hours there.

Q. Do you happen to have in mind quite apart from this exhibit approximately how many violations of this law there have been during 1948 at this stockyards?

A. The figures up to February 9th, I believe, was 18

violations or 18 violations reported to be reported to the Government.

Q. Approximately how many did you have last year?

A. I have not the figures for last year. The Bureau of Animal Industry has those figures; I have not those figures with me.

Q. You don't know approximately?

A. Approximately I understand between 75 and 100.

Q. Did the Government take steps to prosecute those violations in the usual manner?

A. They report them to Washington for prosecution.

Q. In respect to each of these shipments that are recorded in this Exhibit 45, does the exhibit show under total time confined in cars just how much time was left under the 28 or 36 hour law in respect to that particular shipment?

A. It shows actual time from the time loaded until they were unloaded.

Q. Mr. Welsh, is there any shipment or shipments included in this showing or this exhibit where the animals were unloaded enroute for feed, rest and water, and if so, [fol. 886] does the total expired time which is shown in the third from the last column run from that enroute unloading or from the original loading?

A. The time shown here or the time confined is from the point where the stock was fed and watered and reloaded.

Mr. Smith: Mr. Examiner, I think it is clear that you can hypothesize any delays that you please that might occur to these cars under this new arrangement, six, eight, ten, or twelve hours and determine on the basis of these cars which ones of them would have violated the statutes. That is the purpose of it.

Exam. Diamondson: Do you have any questions?

Mr. Rynder: No questions.

Exam. Diamondson: You are excused.

(Witness excused.)

Mr. Quasey: There is a question I would like to put to Mr. Swanson that he omitted.

Exam. Diamondson: We will recall Mr. Swanson.

D. L. SWANSON was recalled and testified as follows:

Direct examination.

By Mr. Quasey:

Q. Mr. Swanson, what is the average commission that the Chicago producers received last year related to the value of the livestock total?

[fol. 887] A. It was 43/100 of 1 per cent. The commission was 43/100 of 1 per cent of the value of the livestock sold.

Mr. Quasey: That is all.

Exam. Diamondson: Any questions?

Mr. Rynder: None.

Exam. Diamondson: The witness is excused.

(Witness excused.)

Mr. Smith: Mr. Raasch.

R. G. RAASCH was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. Will you state your name, please?

A. R. G. Raasch.

Q. What is your occupation?

A. I am Chairman and Tariff Publishing Agent of the Illinois Freight Association, 516 West Jackson Boulevard, Chicago, Illinois.

Q. How long have you held that position?

A. Since September, 1942.

Q. Were you in railroad work prior to the time you took that position?

A. Prior to that time for 46 years I was employed by the Illinois Central in various clerical and official capacities.

Q. Have you prepared a statement and an exhibit to submit here, Mr. Raasch?

[fol. 888] A. I have.

Mr. Smith: May we have the documents marked?

Exam. Diamondson: The large exhibit will be marked as Exhibit No. 46 for identification and the smaller one 47.

(The documents referred to were marked as Defendant's Exhibits Nos. 46 and 47, Witness Raasch, for identification.)

By Mr. Smith:

Q. Will you continue with your statement?

A. The Union Stock Yards are located on the rails of the Chicago Junction Railway and have for many years constituted the livestock terminal of the Chicago railroads, defendants, at Chicago, Illinois. I am appearing on behalf of the carriers parties to the complaint, except the Chicago Junction Railway and the Chicago River and Indiana Harbor Company. The Chicago South Shore & South Bend Railroad does not handle any livestock, I am so informed.

In Hygrade Food Products Corporation versus A. T. & S. F. Railway Co. et al., 195 I. C. C. 553, at page 554, it is said:

> "No side track delivery of livestock to any packing house or other industry is made by the Chicago Junction. The Union Stock Yards are public yards served over the rails of the Chicago Junction by the individual line-haul carriers bringing livestock to Chicago, and they are the livestock terminal at Chicago of all these carriers. They provide for the carriers the means of making the deliveries of livestock to consignee at these public yards which they are under ob-
> [fol. 889] ligation to make."

The Union Stock Yards is located in the City of Chicago, which has a population of between three and four million, and is in a thickly populated area where railroad traffic is very dense and heavy. It is located almost in the center of the Chicago Switching District, which is approximately 40 miles long and 7 to 15 miles wide. The Chicago Switching District covers an area larger than any other switching district in the country, and is served by

approximately 38 railroads which maintain a network of over 5,500 miles of track in the district; 160 freight and passenger yards and 73 freight stations.

38 railroads perform switching service, of which 25 railroads perform road haul service as well as switching service.

Agent R. G. Raasch's Tariff I. C. C. No. 626, Directory of Industries with private or individual side tracks in the Chicago Switching District, as defined in Agent R. G. Raasch's Tariff I. C. C. No. 584, contains approximately 5,000 industries which are constantly receiving and shipping freight. There are about 10,000 shippers and receivers of freight which is handled in this area in great volume.

A map of the Chicago Switching District is already in the record, as per Exhibit No. 9, and shows the location of the Union Stock Yards.

In I. C. C. Docket No. 24847, 197 I. C. C. 463, 219 I. C. C. [fol. 890] 531, the Commission found that "centralized delivery of livestock has been found to be advantageous to both the carriers and the livestock industry." Packers and buyers receive their livestock at the Union Stock Yards and the receipts are very heavy.

I should like to introduce Exhibit No 46 consisting of 10 pages, containing a statement showing the receipts of livestock at the Union Stock Yards for a number of years, which I will describe as follows:

Page 1 is a statement showing receipts of livestock at the Union Stock Yards, Chicago, Illinois, for the period 1920 to 1946. I should add in there other than by railroad.

Mr. Rynder: Other than by railroad?

The Witness: That is right.

Pages 2 and 3 of the exhibit are statements, showing receipts of livestock at the Union Stock Yards by rail via the railroads indicated and for the years 1920 to 1946, inclusive.

Pages 4 and 5 consist of a statement showing the receipts and valuation of all livestock at the Union Stock Yards, Chicago, Illinois, for the term of 81 years, ending December 31, 1946.

Page 6 consists of a statement showing shipments of livestock from the Union Stock Yards, Chicago, Illinois, other than by railroads, for the years 1920 to 1946.

It will be noted there were apparently no shipments from [fol. 891] 1920 to 1928, other than by railroads.

Pages 7 and 8 show shipments of livestock from the Union Stock Yards, Chicago, Illinois, by rail via railroads indicated.

Pages 9 and 10 show shipments of all livestock from the Union Stock Yards, Chicago, Illinois, for the term of 81 years, ending December 31, 1946.

This last statement shows the number of heads during the period mentioned, and the exhibit in its entirety was taken from the 81st Annual Report, 1946, and other reports as shown in the statements issued by the Union Stock Yards and Transit Company, Chicago, Illinois, and shows that there is a very heavy movement of livestock into the Union Stock Yards and out of the Union Stock Yards.

Most of the livestock shipped to Chicago comes from the west and southwest as can be deduced from the shipments arriving by rail in Chicago over Western lines, as shown in my Exhibit No. 46.

The Interstate Commerce Commission in the Western Livestock District Rates Case, reported in 176 I. C. C. 1, decided June 8, 1931, prescribed rates on livestock between practically all points in western territory, including Chicago, Illinois, and the same measure of scale was required to be published throughout the territory.

In Ex Parte 123, reported in 226 I. C. C. 41, these rates [fol. 892] were increased 5 per cent on March 28, 1938. In Ex Parte 148, reported in 248 I. C. C. 545, the rates were increased 3 per cent, and that increase remained in effect until approximately May, 1943, when the authorization for the increase was suspended until six months after the legal termination of the war. The suspension notices are found in 225 I. C. C. 357; 256 I. C. C. 502; 258 I. C. C. 455; 259 I. C. C. 159; and 264 I. C. C. 702.

While these rates were under suspension, the railroads again petitioned the Commission for an increase in rates, which became known as Ex Parte 162, as reported in 266 I. C. C. 537. That report authorized railroads to increase

rates on livestock 15 per cent effective January 1, 1947. This had the effect of taking the place of Ex Parte 148, which authorization had been vacated as previously mentioned. This was followed by the so-called interim report in Ex Parte 166, wherein the Commission authorized a 10 per cent increase in the total transportation charge which became effective October 13, 1947, which the Commission later enlarged to a 20 per cent increase in the total transportation charge, effective January 5, 1948, and represents the present rate and charge.

This last authorization is not a 20 per cent increase over the existing rate, but represents a 20 per cent increase in the total transportation charge which may or may not be 20 per cent over the rate. This is mentioned specifi- [fol. 893] cally at this time, because on the statements, which I would now like to introduce as Exhibit No. 47, I have shown an interim 20 per cent increase in the rate which is not accurate, but is simply shown for information purposes.

For several years the railroads have afforded pickup service on livestock from points within approximately 250 miles of Chicago, Illinois, which carries with it an allowance by the railroads to the shipper of 3 cents per 100 pounds when that party brings livestock to the railroad for transportation in carloads, and when the railroad through truck operation goes out to the farm and brings in the livestock for subsequent transportation the railroad has the right to pay its trucker 4 cents per 100 pounds. These decisions are 238 I. C. C. 671; 248 I. C. C. 385; and 251 I. C. C. 549. On the statement I have indicated the points in Iowa at which this pick-up service is applicable, as it does not apply from Wisconsin points to Chicago, Illinois.

These are not the only points, but they are representative.

On page one of the exhibit I have endeavored to show the scale shown in the report of the Commission in I. C. C. Docket No. 17000, Part 9; 5 per cent increase authorized in Ex Parte 123; 3 per cent authorized in Ex Part 148, which was in effect only a short period of time and subsequently [fol. 894] vacated; 15 per cent increase authorized in

Ex Parte 162, which is 15 per cent over the rate resulting from the use of the basic rate plus 5 per cent increase in Ex Parte 123, but totally ignoring the temporary increase authorized in Ex Parte 148.

I have then shown the 20 per cent interim increase authorized, and as a practical matter this 20 per cent increase does not apply to the rate, but applies to the total transportation charge, and in that respect the statement does not reflect the true condition. This statement will show the increases as authorized in livestock rates since the original prescription without modification as indicated.

By Mr. Smith:

Q. Mr. Raasch, is it correct then to say that in comparing the rates that exist in Chicago today with the 17,000 Rate Case that there have been three increases or rather that three increases are reflected in the present rate, first the 5 per cent increase and then a 15 per cent increase and then a 20 per cent increase?

A. Yes, that is correct.

Q. So that the present rates in relation to the 17,000 rates can be determined by first taking 105 per cent of the 17,000 rate and then taking 115 per cent of the resulting rate and then finally taking 120 per cent of those rates?

A. 105, 115, and 120?

Q. Yes.

[fol. 895] A. Yes, that is correct.

Mr. Kaylor: That is applicable only on interstate traffic?

The Witness: Yes.

Mr. Kaylor: There is a different basis on the Illinois traffic, isn't that correct?

The Witness: Yes, much lower than the interstate traffic.

Mr. Rynder: May I interrupt there a moment?

The Witness: Yes.

Mr. Rynder: Will it work out about the same whether you use the 20 per cent instead of 105, 115 and 120 per cent? Will it come out practically the same?

The Witness: Practically the same. For all practical purposes in this case, I think it is substantially the same.

There may be some difference in a new pennies per car.

Page 2 of the exhibit takes specific points of origin in Iowa and Wisconsin with similar information shown thereon as indicated; also these points at which pick-up service of livestock is afforded are specifically marked.

Conditions affecting rail transportation of livestock have changed materially since the decade starting with the year 1920 and since the Commission decided Docket No. 17,000, Part 9, in that much of the short haul livestock shipped by the smaller operators located within about 250 miles of the western markets, has been transported by highway. In the earlier years this short haul traffic was handled largely by shipping associations and moved [fol. 896] by rail, but these associations disappeared with the building of hard roads, because truck transportation enabled the smaller producer to market the livestock in relatively small lots and permitted movement from the farm at any convenient time.

The heavy movement of livestock by other than rail transportation is demonstrated by page 1 of Exhibit No. 46.

In "Live Stock to and from the South," I. & S. Docket No. 4779, decided August 11, 1942, the Commission prescribed rates from points in southern territory to Chicago, Illinois, and other points in official territory.

From Official territory to Chicago, Illinois, the Commission prescribed rates in No. 16,746, Eastern Live Stock Cases, 144, I. C. C. 731 and 165 I. C. C. 277.

In the application of a freight rate by rail from point or origin to the Union Stock Yards, the line haul tariffs of the carriers generally refer to Agent R. G. Raasch's Tariff No. 20-X, I. C. C. No. 584, for the application of the rate from the point of origin to Chicago, Illinois, to deliveries in the Chicago Switching District.

Page 118, Section 10, Rate Bases 5 and 6 of Agent R. G. Raasch's I. C. C. No. 584, Tariff No. 20-X, provides that on livestock, carloads, from or to industries, chutes or sidings of the Union Stock Yards, the Chicago rate applies to or from points in the following states:

[fol. 897] Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Louisiana (west of the Mississippi

River), Michigan (Upper Peninsula), Minnesota, Missouri (except St. Louis), Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming, and certain points in northern Illinois on interstate traffic.

When from and to territory other than as just described, which briefly might be said to be eastern territory and southern territory, the Chicago rate applies on traffic to and from the Union Stock Yards, plus a base charge of $2.97 per car in some instances, which under the general increases has become $4.45 per car, and in other cases, the Chicago rate applies, plus $1.49 per car, which under the general increases has become $2.33 per car.

The $4.45 per car charge in addition to the Chicago rate has been applied on livestock, referred to, moving into Chicago in addition to the line haul rates since June 1894 (I. C. C. Docket No. 24847), when the rate was $2.00 per car.

The amount of the terminal charge as such has been found to be reasonable for application to Livestock traffic, but in a decision on rehearing in I. C. C. Docket No. 24,847, the Interstate Commerce Commission required the cancellation of this terminal charge of $4.45 per car to and from the west, namely, the territory covered by I. C. C. Docket No. 17,000, Part 9, 176 I. C. C. 1 and 190 I. C. C. 611, and [fol. 898] this was done April 16, 1937.

In I. C. C. Docket No. 24,847, 219 I. C. C. 531 at page 546, the Commission said—

> "2. In prescribing the rates in Livestock-Western District Rates, supra, we specifically took into consideration as an element the rendition of terminal services in connection with the transportation of livestock, and included what we considered sufficient to cover such terminal services under a normal operation, as well as to cover the unloading and loading of livestock at public stockyards."
>
> * * * * *
>
> "9. After making allowance for overstatements as to the costs of these terminal services at Chicago, as mentioned hereinabove, such terminal costs are not

shown to exceed the approximate allowance made by the Commission for terminal services arrived at in the manner indicated in this report under the rates prescribed in Live Stock-Western District Rates, Supra."

The terminal charge remained in effect to and from Southern and Eastern territory, and to and from Illinois on Illinois intrastate traffic.

Most of the livestock received by the packers at Chicago is handled through the Union Stock Yards, but there is some livestock received by the Omaha Packing Company, which is not located in the Stock Yards. The Omaha Pack- [fol. 899] ing Company has been located on the Chicago, Burlington and Quincy Railroad Company in Chicago, Illinois, for over 35 years, and during that period of time the Chicago rates on livestock have been maintained to that delivery in somewhat the same manner as the maintenance of the Chicago rates to deliveries at the Union Stock Yards in Chicago.

The reason for the application of the Chicago rates to this delivery is a competitive one.

Mr. Rynder: Mr. Examiner, if the witness is going to testify to that I wonder if he can possibly say that he has been informed on that? That matter has been fixed by two decisions of the Commission.

Exam. Diamondson: We assume that he is because he is going to have to stand cross-examination on it, Mr. Rynder.

The Witness: The Burlington is a large granger road reaching livestock origin territory in Illinois, Iowa, Nebraska, South Dakota, Minnesota and Wisconsin. Other railroads reaching Chicago also serve the same origin territory as the Burlington, although not necessarily the same specific origin points, and if those roads desire to participate in this livestock traffic at this particular delivery, they must maintain as nearly as possible the same basis of rates as maintained by the Burlington to this particular delivery.

A large amount of livestock originates at or is recognized [fol. 900] from the livestock markets at the Missouri

River, such as Kansas City, Omaha or Sioux City, and likewise at South St. Paul, Minnesota, all points reached by the Burlington. Other railroads reaching Chicago serve those points of origin, and again competitive conditions compel the maintenance of as nearly the same rate as possible to the Omaha Packing Company delivery as is applicable via the Burlington, due to the fact that for a great many years on the delivery of livestock to the Union Stock Yards the railroads assessed a so-called terminal charge of varying amounts, according to the particular time involved, of $2.00 per car, $2.70 per car, etc., and finally without any additional terminal charges when from the west.

It has been the effort of railroads, other than the Burlington, serving Chicago to maintain a no lower charge to this particular delivery on the Burlington than was maintained to the Union Stock Yards, and as a consequence the absorption tariffs provide generally for the application of the Chicago rate, the absorption of switching charges of the Burlington in connection therewith, plus the same terminal charge as prevailed at the Union Stock Yards. This action carried with it the use of the same measure of the rate to both deliveries; one being a private packing company, and the other public livestock yards open for the use of all.

In Omaha Packing Company v. C. M. & St. P. Railway Co. et al., decided December 20, 1915, reported in 37 I. C. C. 378, the Commission found specifically in connection with [fol. 901] livestock from points on the Milwaukee Road that it was proper to apply the livestock rate to Chicago plus a charge of $3.00 per car for delivery, which terminal charge was similar to that which prevailed contemporaneously to the Union Stock Yards at Chicago, Illinois.

In Livestock Western District Rates, decided June 8, 1931, reported in 176 I. C. C. 1, it was shown that the terminal charge to the Union Stock Yards at Chicago was $2.70 per car in addition to the line-haul rate. At page 123 of that report it is indicated that Western lines, other than the Burlington, absorbed the switching charges of the Burlington to the Omaha Packing Company, but added

the terminal charge of $2.70 similar to that which prevailed to the Union Stock Yards.

In Chicago Livestock Exchange v. A. T. & S. F. Ry. Co., et al., decided November 18, 1933, reported in 197 I. C. C. 463, the terminal situation in Chicago was discussed and the Commission found, among other things, that it was entirely proper to add the terminal charge of $2.70 to the line-haul rate on livestock prescribed in the livestock case to the Union Stock Yards, as well as the Omaha Packing Company located on the Burlington. On rehearing this report was reversed in Chicago Livestock Exchange v. A. T. & S. F. Ry Co., et al., decided December 7, 1936, and reported in 219 I. C. C. 531, and the Commission required to both deliveries, namely, the Union Stock Yards and to [fol. 902] the plant of the Omaha Packing Company, that the scale of rates prescribed by them on livestock to Chicago should apply. It was this report which caused the application of the rate to Chicago to these deliveries without the addition of the terminal charge.

Swift & Company now seeks to receive livestock through certain new facilities constructed or to be constructed on the Chicago Junction Railway at the flat Chicago rate.

The involved tariffs do not permit the application of the flat Chicago rate to the proposed unloading point at Swift & Company's siding. The Chicago rate applies to point of connection with the Chicago Junction Railway, plus its switching charge of 4.8 cents per 100 pounds, minimum 60,000 pounds, or $28.80 per car.

Exam. Diamondson: That is the present switching charge as increased?

The Witness: Yes, as increased.

In other words, at the present time to make delivery to Swift & Company's proposed facility, the Chicago rate from any point of origin would be applied, plus $28.80 per car, charge of the Chicago Junction Railway, published in its Tariff No. 22-S, I. C. C. No. CJ-74.

As the record here indicates, the Chicago Junction Railway seeks to cancel this switching rate of $28.80 per car on the ground that, as we understand it, it is unable to perform the service contemplated by the rate and feels [fol. 903] that the rate itself should be canceled.

With the possible exception of some emergency move-

ment, such as might have occurred during the great fire at the Union Stock Yards in May, 1934, I know of no movement on the $28.80 switching rate of the Chicago Junction Railway.

With the possible exception I have just indicated, so far as I know there never have been any deliveries of livestock to any packers, individual sidings or side tracks on the Chicago Junction Railway, and it has never been in contemplation that there should be such deliveries, because the Union Stock Yards' chutes have been recognized to be the livestock terminal of the Chicago railroads from the very beginning.

Mr. Day: Mr. Raasch, the Chicago Junction has never held itself out to handle livestock, has it?

The Witness: No, sir, not to my knowledge.

Mr. Rynder: That may be a question of law if there is a tariff charge there for it.

Exam. Diamondson: The tariff actually carries such a charge?

Mr. Day: No, the tariff applies on all freight.

Mr. Rynder: On all freight?

Mr. Day: On all freight.

Exam. Diamondson: It does not specifically indicate that it applies to livestock?

[fol. 904] Mr. Day: There never has been any provision for livestock.

Mr. Rynder: Well, Mr. Examiner, I don't care to argue that question here but I presume all freight includes livestock when it is published that way.

Exam. Diamondson: That is a question for the briefs.

Mr. Day: It is a question whether that and other things are included.

The Witness: The line-haul carriers bringing livestock into Chicago for delivery at the chutes and sidings of the Union Stock Yard and Transit Company effect delivery at these facilities by use of their own power and the exercise of running rights over the tracks of the Chicago Junction Railway. Presently, $1.50 per car is paid by the trunk line roads to the Chicago Junction Railway for such trackage rights, both inbound for the loaded car and outbound for the empty.

If the stock were to be moved to the proposed new facilities of Swift & Company, the trunk line carriers do not now have and would not have trackage rights to run into such location with their own engines and crews as they now do at the Union Stock Yards. The trunk line carriers have been advised by the Chicago Junction Railway that they would not be permitted to make such deliveries by use of their own power.

Exam. Diamondson: That is the trunk lines?

The Witness: Yes. Trackage rights would not be granted for that purpose, and it would be necessary for the trunk lines to make such deliveries to the Chicago [fol. 905] Junction Railway at the interchange tracks in the Ashland Avenue Yard.

The per car charge of $28.80, to which I have referred, would be imposed by the Chicago Junction Railway for the handling of traffic from the interchange tracks on Ashland Avenue to the proposed new facilities. It is this service that I have cited which the Chicago Junction Railway declares it would be unable to furnish.

Assuming, therefore, that the Chicago Junction Railway could perform the necessary switching service which it declares it will be unable to do, the trunk line carrier will be obliged to absorb out of the flat Chicago rate the switching charge of $28.80 per car, thus further reducing the already low earnings on this traffic.

The $28.80 per car charge published in Chicago Junction Railway Tariff No. 22-S, I. C. C. No. CJ-74, is made by that railroad and not by the trunk line or road-haul carriers.

That charge has never been absorbed by line haul carriers, and plainly if they were to absorb such a charge, it would leave the line haul carriers with substantially less revenue on direct shipments of livestock delivered to packer facilities as proposed, than they now receive on all livestock delivered to the Union Stock Yards.

By Mr. Smith:

Q. By that you mean what? That it costs the railroads substantially less to make deliveries at the Union Stock

[fol. 906] Yards on the general run of livestock than $28.80 per car?

A. Yes.

Mr. Rynder: Well, now, I would like to ask if the witness has any information on which to base that answer. What I mean is this: In going to the one delivery, the railroads use its own engine and crews. It pays this trackage and it pays this unloading charge.

Mr. Smith: Mr. Rynder, I did not intend to include that in my question. I don't believe the witness intended to include that in his answer either. When I referred to the cost, I meant the trackage charge and the unloading charge on the one hand as compared with $28.80.

The Witness: That is what I intended to answer.

Mr. Smith: I think your question would have been a proper one if I intended to include the other one, but I did not.

The Witness: The railroads can pay out as expenses through absorptions only such amounts as they receive from the shippers, and the livestock rates to Chicago were established on the basis of delivery at the Union Stock Yards and cover only expenses involved in such delivery.

For a very informative statement of the history of the Union Stock Yards, I refer the Examiner to statement of the Commission in 219 I. C. C. 531.

It is contended that in the assessment of charges com-
[fol. 907] plained of here, the carriers are giving different and unfavorable treatment to livestock in comparison with the rates applicable on dead freight. I think the Commission will recognize that there is a very great difference in the measure of transportation service given to live animals as compared to that accorded dead freight. It is manifest, of course, that the complainant receives the full benefit of the rates applicable on dead freight just as every other shipper in this area, and moreover it will be recognized that there is no competition between livestock and dead freight, and similarly the line haul rates were made in contemplation of that fact. For the sake of accuracy, it should be noted here that on many commodities the flat Chicago rates do not apply, but on the contrary, additional switching charges are imposed.

Livestock must be given expedited service from point of origin to destination, not only because of its highly perishable quality, but also because the law provides that livestock must not be permitted to remain in the cars more than 28 hours, or if released, more than 36 hours, without unloading for feed, water and rest. There are, of course, no similar provisions with respect to the handling of dead freight.

Shippers and growers of livestock are likewise anxious to get this stock to market terminal to have the opportunity of prevailing market prices and to find ready sale when there is demand for stock. The seller is anxious that [fol. 908] his stock be in good condition and of good appearance and good weight, and the buyer is likewise anxious to have the stock in good condition.

Exam. Diamondson: What is that $1.50 per car?

The Witness: That $1.50 per car is the trackage charge that the trunk line carriers pay to the Chicago Junction. They pay $1.50 in and $1.50 out.

Exam. Diamondson: That is $3.00 for the loaded and empty car?

The Witness: Yes.

By Mr. Smith:

Q. Do you find any emphasis for the comparisons you have made between the handling of live animals and dead freight in the testimony here that the railroads generally undertake to deliver livestock within a few hours after its arrival in Chicago, whereas the Junction's experience shows that it takes from 23 to 30 hours in a representative period for the delivery respectively of perishable freight and dead freight after it has been placed on their tracks?

A. Yes, I do.

Q. On the top of page 11 of your statement you say that the reason for the application of the Chicago rates to this delivery and that is to the Omaha plant is a competitive one. Mr. Rynder points out that that has been the subject of a couple of decisions by the Commission which have had some influence in that matter. Do you have any comment to make on that score?

[fol. 909] A. None other than that the Burlington Quincy expects to handle some traffic and they will have to meet the competitive condition.

Q. That competitive situation that you refer to would have a compelling effect upon the other roads if they want to handle the traffic that does exist, regardless of what the Commission does, is that right?

A. Yes.

Mr. Smith: That is all.

Exam. Diamondson: You may cross examine.

Cross-examination.

By Mr. Rander:

Q. On page 12 of your statement you refer to the first decision in the Omaha Packing Case 37 I. C. C. 378?

A. Yes.

Q. I want to ask you if the condition at that time was not this: that the Burlington bringing in livestock for delivery to a point on its own road did not charge anything above the Chicago rate?

A. I think that is probably true, yes.

Q. And at the time of the decision of that complaint, wasn't it a fact that the other roads were adding on the local switching charge of the Burlington which I have not got the decision with me on, but it might have been $6 a car then or something of that kind?

A. Yes, that is true.

[fol. 910] Q. And what the Commission did there was to require that the total charge to the Omaha plant be the same total charge of the U. S. Yards which was then $2 over Chicago?

A. Yes, that is true.

Q. And in the Chicago Livestock Exchange Case where they cut off the old $2 terminal, they also cut it off at the Omaha Packing plant?

A. Yes, they did that.

Q. Also on page 12 there is one thing I would like to get cleared up and it appears in other places. You say "As a consequence the absorption tariffs provide generally for the application of the Chicago rate, the absorp-

tion of switching charges of the Burlington in connection therewith" etc. Can you show me a tariff that provides for any absorption of those rates as you ordinarily use those terms?

A. In railroad parlance, no, there is no absorption. The through rate is published in one amount.

Q. That is what I thought.

A. But as a practical thing, the trunk line railroad pays the cost of getting in there. It is not an absorption in railroad parlance.

Q. But it is a division?

A. Yes.

Q. What?

A. An allowance it is called.

[fol. 911] Q. It is not published as an allowance, is it?

A. Yes, it is published as an allowance.

Q. Will you show me the tariff?

A. In a division sheet. It is published as an allowance in a division sheet.

Q. I have that too in my possession, but not with me this afternoon and I would like to know if you can show me anywhere where it is published as an absorption or an allowance or a division of so many dollars per car?

A. Well, in a practical way it is a division of so much per car.

Exam. Diamondson: It is published in a division sheet?

The Witness: Yes, but it is published as an allowance.

Mr. Rynder: If the witness wants to stick to his statement that it is published as an allowance, I would like to see that document.

Mr. Smith: I don't see the relevancy of this at all.

Mr. Rynder: I think accuracy is one thing that we might look for here.

The Witness: Unfortunately I did not bring it with me, Mr. Rynder, but the division as I remember characterizes it as a division sheet and it states on the face of it, allowances. It is stated right on the face of it.

Exam. Diamondson: You agree that it is really a division, is it not?

[fol. 912] The Witness: Yes, it is a division and it is called an allowance.

Mr. Smith: What difference does it make?

Mr. Kaylor: In any event, it is not published and on file with the Commission?

The Witness: No, but every copy of the division sheet we issue is sent to the Interstate Commerce Commission of the Chicago switching allowance so that you can check it.

Exam. Diamondson: We will have a short recess.

(Whereupon a short recess was here had.)

Exam. Diamondson: The hearing will please come to order.

Mr. Smith: May the record show that Exhibits 46 and 47 are received?

Exam. Diamondson: Any objection?

Mr. Rynder: No.

Exam. Diamondson: Exhibits Nos. 46 and 47 will be received.

(Defendant's Exhibits Nos. 46 and 47, Witness Raasch, were received in evidence.)

Mr. Kaylor: Exhibits Nos. 46 and 47 will be received by the Illinois Commerce Commission.

By Mr. Rynder:

Q. Mr. Raasch, I believe when we took a short recess you were saying something to the effect that the cover page of this division sheet refers to an absorption or an allowance, is that correct?

A. I see the cover does not say anything about it. I stand corrected. The cover does not say whether it is [fol. 913] an allowance or a division, but it does say it is a division sheet.

Q. Turning to the second page, do you find the use of the word "allowance" somewhere there?

A. Yes, the word "allowance" is shown in rule 3. It says "Allowances provided herein to terminal carriers are divisions of freight charges only," and it is shown in several others rules, the word "allowances".

Q. They are referred to as allowances, but as being divisions of freight charges?

A. That is rule 3 says, "The allowances allowed herein are divisions of freight charges only."

Q. One more question I want to ask you while we are on that. The allowances shown therein to the Chicago Junction on dead freight are not the same as or as high as the local switching charges on dead freight, are they?

A. No, sir, they are not.

Q. Would it be convenient while you have it there to tell me what the general allowance is on dead freight?

A. Well, I don't know whether this is up to date, but I have it here. To and from industries on dead freight 3.15 per 100 with a minimum of 60,000 pounds.

Q. Does that include the latter—the latest increase?

A. Yes, this is up to date.

Mr. Rynder: That is all.

[fol. 914] Exam. Diamondson: Will you identify the document that you got that from?

Mr. Rynder: If you want this for identification, I would like to say that this is my only copy.

The Witness: The allowances are contained in the Chicago Switching Committee Division Sheet No. 12-K.

Exam. Diamondson: Filed with the Commission?

The Witness: Not officially, no, sir. However, the Commission has been sent copies of it for their use. But it is not officially filed with the Interstate Commerce Commission.

Mr. Smith: That is all that I have.

Exam. Diamondson: The witness is excused.

Mr. Smith: I did not expect to have so much time available this afternoon and I do not have any more witnesses here at this time.

Exam. Diamondson: Very well, we will adjourn at this time until 9:30 o'clock tomorrow morning at the Illinois Commerce Commission hearing room.

(Whereupon, at 4:45 p. m., an adjournment was taken until 9:30 a. m., Tuesday, March 2, 1948.)

[fols. 915-916]

Hearing Room,
Illinois Commerce Commission,
160 North LaSalle Street,
Chicago, Illinois,

Tuesday, March 2, 1948.

Met, pursuant to adjournment, at 9:30 o'clock A. M.

[fol. 917]

PROCEEDINGS

Exam. Diamondson: The hearing will be resumed. You may proceed.

Mr. Rynder: Mr. Don C. Pollock.

DON C. POLLOCK was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name.
A. Don C. Pollock.
Q. Your residence?
A. Unionville, Missouri.
Q. In what business are you engaged?
A. Farming.
Q. And in that connection do you raise and market livestock?
A. I do, sir.
Q. What species?
A. Cattle and hogs.
Q. Where do you reside?
A. Adjoining Unionville, Missouri, about a mile from town.
Q. In what part of Missouri is Unionville located?
A. It is about eight miles in Missouri south of the Iowa line and about the middle of the state east and west.
Q. What nearby markets are available to you in marketing your hogs and cattle?
A. Well, the nearest market is Morrell at Ottumwa.

[fol. 918] Q. How many miles?

A. 75. Then we have Des Moines Packing Company at Des Moines, a hundred miles, and then we have the public market of St. Joe about 150 miles and then the Kansas City market, about 175 miles, and then St. Louis and Chicago are our two next closest markets.

Q. Where do you generally dispose of your hogs and cattle?

A. Well, at varied places you might say, just where I think possibly I can get the most money. Some of them we send to Ottumwa direct, some of them we sell to a local purchaser who either goes one way or the other and we go to Kansas City in the open market; we have come to Chicago and St. Louis.

Q. Do you sell a substantial portion of your livestock through what are known as direct sales to packers or others in your vicinity?

A. I would say, oh, probably we sell more to the local purchaser who more or less possibly goes direct.

Q. Are you informed from day to day as to the prevailing prices for livestock?

A. Yes. Of course, we listen to the information we get over the radio every day and if I have something I want to sell we call three, you might say, of the available markets in our immediate territory, I mean fellows that go to different markets in our territory.

Mr. Belnap: May I have that answer read, please?

[fol. 919] (Answer read.)

By Mr. Rynder:

Q. And by those three available markets just what do you mean?

A. Well, we have a man at Centerville that goes to St. Louis with hogs 25 miles away. We have another man at Seymour about 18 miles away that goes to Morrell direct and then we have our local fellow there that goes wherever he wishes to go.

Q. What are the sources of the radio information that you listen to daily?

A. Well, about the first thing in the morning I listen to Kansas City, at 6:25, and then we get Ames, which gives

a complete market; there are two markets in the morning and I generally get one of these or the other if I am interested. I always listen at Omaha, which comes,——

Q. Just stop a minute. Ames, let us take Ames for a minute. Does that mean that they broadcast there, that that broadcast of market information is by the State of Iowa?

A. No, that is by the—I won't be positive if I state this right, but it is government information, put out by the Agricultural Department of the government.

Q. The U. S. Department of Agriculture?

A. Sir?

Q. The United States Department of Agriculture?

A. Yes, that is right, sir, and it gives all the five or six or eight or ten principal markets, both interior Iowa, southern Minnesota, Omaha, Chicago, Kansas City, St. [fol. 920] Louis, St. Joe.

Q. When you sell direct to a buyer in your neighborhood would your stock ordinarily be delivered the same day that you desired to make the sale?

A. Yes. Of course, that depends on what time of the day you make the sale. If you make it of an evening, they possibly would handle that stuff that night or early next morning and be on the market, or if it went to the immediate vicinity there. Of course, if you sell it early in the morning they could get it in there for that day's market.

Q. Can you get a firm or specific offer in cents per hundred pounds before the livestock leaves your farm?

A. Yes, I very frequently do.

Q. Can you ordinarily do that?

A. Yes, any time you want to, that is right. We can call up the local fellow, he may be out in the yards or out in the country, but as a rule there is someone right there, an assistant to someone that will just tell you what they will give for hogs that day.

Q. In that case if you are not satisfied with the price offered that day or think the market might change for the better, what can you do?

A. Well, we can either not sell them or we can get in connection with these other purchasers and then listen in on the radio and see wherever the best market is.

[fol. 921] Q. And if you don't like it you can continue to hold them on your farm?

A. That is right. You can hold them until you run out of corn anyhow.

Q. I understand that you have tried and continue to try both methods of marketing.

A. Yes, sir.

Q. And are acquainted with the outlets in both methods of marketing?

A. Any cattle or stuff that I ever have come to Chicago with have come to the open yards. Most of the stuff I sell at home I presume go direct, not in these.

Q. Do you desire to have both methods of marketing kept free and open to you?

A. Up till what has happened now I do.

Q. Would it be to your interest or not if any artificial charge, cost or unnecessary expenses were added to either method of marketing of your hogs or cattle?

A. I always felt as if any freight increase or the commission increase or any other expense that we pay or someone else pays for us comes off of us, the man that produces and markets the stock.

Q. When you market your livestock direct do you incur anything that is equivalent to a market charge, such as yardage, feeding, commission charges, commission mer-
[fol. 922] chant's fee or anything of that kind?

A. When we go to the open market we pay the charges of commission and yardage, meat inspection. We used to pay a terminal charge here years ago it seems to me when we came here.

Q. Do you pay any such charge when you market your livestock direct?

A. No.

Q. Do you consider that you are competent to decide which method of marketing at any given time is to your benefit or advantage or preference?

A. Well, I think I would have to be or my banker would be shaking his head the wrong way at me sometime.

Mr. Rynder: That is all on direct.

By Exam. Diamondson:

Q. Where do you ship most of your livestock?

A. During the OPA we sold to a local purchaser there, hogs I mean, and they all came to Chicago on account of the ceiling. They could pay a certain price there and it would run as much as you would get up here about and then the OPA permitted them to have that extra expense, so that they all came there, but I suppose you might say most of it are divided between Kansas City, St. Joe, Morrell and St. Louis in regard to hogs. We hardly ever come here with hogs, outside of when the OPA was on.

Q. How about Ottumwa?

[fol. 923] A. That is Morrell out there at Ottumwa.

Q. Do you ship all your stock by rail or by truck?

A. I prefer to ship by rail but quite a lot of the stuff that we sell locally sometimes go by truck.

Q. When you say "locally" what do you mean?

A. Well, to the man that purchases there, to a local purchaser in our community.

Q. Do you have your own trucks?

A. We have a small truck, thirteen, fourteen foot truck, I mean in length, a ton and a half truck.

Exam. Diamondson: Cross examine.

Cross-examination.

By Mr. Smith:

Q. Mr. Pollock, as I understand it this marketing situation that you have now is just about what you want, is that right?

A. Well, of course, any betterment I could get I guess I would be in favor of it, but I don't know of any better one.

Q. You are not making any complaint about your marketing situation now?

A. Oh, I guess everything in general every so often whenever I don't feel well, but as far as I know there is nothing in here to help it.

Q. Have you got any specific complaint to make here about your marketing situation?

A. No.

[fol. 924] Q. Did you answer that?

A. I said "No".

Q. And as I understood you if any change were made at Chicago, for example, that would substantially increase the expense of handling livestock you would feel that in the end you as a shipper and producer would have to pay for it?

A. I feel that very much so.

Q. You have seen that happen?

A. Well, I think that is the only place—yes, that is the way I feel about it.

Mr. Smith: That is all.

Exam. Diamondson: Are there any further questions?

Mr. Quasey: I have just a few questions.

By Mr. Quasey:

Q. Mr. Pollock, you said you got in touch with Morrell at Ottumwa at times.

A. Well, we have a man—we have called Morrell, yes, sir, but we have a man that buys hogs that goes to Morrell that is closer, that we get in touch with.

Q. At these times that you call Morrell do you have to pay a toll on using the telephone?

A. Yes, but as I stated now we generally call the other fellow who is closer and costs me nothing to a dime to talk to him, according to where he might be.

Q. But wherever it might be you pay for the call to any local buyer?

[fol. 925] A. No, some of the buyers it doesn't a cost a cent to call.

Q. They would be within your toll area?

A. That is right.

Q. But those outside you would have to pay?

A. That is right but, of course, it is very seldom we would have to call outside. We have these available at our own town.

Q. What is the meat inspection charge that I heard you mention that was imposed when you ship to Chicago?

A. Oh, it is a nominal sum. The Meat Boards take out a—I don't know.

Q. Oh, you mean the deduction that is made for the National Livestock Meat Board?

A. That is right. That is for our benefit.

Q. That is voluntary; you understand that, do you not?

A. Yes, sir, absolutely.

Q. And it doesn't have anything to do with an inspection charge.

A. No, no.

Q. All right. So that to that extent you probably misstated yourself did you, in the first place?

A. Well, I either misstated it or your mistook it, I don't know.

Exam. Diamondson: Do you pay that charge at other markets?

The Witness: You pay it at every market. It is a small sum that we take out possibly before—that the Meat Board [fol. 926] takes out to advertise our products.

Mr. Quasey: That is all.

Exam. Diamondson: Did you say how far you were from Chicago?

The Witness: About 375 miles.

Exam. Diamondson. Any further questions? You are excused.

RALPH SEEMAN was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name.

A. Ralph Seeman.

Q. Your residence.

A. St. Charles, Minnesota.

Q. Your occupation.

A. Farming and I might say I have also been a buyer. I don't buy as much this last year.

Q. In connection with your farming operation you purchase and market livestock?

A. That is right.

Q. What species?

A. Oh, mostly hogs and cattle.

Q. And up to some recent period were you also engaged as a buyer and seller of hogs in your neighborhood?

A. I was.

Q. What is the approximate location of St. Charles, Minnesota?

[fol. 927] A. It is in the southeastern corner, about 22 miles from the Mississippi River and about 70 miles from the Iowa line.

Q. What markets are available to you for the sale of your hogs in that vicinity?

A. Well, in St. Charles now we have two men whom we call local buyers. At Winona, which is 22 miles away, Swift & Company has a plant. Hormel has a plant at Austin, which is about 75 miles. Then we have the South St. Paul market, which is about a hundred and then Chicago.

Exam. Diamondson: Are those highway mileages or rail mileages?

The Witness: Well, they are approximate. Both ways would be about the same, although I might state that Hormel's market at Austin would be—the railroad connections are such that I would say that was by highway rather than by rail.

By Mr. Rynder:

Q. You say Swift has a plant at Winona 22 miles away?

A. That is right.

Q. Do you now and have you in the past disposed of a substantial quantity of your livestock direct into that plant?

A. I have.

Q. And have you also shipped to Hormel?

A. No, I haven't.

Q. Have you shipped to the St. Paul market?

A. I have.

[fol. 928] Q. What information do you have from day to day as to the state of the livestock market and the prices for various species?

A. Well, we usually get what we call the first flash from Ames, Iowa, the government report it, at 8:55. It gives a pretty general quote on the market. Then Swift & Company gives us a flash at, I believe it is, 9:45 or 9:50 over our local Winona broadcasting station. Then at 11:45 they give the complete quotation of their prices for the various livestock, plus, of course, we have our telephones to contact these different men within our area who are buyers or packers.

Q. Can you obtain a firm or fixed price for your prospective sale of livestock before it leaves your farm?

A. I will say I can on hogs. I can't say that with regard to cattle. I might say that on cattle I can get a fair idea but I cannot get a definite price over the telephone.

Q. Is that because cattle fall into many more different grades?

A. That is right.

Q. And if you sold them at Winona what would happen? Would they be graded at that point?

A. Yes.

Q. And then the amount could be agreed upon, is that it?

A. That is right. If we come in there—if there is a [fol. 929] question of doubt we have the privilege of walking in and talking the situation over and looking in the yards and showing cattle we find in the yards that we think are comparable to what I might have on the outside and in that way we establish a pretty good idea of what we can expect to get from them after we have unloaded them.

Q. I suppose that generally you don't know if you made a sale, for example, at Swift at Winona whether Swift would slaughter the stock there or ship it on to another packing plant, do you?

A. No, I don't know.

Q. So far as hogs, at least, are concerned can you decide whether you want to market them on a certain day or whether you do not, depending upon the offers that were made, without the hogs leaving your farm?

A. Yes, sir.

Q. Now, suppose you shipped to the public market at South St. Paul, what would you have to do in order to get your livestock to that market?

A. Well, you just have to use your own judgment as to what information is available and then go up— I always go out and consign it to a commission merchant.

Q. You ship it normally by truck or rail to St. Paul?

A. To St. Paul our connections are such that by truck is the better. It is faster. Our rail connection——

Exam. Diamondson: How about Winona?

[fol. 930] A. I would say better than 60 per cent go by rail.

Exam. Diamondson: To Winona?

The Witness: That is right.

By Mr. Rynder:

Q. By rail for 22 miles?

A. That is right.

Q. You do?

A. Yes.

Q. But you have a fixed price named on them before they are put on the cars, is that right?

A. Through OPA we did. Then we have had a fixed price pretty much since that. Prior to OPA we used to operate both ways.

Q. I was just curious to know why you used the rails for 22 miles.

A. My answer is this, that most of the time our labor situation was such that I could put a hundred hogs in a car, which would represent about four truckloads and the use of four men, plus I had the use of the Chicago and North Western yards and we worked together for that reason. I had the use of the yards and in turn they got the revenue from me from shipping.

Q. And I take it if you do not like the market on any particular day you can retain the hogs on your farm until you may think that things are more favorable or have decided they will never be more favorable, is that right?

A. That is right.

[fol. 931] Q. But if you have sent them to the public market you cannot do that, can you?

A. Well, I don't have to dispose of them that day if the price don't suit. I can carry them over for a day or a week, I guess, if I could stand the gaff.

Q. If you carried them over for any considerable length of time you would incur additional market charges for feed, and so forth, wouldn't you?

A. That is right.

Q. I take it you generally do not desire to do that, is that right?

A. That is right. Most of this stock is all bought on such a close margin, in fact it is so close that you couldn't afford to carry them over unless you felt quite sure in your own mind that there would be a considerable difference in the market the following day.

Q. Based upon your own experience do you consider the dealer competent to determine at any particular time which method of marketing is preferable for you?

A. Will you state that again, please?

Exam. Diamondson: The reporter will read the question.

(Question read.)

By Mr. Rynder:

Q. If I haven't made myself clear, do you feel that you have enough facts at your command regarding the conditions existing on a particular day to determine whether [fol. 932] you in your own interest ought to send the hogs to Winona or to the South St. Paul public market?

A. Yes, I think we have the information enough to know.

Q. At least is that the way you act in marketing your livestock, upon your own information and belief?

A. That is right, yes, always.

Q. What is your opinion as to whether it would be to your inferest to have any arbitrary or unnecessary charge or expense existing or added to either the direct method of marketing or the marketing through the public stock yards?

A. Well, we feel that any additional expense would have to come off from the original buyer and, therefore, we wouldn't want any more expense than we possibly have to.

Q. Based upon your experience you would think that an expense that might amount to somewhere from twenty-five to thirty dollars a car would be an item that the buyer might take into consideration in dealing with you?

A. I would say definitely.

Mr. Rynder: I believe that is all, thank you.

By Exam. Diamondson:

Q. If you make the sale to Swift at Winona,—you said 40 per cent is trucked,—does Swift furnish the trucks for you?

A. No, sir.

Q. Don't you make any shipments at all on the market to Chicago?

[fol. 933] A. Yes, sir.

Q. How far are you from Chicago?

A. I think about 325 miles.

Q. Such shipments move by rail?

A. That is right.

Exam. Diamondson: You may cross examine.

Mr. Smith: I have a question or two, if I may. I missed most of it.

Cross-examination.

By Mr. Smith:

Q. Perhaps this has been answered: For whose account do you buy?

A. My own.

Q. And then what do you do with this? You just sell them as if you had produced them, in any way that you desire?

A. That is right.

Q. What are these quotations that you get over the radio from Swift?

A. It just gives their market that day, as to what they are paying for the different kinds of livestock.

Q. At Winona?

A. At Winona, yes.

Q. They do not undertake to give you the quotation on the various markets. They just, in effect, give you their offer, tell you what they will pay for certain products?

A. Yes, what they are paying that day for different [fol. 934] grades of livestock.

Q. Now, you ship some to the market and you sell some on your farm, is that it?

A. That is right.

Q. You are satisfied with your selling arrangements, are you?

A. Well, I don't suppose I am ever satisfied.

Q. What is your complaint about your selling arrangement?

A. Well, I have this in a general way, that if there is any way that cost could be cut anywhere, why, I think it would be to the producers' benefit.

Q. You would like to have costs cut rather than increased?

A. That is right.

Q. Anything that figured to increase the cost of handling business at Chicago would be adverse to your interests, would it?

A. Yes.

Q. Because you think that in the end you pay those costs, is that it?

A. Yes, anything that would increase the cost on a carload of livestock would naturally have—I would have to buy the stock for that much less money if I was going to get that much less out of it.

Mr. Smith: I think that is all.

Exam. Diamondson: You are interested in the prices quoted on the Chicago market, are you not?

A. Yes. I take the Drovers Journal and we don't get the livestock quotation from Chicago because of our posi-
[fol. 935] tion there on the radio, it is a little difficult to get it although we do some days but it isn't dependable.

By Mr. Smith:

Q. What part of your stock do you sell on the Chicago market or Chicago public market and what part of it do you sell on your farm, approximately?

A. Well, I would say the hogs for slaughter, I think I sold Swift 90 per cent, but not cattle.

Mr. Rynder: 90 per cent which way?

The Witness: To Swift of my hogs. The cattle, oh, I

would say Swift probably got 30 to 40 per cent, probably Chicago here gets along about that amount or a little more.

By Mr. Smith:

Q. You are an old Swift customer, perhaps that is the reason you are here.

A. Well, I was invited to come down here, yes.

Q. You do want somebody to ship salable livestock to Chicago so that you will have the benefit of Chicago prices, do you?

A. I think they should have all markets, sure. I want to be able to ship to Chicago.

Q. I beg pardon?

A. I certainly want to be able to ship to Chicago.

Q. And if you don't ship you want somebody else to ship salable livestock here so that you will have the benefit of the Chicago competitive price, I take it?

A. Yes.

[fol. 936] Mr. Smith: That is all.

By Exam. Diamondson:

Q. Isn't it a fact that you prefer to sell at Winona most of your hogs rather than to ship it to Chicago?

A. No, I don't think so, only from the angle that we feel that it is to our financial advantage to sell there.

Q. And the shorter haul has something to do with it, does it not?

A. Yes, of course. Our rates are quite different from St. Charles to Winona than they would be from St. Charles to Chicago.

Exam. Diamondson: Are there any further questions?

Mr. Quasey: Yes, I have a question or two.

By Mr. Quasey:

Q. Mr. Seeman, do I understand that the major part of your operation is one where you buy the livestock from the farmers and then in turn sell them to a packer?

A. That is true up to a year ago. A year ago I really rather quit. I just operate my farms more the last twelve months.

Q. Well, just how do you handle the animals that come to you from farmers? Do you go out and solicit business or do they——

A. Oh, different ways. Of course, they call me up and ask me to come out and bid on their produce or come to my yard, come to the office, which is at the Chicago and North Western Railroad yards.

Q. Where you do make a deal of that kind that livestock [fol. 937] becomes your property, isn't that correct?

A. That is correct.

Q. And then you in turn try to find some outlet for it that will give you a price, if possible, that will net you more than what you paid for it to the farmer?

A. That is right, yes, sir.

Q. Now, on what weights do you pay the farmers?

A. The weights are reached at the yards there in St. Charles, the Chicago and North Western Railroad yards. They have a scales up at the yard.

Q. And the animal is weighed immediately after unloading from the trucks?

A. That is correct.

Q. You give no fill or feed there before weighing?

A. No, sir.

Q. What weight are you paid on when you sell the livestock?

A. When OPA was operating Swift & Company paid us on those weights. I sent them a paper showing from whom I purchased each and every hog and the weight and the price.

Q. What is the situation now?

A. Well, I sold out a year ago there so I am not too familiar with that at the present time.

Q. Well, you have sold some livestock to packers since OPA is out, have you not?

A. That is right.

[fol. 938] Q. On what weights were you paid?

A. Since the OPA has been off, of course—let's see, I have got to think back when OPA went off. As I told you, I sold my business a year ago in December.

Exam. Diamondson: What business do you mean, your buying business?

The Witness: That is right.

By Mr. Quasey:

Q. Well, all I want is this. Let us take it this way: When is the last lot of livestock that you sold, we will say, at Winona to a packer?

A. Well, I sold livestock, understand, since I sold my business from my farm. Then I always took it there direct from my farm to Winona by truck or I sold it to our local buyer, but if he got them he bought them and he paid me my weight in St. Charles, but when I went direct to Swift's they paid me for them as of the weight in Winona.

Q. And that was off the trucks there?

A. That is right.

Mr. Quasey: Thank you.

By Mr. Smith:

Q. There is one point there I am not clear about, Mr. Seeman. You said that when you sold these hogs to Swift which you had purchased, you gave Swift the name of the party from whom you purchased the hogs and the price that you paid?

A. That is right.

[fol. 939] Q. Did I understand you correctly?

A. That is right.

Q. And then they allowed you something in excess of that, some fixed amount or how would that run?

A. If my memory is correct I think it was eight cents a hundred.

Q. Yes. So that they really paid you eight cents a hundred as a commission for buying the hogs; that is what the thing turned out to be, wasn't it?

A. Well, I presume you might term it that. Of course, I bought them and paid for them and then they accepted my hogs that way.

Q. And the party that purchases from you, he continues to be a purchaser of hogs for Swift, does he?

A. I don't think I can answer that.

Q. You don't know about that?

A. No.

Mr. Smith: That is all.

Exam. Diamondson: Do you have any further questions, Mr. Rynder?

Redirect examination.

By Mr. Rynder:

Q. In connection with the last question or two Mr. Smith asked you, I understand that was an arrangement that had to be carried out under the OPA regulations, is that it?

A. That is correct.

[fol. 940] Q. And which did not exist before that time?

A. That is right.

Mr. Kaylor: You don't want to infer that there was only a difference of eight cents during OPA's existence, do you?

The Witness: Yes, sir.

Mr. Kaylor: Eight cents?

The Witness: That is right, it was either eight or ten, I won't be positive, it was one way or the other. I believe it started at eight and went up to ten. It wasn't over ten, I am positive.

Mr. Kaylor: Those were fixed that way by OPA?

The Witness: As it was explained to me, yes. Now, I am not definite as to whether OPA set them but that seemed to be the general condition all over our territory. I know the man who sold to Hormel's and from what I know that is the way hogs were being handled throughout our whole territory.

Exam. Diamondson: I don't know whether you showed it definitely: What proportion of your livestock went to Chicago and goes to Chicago at the present time?

A. Well, having sold my business I haven't shipped a half of these livestock here in the last twelve months, but all the time I was in business I never shipped any hogs here but I shipped, oh, I couldn't tell you offhand, but I would say about 35 per cent of my marketing cattle.

Q. Went to Chicago?

[fol. 941] A. Yes, came here to the Yards.

Q. But that is not the present situation?

A. That is right.

Exam. Diamondson: Are there any further questions? You are excused.

W. H. YUNGCLAS was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name.
A. W. H. Yungclas.
Q. Your residence?
A. Webster City, Iowa.
Q. What business are you engaged in?
A. Farming.
Q. And will you please state the approximate location of Webster City, Iowa?
A. Webster City is almost in the center east and west, north of the center north and south. We are approximately midway between Sioux City and Dubuque on the Illinois Central Railroad. My farm is seven miles from town and fourteen miles from Fort Dodge.
Q. Do you produce and market certain livestock?
A. That is right.
Q. What species?
A. Chiefly hogs now but hogs and cattle both all my life [fol. 942] until this year, then hogs only.
Q. What are the nearby points, if any, at which you can dispose of your hogs or other livestock?
A. We are seven miles from Webster City, where there a number of private buyers, a buyer for the Tobin Packing Company of Fort Dodge, a buyer for the Rath Packing Company of Waterloo. We also can go with our hogs, that is, by such mediums of transportation as we so choose, we can go to Tobin's plant at Fort Dodge, just direct from the farm to the plant; that is 14 miles.
Q. How far is that?
A. That is 14 miles.
Q. 14 miles.
A. It is abost 90 miles to Waterloo, and about 80 miles to Des Moines, to the Iowa Packing Company plant at Des Moines. There are other buyers in Des Moines, too. There is the Decker plant, which I believe is owned by Armour now, at Mason City approximately in the neighborhood of ninety or a hundred miles. There are hogs bought

in that area also by the Hormel plant, just over the line at Austin, Minnesota, probably 120 miles.

Q. Would you say that there is a substantial amount of competition in the purchase of these hogs that you desire to market?

A. I would say that in central Iowa we have much competition from many different plants and buyers in the field.

[fol. 943] Q. And that would include all of those that you have mentioned?

A. That is right.

Q. And if you prefer you can also ship your hogs to a public market?

A. That is right, either Chicago or Sioux City directly on the Illinois Central Railroad there.

Q. What information do you have and act upon in marketing your hogs, I mean by way of radio?

A. We have, I think, in Iowa an excellent market news service through the United States Department of Agriculture in cooperation with our State Department of Agriculture and the State college over the State college radio station there that I think is—that is, as I look upon it and I think a great many of the hog producers look upon it as their best source of unbiased news information. That is, it is a Department market news report of both the terminal markets and the interiors.

Q. At what time of day is that information broadcast?

A. Their first report, as I recall it, is about ten minutes to 9, 8:50 or 8.55 in the morning, again at 10:45 and then at 12:15 we get a more complete report. At 1:30 the final and complete report.

Q. And you say that service reports not only the prices at various public markets but also the prices that are being paid or are being offered by the interior plants in [fol. 944] Iowa and southern Minnesota?

A. That is right. I might state that the plants are not given by name.

Q. They are not?

A. For instance, the plants in—the announcer will announce it as the plants in southern Minnesota are paying such and such a price for such and such a grade of hogs

or sows, as the case may be, northern Iowa is such, northeastern Iowa, central Iowa, northwest Iowa and we, of course, in the field know practically exactly who they are talking about in each case.

Q. Where do you dispose of most of your hogs?

A. Practically all of my hogs in recent years have gone either to Rath Packing Company in Waterloo or the Tobin Packing Company in Fort Dodge, a few to Des Moines.

Q. That, I take it, would be the Swift plant at Des Moines?

A. Yes. I think the Iowa Packing Company.

Q. Are you able to obtain bids on your hogs there which are still on the farm, which will be paid upon the delivery of them without change of price?

A. Absolutely.

Q. Will you please explain just how you handle that?

A. Well, the hogs, being a rather major part of our farm crop, we try to do as good a job of selling them as we can and so naturally we watch the radio reports and then at [fol. 945] the time we actually want to sell we perhaps contact several of the different buyers. For instance, right in my home town of Webster City there will be both the Rath and Tobin buyer there. We will know from our radio report whether it appears to be worth while, perhaps, to call one of the interiors in a little different locality and the thing we like about it is if the market isn't satisfactory the hogs are right out there in the feed lot, where they were when we started making our plans, and if we are not satisfied with the deal, why, they will stay there until we do feel the market is, we hope, satisfactory.

Q. Well, in disposing of your hogs to either local packers or other buyers can you obtain a price that will not change, I mean, between the time of your offer and the time you deliver the hogs to that buyer or packer?

A. That is right. If we make a sale in the town and talk with the buyer and tell him what the hogs are that I have there I go out and bring them in and that is the price I get, or if I call him on the phone that is the price when I bring them into town. Sometimes if it is late in the day they may not be brought in until the next morning. That very rarely happens, but as a rule we will bring them

in the same day, which on a paved road such a delivery is not as hard as it might be for some folks.

[fol. 946] Q. So that are you able to manage so that you run no risk of a change of the price from the time you get your offer of them and have it accepted until the time you deliver your hogs?

A. That is right.

Q. Where do you dispose of the major part of your hogs?

A. I would say almost entirely within the State of Iowa, either Rath, Tobin, Iowa Packing. I don't know how many years back you want to go. A few perhaps to Mason City; that would be the old Decker plant, I think now owned by Armour.

Q. Is it less favorable to you in distance, is that the point?

A. Well, if you look at the thing from purely distance, Tobin's at Fort Dodge is 14 miles from me but they haven't gotten the major portion of my hogs. One or two years they perhaps got the highest percentage. Other years the majority of them have gone to Rath at Waterloo.

Q. Would that ordinarily be a movement by truck?

A. I think almost entirely, I believe that is.

Q. And what did you say were your nearest public markets?

A. Public markets?

Q. Sioux City?

A. Sioux City would be the nearest direct on the Illinois Central. The St. Paul market and Chicago market. St. Paul would be a little closer than the Chicago market.

Q. If you ship hogs to those markets would you generally ship them by truck or by rail?

[fol. 947] A. To be frank I haven't shipped hogs to either, to any one of those three markets within a period of quite a number of years.

Q. If you did ship to those markets you would have to take the risk of having to take the price that happened to prevail on that market when the hogs were placed on sale there?

Mr. Smith: I object to it as calling for a conclusion of the witness and not a statement of fact.

Mr. Rynder: I think he knows that.

Exam. Diamondson: I think his experience would show that. You may answer. He said that he has not recently made such shipments.

The Witness: I presume there has been no reason, however—there has been no recent change made and I would expect that I would have to sell them on whatever conditions prevailed on the market at that time. I would, however, have the opportunity of holding them over if I so desired at a certain cost.

By Mr. Rynder:

Q. Is the holding over generally considered a desirable thing to do?

A. Well, that was one of the reasons, perhaps, why it has been so long since I have been there. I felt that it wasn't satisfactory. In other words, I felt that I much preferred to have my hogs there on the farm until I definitely knew what I was getting for them.

Q. And I take it you consider that you yourself are competent to decide which method of marketing is to your [fol. 948] advantage at any particular time?

A. I think so. I think that is just evident in the farming business. We consider our business, how big or little it is, it is our business and we are the ones that are responsible for the decisions that are made. We hope that we are competent.

Q. The reason I asked that question is, if I got it correctly yesterday Professor Ashby of the University of Illinois stated that producers make their greatest mistake in assuming that they are competent to sell their own livestock. Do you agree with him?

A. No. In my own personal case I still think that I am competent.

Q. Do you desire to have both methods of marketing kept open and available to you as nearly as may be, upon equal terms?

A. Yes. I have no particular quarrel with either type of marketing. I think that is purely a matter of the individuals just what it is and there should be no interference placed in either type of system.

Q. Would you think it proper to place any arbitrary, unnecessary or unwarranted cost or expense upon either method of getting your hogs to the desired destination?

A. I would think it would be unfair to place such a charge on either method.

Mr. Ryndor: I think that is all.

[fol. 949] Cross-examination.

By Mr. Smith:

Q. Mr. Yungclas, I should like to know in a little more detail how you sell? You call up some buyer in your vicinity and have some discussion with him in the matter before you sell, as I understand it?

A. Just what do you mean "discussion"? Asking the price on the various grades and weights of stock?

Q. Yes.

A. Yes.

Q. And he tells you what he will pay?

A. That is right.

Q. Does he come out and look at them?

A. Very rarely.

Q. You don't find it makes much difference whether the hogs present a good appearance or a poor appearance?

A. Most of these men are pretty familiar with my hogs.

Q. They do see them from time to time?

A. Yes.

Q. And they are sold on a straight weight basis rather than on the apperance of any particular animal, I take it.

A. That is pretty much the case, other than quite a number of these men know the type of hogs that I have.

Q. Now, he offers a certain price and suppose you are favorably disposed to it, what do you do then?

A. Well, I tell him I will bring in so many then at that price.

[fol. 950] Q. Do you tell him when he can expect them?

A. Yes. In fact quite often I will ask him to stick his head out the door and call a trucker and send them out. Maybe there will be two or three of them hugging the fire there and spinning yarns; I ask him to send out two or

three trucks, whatever number it takes, to send them out to the farm.

Q. And he gives you his word that he will pay a certain price and you will close the deal on it, is that right?

A. You say close the deal? They are weighed up in town when they get there and then the check is written. I guess that would be the final closing of it.

Mr. Smith: Yes.

Exam. Diamondson: You don't have to pay any transportation charges from that point, do you?

The Witness: I pay my trucking costs from my farm into town when they are sold at Webster City.

Exam. Diamondson: From the point of sale you do pay the transportation charges?

The Witness: No.

Mr. Smith: Now, Mr. Examiner, I am not quite sure the record is clear on that. I understand that he does pay the transportation charge into this little town, wherever the hogs are bought.

Exam. Diamondson: To the local point of sale.

The Witness: That is what I said.

[fol. 951] Mr. Smith: That is what the Examiner meant by "point of sale", rather than the farm.

Exam. Diamondson: Yes. Do you truck them in yourself to the local point of sale?

The Witness: Very seldom. I have nothing but just a small truck.

Exam. Diamondson: The buyer sends his trucks up there?

The Witness: No, they are generally the custom truck operators in the town there.

By Mr. Smith:

Q. And you pay that?

A. From the farm into Webster City.

Q. Yes.

A. Yes.

Q. And so after you have had this telephone conversation with the buyer, whether the general price of hogs goes up or down the price that you get is the price that is made over the telephone?

A. That is right.

Q. Now, do you know what hogs are selling for that day on the various markets?

A. I have a pretty general idea.

Q. Will you explain that a little bit?

A. I aim to have followed the markets, not only the interior markets but the various terminal markets, also the yard receipts, how they have been running.

[fol. 952] Q. Well, my specific question is whether when you make that sale you know what the market on hogs is that day at the central markets?

A. Yes, I think I would be familiar with the price at practically all of the markets.

Q. You would get it over the radio?

A. That is right.

Q. Do you think it is a matter of some value to you to have that information before you sell?

A. We like to have all the information we can get.

Q. Why do you think it is a matter of information or value to you to have the price at which hogs may be selling on the markets that day?

A. Because we figure—at least I do as a producer,—that the more information that I can get on it the better; that that reflects the price in the various places that the producers of the livestock,—or that the purchasers of the livestock feel that they can pay in relation to the price that they think they can sell the meat for.

Q. Yes. You think that if you did not have that information you might be at a little disadvantage when Swift's buyer came out to the farm or you called Swift's buyer and just dickered with him without knowing what was going on at the markets? Would that be a disadvantage to you?

A. Well, I have never to my knowledge talked with a [fol. 953] Swift buyer in the sale of my hogs.

Q. Well, whoever the buyer was. Just interpret that question as if I had spoken of the buyer. My question, if you did not get it, is whether you feel that in bargaining with this buyer, whoever he might be, you would suffer some disadvantage if you did not know what like animals were selling for on the central markets, or perhaps you

would be just willing to bargain with him without knowing anything about what the animals were being sold for. How do you feel about it?

A. I would like to know how they are selling in as many places as I can get the information. I don't think we ever get too much information.

Exam. Diamondson: You don't rely entirely on the agent's quotations of the price, do you, on the buyer's agents?

The Witness: Certainly not.

By Mr. Smith:

Q. So that this information as to the central market prices is a thing of value to you, is it, in making your own sale?

A. Yes, it would go into the entire decision.

Q. The sum of the information that you have.

A. The information from all sources would enter into my decision.

Q. Well, then, as I understand your testimony you personally, however, have not in any way contributed to the creation of that price at the central market. You don't [fol. 954] sell those hogs on the central market?

A. Not for a period of several years.

Q. You leave it to somebody else to make that price which you use in your business, as I understand it?

A. Will you state the question again?

Mr. Smith: Read the question, please.

(Question read.)

Exam. Diamondson: Do you understand the question?

The Witness: Yes. I leave it to someone else to make that price? Yes, I think that is right. The consumer that buys our meat products ordinarily is the person that has more to do with the making of my price than anything else, and that consumer can be anywhere in the United States or even our export. That is the final resting place of our price, is in what the consumer will pay for the product.

Mr. Smith: I will accept that as an answer. I don't think it is quite responsive. That is all.

Exam. Diamondson: Any further questions?

By Mr. Gladson:

Q. Mr. Yungclas, who asked you to come to Chicago to testify in this case?

A. Who asked me to come?

Q. Yes.

A. I think that is no more than a fair question. Mr. Simpson of Swift's asked me if I would come in.

Q. And you, of course, expect your expenses to be paid, [fol. 955] do you not?

A. I have no idea.

Q. Have you taken any other trips or any trips at the expense of Swift & Company?

A. No, sir.

Mr. Gladson: That is all.

Mr. Rynder: Just a minute, Mr. Yungclas.

Redirect examination.

By Mr. Rynder:

Q. The information that you get you said includes the public markets. The information also includes what is being paid at the various interior Iowa points, by the various interior Iowa packers, is that right?

A. Yes.

Q. Are both of those factors that you ought to know to reach your own decision?

A. As I stated before we like to have all the information we can get and the answer to that would be "Yes, sir".

Q. Well, if you were going to the public market from your location would you know, for example, that there would be certain amounts that you would have to deduct to give you the net price back on your farm?

A. That is right.

Q. I mean transportation to the market.

A. That is right, we have to take that into consideration.

Q. Marketing charges there?

[fol. 956] A. Yes.

Q. And then in your own mind you would have to compare them with the prices being offered locally?

A. That is right. The net to me would be the thing that I would be interested in.

Q. So that you want all of that information?

A. That is right.

Mr. Rynder: I believe that is all.

By Exam. Diamondson:

Q. I want to ask you one question, please. Do you as a producer talk to—withdraw that. Do you as a producer ship to these interior Iowa markets yourself?

A. Very rarely, except the Tobin plant, which is only 14 miles away, yes.

Q. Do you ship it as the owner and producer to that plant?

A. Yes, that is by truck. You have reference to shipping by rail perhaps?

Q. No, truck and rail. Didn't you testify, or did you testify that practically all of your shipments move by truck?

A. That is right.

Q. To the interior Iowa packing points?

A. That is right.

Exam. Diamondson: Any further questions? You are excused, Mr. Yungclas.

Mr. Rynder: I call Mr. Daggs.

[fol. 957] J. A. Daggs was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name.

A. J. A. Daggs.

Q. Your residence?

A. Arbela, Missouri.

Q. Your occupation?

A. I am a farmer.

Q. In that connection do you produce and sell livestock?

A. Yes, sir.

Q. What species?

A. Cattle and hogs only at the present time. I have quit sheep.

Q. Will you tell us the approximate location of Arbela, Missouri?

A. Arbela is in the second county from the northeast along the Iowa border.

Mr. Kaylor: How far from St. Louis?

The Witness: About 205 miles from St. Louis by automobile.

Mr. Kaylor: And from Kansas City?

The Witness: From Kansas City it would be a little farther than that. 230 or 240, perhaps.

By Mr. Rynder:

Q. What available outlets are there for the sale of cattle and hogs in your vicinity?

[fol. 958] A. We are in the Morrell territory as far as packing houses are concerned.

Q. Morrell at Ottumwa?

A. At Ottumwa, but a lot of the livestock goes from our territory to the St. Louis market.

Q. How far is it to Ottumwa?

A. It is 50 miles from where I live.

Q. Is the haul to Ottumwa generally made by truck?

A. Yes, sir, generally. There is no railroad line that is satisfactory from our territory.

Q. And aside from Ottumwa and at St. Louis and Kansas City what other selling points are available to you?

A. We have a big community sale.

Q. A big what?

A. A big what they call community sale in our county. It is rather large. The cattle and hogs out of there scatters through Illinois, too, and where they go from there I couldn't tell you.

Q. Where do you in fact dispose of most of your livestock?

A. Mostly to St. Louis and Ottumwa.

Q. St. Louis and Ottumwa?

A. Yes, sir.

Q. One being the public market, is that right?

A. St. Louis is a public market.

Q. That happens to be East St. Louis, I think.

[fol. 959] A. That is right. We all call it St. Louis.

Q. Yes.

A. East St. Louis.

Q. And Ottumwa being the local plant,—the Morrell plant?

A. That is right.

Q. Did you say you divide your shipments about 50/50 or is that about right?

A. I couldn't tell you, I never figured it, but I would assume about 50/50.

Q. Do you have available to you every day information as to market conditions both locally and at the public markets that have been described generally by the preceding witnesses?

A. Yes, sir. I have, I think, about the same as they have. We listen in on Des Moines a great deal on markets. It isn't in one report. It is a general report. We get the Chicago, St. Louis, Kansas City and all the way down the line.

Q. If you are making a trade with Ottumwa to sell them hogs can you obtain a fixed price at the time you are negotiating?

A. Yes, sir, they have a local man at my county seat.

Q. And he will name you a price that will not change pending the immediate delivery of the hogs, is that right?

A. That is right.

Q. And based upon all the information you have you decide whether, I take it, to sell to Ottumwa or send them to the public market?

[fol. 960] A. That is right.

Q. Are you interested in keeping each market and each method of marketing free from any unnecessary or arbitrary impediment, expense or cost?

A. I certainly am.

Q. Do you desire to have both methods continue to be available to you?

A. Yes, sir, I want both methods available, all methods.

Q. You do?

A. Yes.

Mr. Rynder: I believe that is all, thank you.

Exam. Diamondson: Do you make any shipments to Chicago?

The Witness: Not of late years, no, sir. We used to.

Exam. Diamondson: Cross examine.

Cross-examination.

By Mr. Smith:

Q. Does Morrell have a plant at Chicago?

A. Who is that?

Q. Morrell.

A. Not that I know of. I am not familiar with it.

Q. They do not. Do you sell mostly to Morrell, as I understand it?

A. To Morrell and to the St. Louis market.

Q. Well, now, when it goes to the St. Louis market is it handled for you there by commission people?

A. It usually is, yes, sir.

[fol. 961] Q. What number goes, approximately, to St. Louis in that way and what part goes to Morrell?

A. Possibly hald and half.

Q. Does that stand for cattle as well as for hogs?

A. Except we generally send by truck to St. Louis. However, I am not a heavy stockman. I have a pure bred herd and I ship my surplus and what I send don't make a market or break a market.

Q. Well, you send some cattle to St. Louis by truck?

A. Yes, sir.

Q. And you send hogs where?

A. To Ottumwa.

Q. By truck?

A. Mainly by truck.

Q. So you are essentially a truck shipper?

A. Our community is pretty near forced to be mainly a truck shipper.

Q. Yes.

Exam. Diamondson: Who furnishes the trucks, the buyers, when it goes to Ottumwa, I mean?

The Witness: We have regular truckers that go to St. Louis. They are independent truckers.

By Mr. Smith:

Q. Some of your hogs go to St. Louis by truck, as I understand it.

A. Yes, sir.

[fol. 962] Q. Did the Morrell people ask you to come here today?

A. No, sir.

Mr. Smith: That is all.

Exam. Diamondson: Do you make any shipments to East St. Louis by rail?

The Witness: Not of late we haven't, no.

Exam. Diamondson: Any further questions? You are excused.

RALPH JENNINGS was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name.

A. Ralph Jennings.

Q. Your residence?

A. Van Meter, Iowa.

Q. Your occupation?

A. I am a farmer, a livestock dealer, breeder of Shorthorn cattle.

Q. Will you please tell us the approximate location of Van Meter, Iowa?

A. Well, I guess I will have to put in a plug here for Bobby Feller. I thought everybody knew where it was.

Q. What?

A. I guess I will have to put in a plug here for Bobby Feller. I thought everybody knew where it was. 20 miles west of Des Moines.

[fol. 963] Q. 20 miles west of Des Moines?

A. Yes.

Q. What purchasing or sales points are available to you in connection with the marketing of your livestock?

A. State that question again, please.

Q. At what points can you sell your livestock? At what points can you sell your livestock when you are ready to sell same?

A. Well, we have Omaha about 120 miles, Kansas City about 240 and Chicago about 375 and Morrell's is about 120 miles.

Q. Morrell at what point?

A. Ottumwa.

Q. Morrell at Ottumwa about 120 miles?

A. But I would say that approximately 90 per cent of our hogs goes to Des Moines, that is to the Iowa Packing Company, and there is a buyer there for Cudahy on hogs and also Swift at the Iowa Packing Company and then Swift has another buyer who is about 15 miles from us at West Des Moines, John P. Squire.

Q. And what percentage did you say went to Des Moines?

A. I think 90 per cent of everything.

Q. Goes to Des Moines?

A. Hogs, cattle and sheep, yes, sir.

Q. Do you keep yourself informed as to the market conditions both in interior Iowa and at the terminal markets from day to day?

[fol. 964] A. I do.

Q. Does that nowadays come principally by radio?

A. Well, the up-to-date market I would say does. I take the Journal and try to keep posted on the different grades and then the up-to-date markets always come by radio and then I contact the plants once or twice a day regularly for the simple reason that some territories want some meat worse than others certain days. Maybe the demand is greater in one section than it is in another, so that for that reason I found it profitable to contact more than one buyer.

Q. Can you obtain a substantial number of competitive bids for your livestock at your farm?

A. Yes, sir.

Q. I believe you said that you were 20 miles west of Des Moines. Now, if you sell most of your livestock there at Des Moines, does that move in by a short truck movement?

A. Most of it does now. Most of it does, yes.

Q. Are you able to obtain a bid or price that will not be changed pending the delivery from your farm to Des Moines?

A. Yes, sir.

Q. So that you take no risk of having it changed between the time you start the shipment and the time it is sold, is that right?

A. That is right. The bid is usually go-d for all day or till nine o'clock the next morning, before the market opens then we sell. They are made both ways and I [fol. 965] mean—of course, you know they get congested once in a while, but as a usual thing I can go out and buy all the hogs I want to and that price is good if I want them before nine the next morning or that evening, whatever we agree on.

Q. Have you had experience in marketing your hogs or other livestock at Omaha, Kansas City or Chicago public markets?

A. Yes, sir.

Q. Would you ship them by rail to each one of those three markets?

A. We usually do, especially Chicago. I have sent a very small amount of stuff to Kansas City, but the bulk of the stuff has come to Chicago by rail.

Q. If you ship them to Chicago by rail how far in advance do you have to try to arrange for the rail shipment; I mean do you have to order a car?

A. Yes. Our general routine of business is we order a car three or four days ahead because it is necessary, because it is uncertain to get them on short notice. We have gotten them the same day we ordered them, but we usually order them three or four days ahead.

Q. About how much time would be consumed in transit?
A. About from 24 to 36 hours.

Exam. Diamondson: We will take a short recess.

(Whereupon a short recess was had.)

[fol. 966] Exam. Diamondson: You may proceed.

By Mr. Rynder:

Q. I believe you said that you dispose of about 90 per cent of your livestock to the buyers at Des Moines.
A. Yes, that is right.
Q. Whether to the Swift packing plant or buyers for other companies.
A. That is right.
Q. Now, could you summarize briefly the facts or circumstances which lead you to dispose of 90 per cent of your livestock there rather than sending it to the public markets that you have mentioned? Just what are the considerations that have led to that result?
A. Well, the end of the trail is the pocketbook. I always thought I could do better.
Q. That summarizes the whole thing?
A. That is right; for no other reason.
Q. Could you enlarge upon that a little bit to compare the pros and cons of one part as against the other?
A. I am not sure I understand your question.
Q. You said you thought you could do better.
A. You mean in comparison to shipping it all to the public markets, is that what you mean?
Q. I mean what are some of the items that entered into your consideration and led you to believe that you could do better selling it at Des Moines than by shipping it to [fol. 967] Omaha or Kansas City or Chicago?
A. Well, the principal reason was the deductions are so much for freight and yardage and once in a whole a switching feet and some kind of an inspection charge on there that I never felt like we got benefited in any way and there is less chance because I know what I am going to get for my stuff before I leave home and I am well enough acquainted with the buyers that they understand my lan-

guage and I understand theirs and I can sell them cattle over the telephone, tell them what I think the cattle are, and I very seldom have any trouble, but I have done that and have shipped some direct to Chicago, to the Omaha Packing Company, but I knew the buyer, knew him personally.

Exam. Diamondson: Was that because you got a better price there than you would at Des Moines?

The Witness: Yes.

By Mr. Rynder:

Q. Do you desire to keep both methods of marketing open and free from any unnecessary or arbitrary charges?

A. Well, yes, I do, but maybe I am just a lone wolf. I like to see all the public markets open, but personally just me only I think I would be just as well off without them because I think the packers, taking them in general, we think in our territory the competition is keener among the buyers in the country than it is in the yards. Now, [fol. 968] whether that is true or not I am not saying and another reason that makes me say so, a few years back, which probably all you men will recall, there was a stock yards strike in Chicago, we couldn't ship here. A lot of the boys just threw up their hands, "What will we do, maybe we won't have anything to go up". Our markets went up like a skyrocket; we had the best markets we ever had. That is what happened at that time.

Mr. Smith: All you needed to help you was a good fire at Chicago.

The Witness: The fire was out there. We didn't need any fire in Chicago. We had plenty of fire out there.

Mr. Smith: I am sorry. I thought you were through.

Mr. Rynder: I believe that is all.

Exam. Diamondson: Cross examine.

Cross-examination.

By Mr. Smith:

Q. How do you ship these hogs to Des Moines?

A. Principally by truck; practically all.

Q. You are not a rail shipper presently?

A. Not into Des Moines.

Q. Where do you ship by rail?

A. Chicago principally whenever I ship there.

Q. And what do you ship?

A. I ship cattle if I do ship any.

Q. Well, for example, what did you ship to Chicago [fol. 969] during 1947?

A. Well, let me see.

Q. Do you remember shipping any?

A. Yes, I did but I believe they came by truck. I believe the cattle in 1947 came by truck.

Q. Now, as I understand you differ a little from these other gentlemen in that you say you don't care whether these terminal markets are maintained or not. Am I correct?

A. Don't misunderstand me. I think for the whole general public it is better to keep them open.

Q. Why is that, sir?

A. As I view it, being that I am my brother's keeper I think I should help keep it open.

Q. Will you explain why that is?

A. Why it is?

Q. Yes.

A. Well, I think the public has a better knowledge of the markets. In other words, if everything was direct buying they would have to change the marketing system.

Q. Why is that?

A. I mean the broadcasting system and the market news, that is what I mean, not the marketing system.

Q. If they didn't have a market they would not have to broadcast the result, is that what you mean?

A. I mean that they would have to change their market- [fol. 970] ing system in my opinion.

Q. That is, in selling direct you wouldn't have that information to go by, is that what you mean?

A. I don't know of any direct packer that broadcasts their market and the open markets do, see.

Q. You have gotten me a little confused or perhaps I have confused myself. Are you interested in what the price is on the terminal markets when you make your sales?

A. Yes.

Q. So you yourself have an interest in the maintenance of this market?

A. That is right.

Q. But as far as the sale of hogs is concerned you don't contribute anything to the making of that price at the terminal markets, as I understand it.

A. Not at the present, no.

Q. But you do rely and you want to rely on that market being maintained in order to give you a guide for your sales, is that your point?

A. It doesn't make much difference to me personally.

Q. You just got through saying it did. Well, we will pass that. You buy hogs, as I understand it.

A. And cattle.

Q. Yes.

A. Mostly cattle and sheep more than I do hogs. I buy [fol. 971] a few hogs.

Q. And who do you sell them to?

A. I sell some to the Iowa Packing Company at Des Moines and I sell some to Morrell's and then we have a few little packers there like Des Moines Packing.

Q. How much of a margin do you get?

A. What do you mean by that?

Q. What do you make off those? What is your commission, what do you earn off those purchases?

A. Whatever my intelligence———

Q. I beg pardon?

A. Whatever my intelligence lets me. I aim to get the market for my cattle, plus a little commission. Not much, something around a dime a pound,—or I mean a dime a hundred.

Q. Around a dime a hundred?

A. Yes.

Q. Are you a pretty substantial buyer in that neighborhood?

A. I had better let somebody else answer that. I have been there for forty years.

Q. I was just referring to the amount of your sales, as to which there couldn't be any other man to answer I suppose. Are you a big buyer or small buyer or can you give us some idea?

A. Over a period of years I would say about an average of two cars a week. That would be in the neighborhood of a hundred cars a year if it was put in cars.

[fol. 972] Q. You believe strongly in purchases and sales in the country, I take it, inasmuch as that is your business?

A. That is right.

Mr. Smith: I think that is all.

Exam. Diamondson: Any further questions? Do you have any questions, Mr. Quasey?

Mr. Quasey: No.

Exam. Diamondson: You are excused.

LLOYD LINDSEY was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name.

A. Lloyd Lindsey.

Q. Your residence?

A. Delton, Michigan.

Q. Approximately where is that?

A. It is about 70 miles north of South Bend. It would be about 60 miles in the State of Michigan. It is as near half way between Detroit and Chicago as it could be on the railroad.

Q. What business are you engaged in?

A. Farming and livestock feeding mostly. I buy some stock.

Q. What species of livestock do you generally feed?

A. Mostly lambs. The last few years we haven't done so much in hogs. We used to buy and feed around a thousand hogs a year but business has kind of dried up in our [fol. 973] neighborhood lately.

Q. Are you at present feeding or have you in fairly recent times been feeding a substantial number of lambs?

A. The last few years we have been doing around about 2500 a year. We used to feed,—I think the high point was 6,000.

Q. Where do you obtain the lambs for feeding?

A. We used to buy quite a lot of lambs in the yards here and because we were forced to we have been buying them direct through an order buyer. I have bought my lambs through an order buyer lately at Columbus, Ohio. You can't purchase lambs in the Chicago Yards when they don't have them here, I have found that out. It wasn't a matter of choice. I have only had two loads of lambs out of the Chicago Yards this year.

Q. When you are ready to dispose of these lambs that you have been feeding how do you do it?

A. My lambs for the last few years have been going all East. Prior to that we shipped to Jersey City and when we thought it warranted it we came to Chicago with them.

Q. When you say you formerly shipped to Jersey City, does that mean to the public market at Jersey City?

A. That is right.

Q. And when you ship there I take it you ship by rail?

A. That is right. We were gambling about a week or ten days ahead when we shipped to market.

Q. You had to allow that much of an interval between [fol. 974] the time you——

A. Ordered the car. Rail shipments have gotten slower. It is a four day run now going down there.

Q. And you were taking the risk of what the market might be at Jersey City at the time they arrived, is that it?

A. That is right, and quite often to our regret.

Q. And I assume that you had to bear the transportation charges to Jersey City?

A. Yes. I think it is, to my knowledge, probably the highest commission costs in Jersey City, the highest that I ever encountered.

Q. And then in addition you had to bear the commission, yardage and feed charges?

A. That is right, plus all the death losses.

Q. Plus any death loss?

A. Yes.

Q. Now, when you say they have been going to the East will you tell us where have you in fact sold them? I mean where have they passed out of your possession or been paid for or whatever you do to them?

A. As to lambs this business has been done on confidence. Our lambs are sold over the telephone. I think they have confidence in me or they would quit it. When my lambs are weighed up at the station they are the packer's property.

Q. And you say they are sold over the phone. Where is the man on the other end of the phone who is buying [fol. 975] them?

A. Swift's man is at—their Eastern division is out of Columbus, and then another buyer, Armour's man, would be out of the—I think their headquarters is in Portland, Michigan. When we have shipped lambs to Wilson and also to——

Q. To Wilson, where would that be?

A. They have an order buyer there working out of Payne, Ohio, and also he used to order for the Miller Abbatoir Company, North Bergen, New Jersey.

Q. Are you able to obtain a firm bid on your lambs at the time that you carry on this telephone conservation?

A. Yes. We always establish a top price when we are buying lambs in the country. That is my business, to grade the lambs and shrink them if they need shrinking.

Q. And do you take any risk as to change in price after this transaction over the telephone?

A. Not a bit. I usually have three or four days to get the cars ordered and ship them. That is the way we do.

Q. And if they were going East through the Swift buyer, would Swift bear the transportation charges, and so forth?

A. Yes.

Q. And the transportation risk from your shipping point?

A. That is right. Since I have done business that way I have no record of how many dead lambs I had, but before that I always found it out in a few days.

[fol. 976] Q. But under this present system if there are some dead lambs and Swift was the purchaser, Swift has to stand the loss on the lambs?

A. That is right, so it isn't important.

Q. It doesn't come back to you?

A. No. If this stock is not what I tell them, if I misrepresent the stock, that is my fault, but if the railroad

wants to kill a load of livestock, healthy stock, that is not my responsibility.

Q. Do you have various methods of keeping yourself informed as to the relative prices that you can obtain at the available public markets as well as through these buyers that you have mentioned?

A. I feel I am a better salesman than most of the commission men we ship to. I may have too good an opinion of myself, but we have carried on this extensively for the last twenty years. We know how much the shrink is and how much the cost of marketing and also know what the dressed market is and I think that controls the live price. We have that every day in our Chicago paper, the dressed market.

Q. Then you do make the assumption that you are competent to sell your own livestock, do you?

A. A few times I have gotten dissatisfied and did it the other way around. I didn't tell the packers, but I never did that but once at a time. I usually take the loss [fol. 977] and don't mention it. They usually find that out.

Q. Are you interested in keeping both channels of sale open and free from any arbitrary or unnecessary imposition in the way of costs, expenses, and so forth?

A. I guess so. I am not as sure on that point as some men are. If there is so much livestock to be purchased and it isn't purchased here, they have got to have a buyer some other place, they are going to compete some other place. That is my business. If they don't compete here, they will have to compete elsewhere.

Q. Maybe I didn't make myself quite clear. What I had in mind was this, that you can sell direct to one of these packer buyers or you can ship your livestock to a public market.

A. That is right.

Q. Are you interested in keeping each channel open and free of any arbitrary or unnecessary costs?

A. Yes.

Mr. Rynder: I believe that is all, thank you.

By Exam. Diamondson:

Q. You want to be limited to direct shipments only, do you?

A. What?

Q. You want to be limited to direct shipments only, do you?

A. I guess not. I like the other way. The other way has worked out better for me, the direct shipments.

Exam. Diamondson: Cross examine.

[fol. 978] Cross-examination.

By Mr. Smith:

Q. I was wondering why you are interested in keeping the terminal markets open inasmuch as you say you always lose money when you ship there.

A. I said when I spoke out of turn a while ago I wasn't sure about it, I am not yet convinced. If any of them didn't purchase it here, it will make competition where the livestock was marketed. I don't know.

Q. As far as you are concerned you happen to be one of these gentlemen who doesn't really care whether the terminal market is kept open or not, is that a fair statement?

A. My mind is rather open on that. I guess it would be in a degree either way.

Q. Either way?

A. Yes.

Q. What is this buying business that you engage in?

A. Mostly lambs, some hogs.

Q. Well, now, the hogs that you buy, how do you dispose of those?

A. We used to when we had carload lots, we sold those direct and they would be shipped wherever the packer told us to ship them. Our assembling point when we bought them and trucked them to was Marshall, Michigan. I don't know where they went; I didn't ask them.

Q. How long since you engaged in that business, or do you now?

[fol. 979] A. No, not in the hog business. It has been probably three years since I did that extensively.

Q. You worked out some commission on that livestock?

A. On the hog business?

Q. Yes.

A. Yes.

Q. For whom did you buy those hogs or whom did you sell them to, if you want to put it that way?

A. More than half of our hogs we purchased and held on the farm for a while. They were always our property.

Q. Yes.

A. I never worked for a packer.

Q. And then the other half, what about those?

A. Usually we could sell them before we bought them.

Q. You would know just what you were going to make on those when you bought them?

A. That is right.

Q. Because you knew what you could sell them for?

A. That is right.

Q. Who did you sell those to, what packers?

A. Well, they were largely to Swift.

Q. When you get this fixed price that Mr. Rynder has spoken about that relieves you of any risk of the market going down, you also have to suffer the risk of the market going up, do you not?

[fol. 980] A. Yes. I would say this: The first business we did marketing through Swift was through an order buyer, a large order buyer and I know this is beside the point, but very often he did stand the loss and when there was a gain in the price it was added onto the check, but it was never mentioned. That wasn't Swift & Company, however.

Q. You have emphasized the fact that there are certain delays that occur in transportation, certain shrinkage which occurs, certain damage to the animals and a certain time element involved and certain market fluctuations are involved where you ship over some distance and that is a factor which has been of some influence in causing you to sell direct, is that it, from the farm?

A. That is right.

Q. Well, now, do you have the impression that those risks that the packer takes are not reflected in the price that he pays you? You thought he just took those risks gratuitously, did you?

A. I don't know how we—our success in getting claims back from the railroads have been wonderfully slow. I don't know how his luck is. I imagine it is better than ours.

Q. Well, now, you do realize that whatever risks and losses he sustains day in and day out, he knows those and reflects those in the price that he pays you; you realize that, don't you?

[fol. 981] A. Well, probably, but why do we get more dollars the other way around?

Mr. Smith: Well, I don't know that you do, so I am not the appropriate one to ask that question. That is all.

By Exam. Diamondson:

Q. Did you make any shipments to the livestock market in Chicago last year?

A. Not last year, no. We purchased lambs here but I didn't ship any lambs here.

Q. You gave an illustration of making a shipment to some public market in New Jersey.

A. That is right.

Q. And you stated the commission charges were higher than they were here.

A. That is right.

Q. What was the reason for making the shipment there instead of to the Chicago market?

A. That was before we marketed anything direct and when we were marketing before that in Buffalo we did for a few years market our lambs under another man's name. We bought his name for ten dollars a car. He didn't see these lambs but they always sold better than though they were sold under our name. We didn't have to do that on the Jersey City market.

By Mr. Smith:

Q. Somebody was getting fooled there, weren't they?

A. Well, we gave him ten dollars a car. It was worth it.

[fol. 982] Mr. Smith: That is all.

Exam. Diamondson: Are there any further questions?

Mr. Rynder: I believe that is all.

Exam. Diamondson: You are excused.

Mr. Rynder: If it please the Examiner, those are the witnesses for whom I asked this indulgence yesterday afternoon.

Exam. Diamondson: Are you ready to proceed further, Mr. Smith?

Mr. Smith: Yes, I am, sir. I would like to offer that exhibit that contained those historical documents at this time, if you please.

Exam. Diamondson: That has been identified as exhibit 42.

Mr. Smith: Yes, I think that was exhibit 42.

Exam. Diamondson: Do you have any objection, Mr. Rynder?

Mr. Rynder: Yes, but it will take some time to state them. Does counsel want to go ahead with witnesses?

Exam. Diamondson: Well, we would like to dispose of the question as to whether or not this exhibit should be received.

Mr. Rynder: Mr. Examiner, in offering these exhibits the other day I understood Mr. Smith to stress one point as being determinative of their admissibility, to-wit, that they had been admitted in the record in No. 27,862, Swift vs. the Alton, 238 ICC 179.

The point I desire to make about that is that the issues in the two cases are entirely different. The issue in No. [fol. 983] 27,862 as shown by the decision itself, was whether the complainant had a right, or the railroads had the duty to provide egress without charge on shipments which it delivered to the chutes of the Union Stock Yard & Transit Company.

In that case the Commission said:

"The determination of the question at issue in this proceeding requires the determination of the point at which transportation of direct shipments of livestock to the Union Stock Yards ends."

As I understand it, that was the only point in issue and the only one decided by the Commission.

Now, that issue is in no sense involved in this case. The livestock here is not being shipped to the chutes of the Union Stock Yard & Transit Company, nor is it desired to ship it there, nor would any service be rendered by that company of any kind whatsoever if this complaint were granted.

Now, I shall refer to these exhibits by the numbers that they are given in the bound volume.

Proposed exhibit No. 47 is a copy of a contract of January 15, 1892 between the Chicago Junction Railways and Union Stock Yards Company, a New Jersey corporation, and Philip D. Armour and others.

It will be rather too long to call your attention to each paragraph at this time, but it purports to bring about the settlement of a controversy that had existed at that time, [fol. 984] under which the packers proposed to move their packing facilities from the Union Stock Yards in Chicago to a point in Indiana called Polleston, I believe, and for the various considerations therein named the parties agreed to certain things in the paragraphs numbered first through fourteenth, inclusive.

Now, first it should be remembered that there has been a substantial change in the facts as to the parties since that time. As I understand it, the Chicago Junction Railroad at that time was not a separate corporate carrier but was an inherent part of the Union Stock Yard & Transit Company of Chicago. I believe later it was made a separate corporation. In fact up to the time of the Pfaelser case in the United States Supreme Court about 1914 it contended that it was not a common carrier subject to the Act. It maintained that contention through that case. Later on it was leased to the New York Central, as you now know. So that that contract relates to a set of facts and conditions that have no existence at the present time.

Furthermore, all of the terms and conditions in that contract, with one exception I believe, number 8, were to be carried out within fifteen years but no longer. Number 8 did not have any fifteen year limitation upon it; and in the other case a substantial contention was based upon that fact and I think the Commission rather overlooked [fol. 985] one point in what it summarized in that connection.

If you will look at that exhibit with some care you will note that Swift & Company was not a party to it.

Mr. Smith: What was Gustavus Swift's relation to Swift at that time, Mr. Rynder?

Mr. Rynder: I would prefer to handle this without interruption.

Mr. Smith: All right, excuse me.

Mr. Rynder: If you refer to the first whereas paragraph on page 4, you will see that the contract is made with Gustavus F. Swift, Edwin C. Swift, Louis F. Swift and Edward F. Swift, who are said to be the owners and holders of a majority of the shares of the capital stock of Swift & Company.

I don't know. I assume they were the owners of a majority of the stock at that time. All of those gentlemen have been dead a number of years and none of them are, or have been, for many years, or could have been for many years the owners of a majority of the capital stock of Swift & Company and they are described, and you will observe they signed the contract only in their individual capacity and not on behalf of Swift & Company.

Now, if it be contended that the contract has any bearing on present day conditions because of paragraph 8, I would like to call your attention to this fact, that openly and notoriously since about 1911 or 1912 Swift & Company have through a subsidiary operated these pens for [fol. 986] the receipt of livestock at the Omaha Packing Company location. If there were any liability on the part of Swift & Company for so doing it might be assumed that the party who had a right to enforce it would have been doing something during those thirty some years, but nothing of that kind has ever occurred and the position taken by general counsel for Swift a number of years ago, and which I believe is the answer to what I am saying, is that Swift & Company was not a party to and was not bound by the terms of this contract, and Swift & Company is the complainant before you today, for all of which I contend that that contract now is inadmissible because it is not relevant to any present day matter.

The Number 48 here I might say I have no interest in it. It is an agreement made about the same time with certain other packing companies and individuals in and around the Union Stock Yards in Chicago, many of whom, by the way, have passed out of existence, but there is nothing to indicate that Swift & Company was remotely a party to that particular contract.

Now, the next one, exhibit 49, purports to be a copy of

a bill in equity filed in the Circuit Court of Cook County by counsel for Swift & Company on April 30, 1891.

As having some bearing on the relevancy or admissibility or materiality of that at the present time I might recall to your Honor all I have said about the change in conditions.

[fol. 987] I think that by looking at the terms of this bill you will note that the Chicago Junction Railway did not independently exist at that time and I have pointed out the changes that have since taken place with respect to that corporation.

Furthermore, as to whether the matter is of any importance at the present time, it is to be noted that the case was never brought to trial or tried and I don't see how it could possibly affect any issue pending in the present complaint at the present time.

Exhibit 50 appears to be a bill in equity filed in the same court on or about the same time on behalf of Nelson Morris & Company. I have no interest in that contract but I think it would be even less material or relevant than the one filed by Swift & Company.

Number 51: All that I have said about the Swift bill in equity would apply to it equally, except that it is filed on behalf of Armour & Company and it could have no bearing upon the rights and duties or obligations of Swift & Company. Furthermore, the case was never brought to trial and you will see it was specifically dismissed.

Now, if I am in any sense correct in my objections to the admission of these bills in equity in the Circuit Court of Cook County, it would follow, of course, that the answers are equally inadmissible and I do not need to go into them [fol. 988] in detail.

I come now to Number 53, which is a deposition or affidavit in one of these equity cases of the General Superintendent of the Chicago, Burlington & Quincy Railroad Company. Aside from the objections that I have urged to the admission of the bills in equity themselves, it seems to me that there is another objection to this affidavit.

I cannot assume that it is put in here unless it is for the purpose of trying to prove some facts. Now, even the Commission with its rather liberal practice will not permit the proof of any facts by affidavit in a case before

it if the party against whom it is offered objects to proof by affidavit. I am advised that the maker of this affidavit, like some of the other gentlemen I have mentioned, is long since dead and that he could not be called as a witness even if we desired to question him.

Now, exhibit 54 is an affidavit of a Mr. A. J. Earling in one of those equity suits which never came to trial. I will not dwell on that one at length because I just ask that you consider me as repeating all of the objections that I made to the former affidavit.

Exhibit 54 seems to be merely a certification by the Clerk of the Court of the accuracy of certain documents.

Now, exhibit 55 is an affidavit in one of those equity suits of a Mr. J. D. Springer and all of the objections I [fol. 989] have urged against the other affidavits apply equally to this affidavit.

Exhibit 56, you will notice, is a stipulation for dismissal of the suits in which those equity bills were filed, which verifies the statement I have previously made that they had never come to trial. So, of course, that stipulation needs no additional or particular comment.

I now come to exhibit 59, which is a copy of Part 3 of a report of the Federal Trade Commission on the meat packing industry, published in 1919. This part is entitled, "Methods of the Big Five Packers in controlling the meat packing industry".

I assume here again that this would not be filed unless it is desired that it be accepted as some proof of the facts that are therein stated and I believe that it is inadmissible because of certain things to which I shall now call your attention.

If it please the Examiner, that report was what was known as an ex parte investigation. The people who were being investigated were not permitted to offer witnesses on their own behalf, to appear by counsel or to examine witnesses that appeared against them.

That the nature of the investigation was of that kind was stated by counsel for the Commission at the opening of the proceedings. The transcript is very long and I have had certified merely the page in which that statement [fol. 990] is made. I will call it to your attention in some

other connections as I go along. It is at page 547 of the transcript and it reads as follows:

"Mr. Heney"—Mr. Heney was counsel for the Federal Trade Commission in that investigation.

"Mr. Heney: I think it might be well for me to state for the benefit of the members of the press, that this investigation is not a trial in which any parties are defendants and thereby entitled to appear by attorney. It is an investigation into the economic conditions, as well as practices that may be prevailing, and it is ex parte, and while the Commission will be glad to hear any witness that presents himself here, no one comes here with the right to be represented by attorneys, with the right to put on witnesses, because there is no investigation of that sort being conducted."

I would like to offer that certified copy and have it identified, have it marked for identification. Of course, it need not be received unless the Federal Trade Commission report to which I am referring is also received.

Exam. Diamondson: It will be identified as exhibit 48.

(Exhibit No. 48 marked for identification.)

Mr. Rynder: Now, in that connection I desire also to call your attention to the weight that has or has not been [fol. 991] — to that report by other branches of the government.

As I understand it, after that report was issued the Commonwealth of New Zealand cancelled the license of Armour & Company to do business in there because of the facts stated about Armour & Company in that report. The State Department then presented the matter to the Government of New Zealand. I have here a certified copy from the State Department of a letter concerning that report, written by the American Consul General at Auckland, New Zealand, to the Government of New Zealand on July 6, 1921.

I would like to have that certified copy identified at this time, although it may not be necessary to receive it unless the excerpts from the Federal Trade Commission report are also received.

Exam. Diamondson: It will be identified as exhibit 49.

(Exhibit No. 49 marked for identification.)

Mr. Rynder: Before I go further I would like to call the attention of the gentlemen to the fact that that copy is deficient in one respect which I regret. At the top, as shown on the certified copy which I have shown to the Examiner, it should bear the address, "The Honorable, the Acting Prime Minister, Wellington, New Zealand".

I desire to call your attention to what was said there by authority of the State Department, starting out with the words, "Your l":

[fol. 992] "The investigation of the Federal Trade Commission of the United States which led to the report upon which the action of the New Zealand Government regarding Armour and Co. Australasia is considered to be based, has been described by the Chief Counsel of the Federal Trade Commission as follows: 'This investigation is not a trial', and then the same quotation that I made before from the minutes of the Federal Trade Commission. Then it later proceeds:

"The Federal Trade Commission investigation was, therefore, not a judicial trial, and its report is not a judicial decision, and it expressed the conclusions of the Federal Trade Commission only. In a stipulation signed by the Attorney General of the United States, which is quoted in and as a part of consent decree of the 27th of February, 1920, in the Supreme Court of the District of Columbia, to which reference is made on page 63 of the Report of the Agricultural and Pastoral Industries, Stock, and Commerce Committee of New Zealand, dated 1920, it is specifically stated as follows: 'and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the Clerk of this Court, and from which it appears among other things that while the defendants and each of them maintain the truth of their answers and assert their innocence of any violation of the law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a posi-[fol. 993] tion of antagonism to the Government, have consented and do consent to the making and entry of the

decree now about to be issued without any findings, upon condition that their consents to the entry of the said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.' The Government of the United States greatly regrets the attitude of the New Zealand Government in ascribing to the report of the Federal Trade Commission, as it appears to carry greater weight and a much different application than is given to it by the appropriate officers of the United States who are charged with the enforcement of these laws of the United States which Armour and Co. were alleged to have violated."

Now, in a case which went to the Supreme Court it appeared that the government tried to prove certain facts concerning the International Harvester Company by the introduction of a similar report of the Federal Trade Commission, that is, in an ex parte proceeding. The admissibility of that report as evidence against it was contested and the case was decided by the Supreme Court in United States vs. International Harvester Co., 274 U. S. 693, 71 Law Edition, 1302. Upon this point the Supreme Court said at page 703:

[fol. 994] "In support of its alternative contention that competitive conditions have not been established bringing about a situation in harmony with law, the government relies in large measure upon various statements and tabulations contained in the report of the Federal Trade Commission, which was introduced in evidence over the objection of the International Company. But it is entirely plain that to treat the statements in this report—based upon an ex parte investigation and formulated in the manner hereinabove set forth—as constituting in themselves substantive evidence upon the questions of fact here involved, violates the fundamental rules of evidence entitling the parties to a trial of issues of fact, not upon hearsay, but upon the testimony of persons having first hand knowledge of the facts, who are produced as witnesses and are subject to the test of cross examination."

For the reasons that I have mentioned I believe that the excerpts from the said report of the Federal Trade Commission are inadmissible here to prove any facts and all that I have said concerning exhibit 59, which quotes from Part 3 of said report, of course applies with equal force to exhibit 60, which is a copy of another portion of the same report.

Now, the so-called consent decree, which is exhibit 62, well, my objection is that I don't see that what it says is in any way relevant or material to any issue in this case. The entry of that consent decree is well known, the fact that the defendants denied the violation of any law and [fol. 995] that the Attorney General so stipulated and that the defendants agreed within specified times to retire from certain lines of business and to sell certain interests which they then held, including substantial interest in public livestock markets.

I mean there is nothing secret about that consent decree. I just can't see that it has any bearing upon the issue whether the Chicago Junction Railroad and its connections should be required to make a delivery of livestock at a specified point on the railroad.

Now, exhibit 65, as I understand it, is another affidavit in connection with those bills in equity of 1891. I doubt whether I need to repeat my objections to the attempt to prove facts by an affidavit in a suit that was never tried and by a man who is now dead.

Exhibit 66, as I understand it, is another affidavit in the same equity suits and all the objections I have stated to the proof by affidavit would apply to it as well as to those I have already mentioned, and I hope that the Examiner will consider that I have included them in the objection to this exhibit.

The next, which is No. 70, is a copy of certain proceedings of short duration before a committee of the United States Senate on January 29, 1919. I believe that, generally speaking, the same objections I have made to the Federal Trade Commission report apply to a committee [fol. 996] hearing of this kind before a committee of the House or Senate. In other words, persons are not allowed to appear there by counsel. They are examined and ques-

tions are asked by members of the committee. The committee has a perfect right to do that in order to inform itself and make up its mind what it will do, but it is not the kind of a proceeding in which any party has the ordinary rights of cross examination, the production of witnesses, and so forth, and so forth, and for that reason is not admissible in judicial or semi-judicial proceedings to prove facts. In fact, the only place I know of where those committee reports are sometimes referred to by the courts is not the evidence of this type but in attempting to construe a statute the Supreme Court has said that they may look to the committee reports as indicating what the committee had in mind, but those are the reports going with the bill when they go before Congress and not a mere transcript of evidence.

I haven't examined this in detail. I assume that exhibit 72 is different pages, and so forth, than exhibit 59.

Mr. Smith: Yes. It seems to contain different material, Mr. Rynder.

Mr. Rynder: Well, Mr. Examiner, the objections to exhibit 72 are exactly the same as the objections urged to exhibit 59 and for the same reasons, it being a part of the same report of the Federal Trade Commission to which I have adverted in connection with exhibit 59. Therefore, [fol. 997] all that I have said in connection with exhibit 59 and the documents that I have filed and the Supreme Court decision that I have cited apply equally to exhibit 72 and I would appreciate it if the Examiner would take it that I have repeated verbatim and in detail in connection with exhibit 72 each objection made to exhibit 59. Is that satisfactory, Mr. Examiner?

Exam. Diamondson: Yes.

Mr. Rynder: Exhibit 73 is also an excerpt from the same report of the Federal Trade Commission and the objections that I have urged to exhibits 59 and 72 apply also to exhibit 73 and I ask that they be considered as urged in opposition to it.

Now, I believe that the remaining exhibits, 74 to 78, inclusive, are all copies from later court proceedings under exhibit 62, the consent decree, and they would naturally

go with it. I cannot see that the consent decree is relevant or material to any issue in the present case where the only relief sought is against a common carrier by railroad in connection with the delivery of an item of commerce at a point upon the line of that carrier.

That concludes the objections I desire to urge at this time.

Exam. Diamondson: We will adjourn at this time until two o'clock, at which time Mr. Smith can reply to those [fol. 998] objections.

(Whereupon, at 12:33 o'clock P. M., a recess was taken, to reconvene at 2:00 o'clock P. M.)

[fol. 999] AFTERNOON SESSION

Exam. Diamondson: The hearing will be resumed.

Mr. Rynder: Mr. Examiner, I desire to bring up a little matter of procedure that I have already explained to you and Mr. Smith. So far as I am concerned, it does not need to be on the record, but if you prefer it to be on the record, I will put it on there.

Exam. Diamondson: On the record. You may proceed.

Mr. Smith: Your Honor, it is not my purpose to make any extended remarks here in response to Mr. Rynder's objection to the admission of Exhibit No. 42. We are brushing over a lot of old stuff here. This is the latest of a series of cases which have involved the delivery of livestock to this market. Without making any pretense of referring to all of them of recent years, we have had Adams vs. Mills in which, as I stated to the Examiner in my opening statement, that the Supreme Court of the United States said that in questions involving the delivery of livestock at this market, it is proper for the court to consider the history of the yard and the relation of the parties to the questions that are before the Commission or the court.

Then there was the Higrade case which involved exactly the same issues that are involved here and in that instance it was a small packer who desired to take shipments at [fol. 1000] his plant as Swift does here and they complained that this very rate which is now $28.80 was un-

reasonable and discriminatory and the Commission held, that that rate was applicable and was lawful.

Then Swift and Armour devised a program under which they would attack the delivery at the yard, one in the court and one before the Commission and those statements both reached the Supreme Court. In one, the one that arrived there first, the Armour case, the Supreme Court said that it was a matter for determination by the Interstate Commerce Commission. The Swift case was then proceeding through the processes of the Interstate Commerce Commission and when it reached the Supreme Court the court held that the Commission had properly decided the case.

Now we offered before the Commission in the Swift case these very exhibits that are before the Examiner here now. It is not like exhibits or similar exhibits, but the same exhibits down to the last exhibit. We did that because for one thing the Supreme Court then recently said in Adams vs. Mills that such evidence was relevant and had gone at great length into the history of the stockyards.

We offer it also because on the face of the matter it is apparent that it is a highly relevant, competent and also decisive piece of evidence. The admissibility of that evidence was tested out in that proceeding in a very extreme degree. It was argued at great length before Examiner [fol. 1001] Carter, each exhibit as it was offered, and Mr. Rynder was not content with the Examiner's ruling, of course, as was his privilege and he appealed from it, which he did to the Commission and he insisted on a separate ruling on the admissibility of the evidence which the Commission gave and the Commission received it.

Exam. Diamondson: As a matter of fact, it was a separate hearing, a further hearing for that purposes, wasn't it?

Mr. Smith: That is right. Mr. Rynder, when that evidence was offered, insisted that he have a separate hearing to offer rebuttal testimony in respect to that very evidence which he had and which he used and it was on the basis of all that we argued the matter to the Commission at considerable length and the Commission not only received the evidence, but it commented on it at great length and made it very clear in its report that it

relied strongly on the evidence along with other relevant facts before it.

When we got to the Supreme Court, I don't recall if Mr. Rynder raised the question as to the propriety of the admissibility of this evidence by the Commission. He may have, but if he did, I don't recall it. He can have it either way, either that he objected to it and the Supreme Court overruled his objections or that he felt at that time that it was so obvious that the Supreme Court would receive the evidence and think it proper that he did not argue it at all. Whichever side of that he takes, I think it does [fol. 1002] not help him.

Of course, I think he did not argue it and I think it is perfectly apparent why he did not argue it. I don't think the Supreme Court would have listened to him for a moment in any argument as to the relevancy of this material itself because it is so obviously relevant.

The Supreme Court said as to this evidence and on the basis of this evidence, "It was the packers themselves who suppressed the competitive yards and alternative facilities for unloading their stock."

Now, I want to come back to that, but I want to say this first: That in attempting to present a different question to the Examiner here from that which has been ruled on by the Commission, Mr. Rynder undertook to argue that first, we have a different question here from that presented to the Commission. Actually, the question here is the same question that was presented at the Swift case to the Commission in the Supreme Court. Here, as there, the fundamental underlying question is whether the delivery that we presently afford to the packers at Chicago is reasonable under Section 1 of the Act and non-discriminatory under Section 3 of the Act and that is precisely the question that was involved in their previous case.

They are attempting to do here in another way the same thing and they, of course, would not attempt in the same way to do it. They are attempting to do here a different way exactly what they undertook to do in the other case [fol. 1003] and for the same purpose.

Now, secondly, Mr. Rynder says that this is very ancient history and in some parts it is, but the idea is that history

is irrelevant just because it is history and just because it happened yesterday and not today is certainly a very novel and extraordinary idea. It is because it is history that it is important here and relevant here as the Supreme Court said that the history of the yards and the relations of the parties to the question before the Commission or the court is relevant.

To suggest that because the people who said that history may be dead and that those acts are not recurring today makes it inadmissible is, as I say, a very extraordinary conception, but as a matter of fact it turns out that history is repeating itself today.

The Supreme Court says, "It was the packers themselves who suppressed the competitive yards and alternative facilities for unloading their stock." What did the court mean by that? The court was referring to the facts that are embraced in this questioned exhibit. After the packers had delivered their stock at the yards for years and saw the yards' business, as they thought, being a good business; it made money, they decided that their patronage of the yards was worth something to the yards' company and it ought to be paid for. They wanted to get into the yards business at Chicago and to do it, they set about convincing the yards that if the yards did not [fol. 1004] make them partners in the enterprise and pay them for the use of that market, that they would leave the market. So to convince the yards that they intended to do so, they built what they called a central stockyards, just as they now propose to establish another yard here for the receipt of livestock, and after they built the central yard and threatened to move to that yard, then they brought the lawsuits to compel the delivery of the livestock to those yards.

The railroads in those days were willing to deliver the livestock to the yards. That was in the fairly early inception of that area down there. It was possible at that time to deliver to the yards. This terrific congestion and this concentration of industry and traffic and of railroads had not then grown up and it was possible to make the deliveries that Swift said it wanted, but Swift did not really want that delivery nor the other packers either.

They were simply using that as a bludgeon, to bludgeon the yards company to make them partners in the yard enterprise and it was successful. They did make them under duress to take them in as partners and they took them into the concern and gave them a part of the profits and then the packers, having accomplished their objective, gave up the central stockyards where the railroads had then been ready to deliver the stock and they made this contract that Mr. Rynder has referred to.

[fol. 1005] He referred particularly to that paragraph 8, because that happens to be the paragraph that continues even down to the present time, by which the yards company agreed forever, so long as they were interested in bringing stock to Chicago at least, never to make use of any other yards for the receipt of their livestock and he attempts to nullify the effect of that by saying, well, why is it that the yards company has not ever sued Swift and these other packers?

I am not concerned about that. As a matter of fact, we have been fighting these cases for a number of years and this time is the first time that the producers in the stockyards and the commission people have at last awakened to the fact that the very life of this yard is involved in what is going on. This is the first time they have ever come into this case and I take it that there are somewhat similar situations which operated to prevent any effort here or previously to enforce the provisions of Paragraph 8 under which the packers agreed never to interest themselves in any other point for the delivery of livestock.

He has referred to some of these exhibits because they related to Morris, or to Armour, or to some of the others. Mr. Rynder would like to think of this for very obvious reasons as a case that involved Swift & Company alone just as he brought out from these witnesses that the delivery at the Omaha plant at Swift or by these particular roads is not very large and by the same token, he wants [fol. 1006] to emphasize the fact that a number of these exhibits relate to other packers and whatever is done here would apply to other packers and this material is relevant here as it was in the previous Swift case, in which Swift

was likewise the only nominal complaint. Of course, all of the packers are actually complainants here.

I will just add one thing, your Honor, to my comments on these exhibits and that will be to read a sentence from the report of the Interstate Commerce Commission in the Swift case in which it states what it thinks is the relevancy and the competency of these documents. The Commission said, "For many years, the packers, including the complainant," that is, Swift & Company, "made the practice of which they now complain their own practice. They gave up their own terminal facilities at the central stockyards for a substantial consideration and by their covenants with the yards company, made the Union Stockyards their own terminal facilities at Chicago" and essentially our defense here is as the Commission said in this instance, that the Union Stockyards at Chicago constitutes the terminal facilities of these railroads for livestock and those terminal facilities we say are reasonable under Section 1 and non-discriminatory under Section 3.

I think I should add that this evidence in Exhibit 42 is not only relevant as bearing on the intrinsic reasonableness of the situation as it exists at Chicago, but it has much importance and as much relevancy in showing the [fols. 1007-1008] peculiar situation that exists at Chicago which does not exist at any other yard in the country and it consequently is relevant and competent and bearing on the Section 3 issue as well as on the Section 1 issue.

Exam. Diamondson: I am going to rule that the objection is overruled and, of course, that may be pressed on briefs. The exhibit will be received for such consideration as the Commission may deem proper.

(Defendant's Exhibit No. 42, Witness Smith, was received in evidence.)

[fol. 1009] Exam. Diamondson: Exhibit Nos. 48 and 49 will be received.

(Complainant's Exhibit Nos. 48 and 49, Attorney Rynder, were received in evidence.)

[fol. 1010] Mr. Kaylor: Complainant's Exhibit Nos. 48 and 49 and Defendant's Exhibit No. 42 are received by the Illinois Commerce Commission.

Mr. Smith: Mr. Examiner, Mr. Gladson asked if I would step aside for one witness for him and I have agreed to do so.

Mr. Gladson: I would like to call Mr. Heinemann.

C. B. HEINEMANN was sworn and testified as follows:

[fol. 1011] Direct examination.

By Mr. Gladson:

Q. Will you state your name and residence?

A. C. B. Heinemann, residing in Washington, D. C.

Q. What is your occupation, Mr. Heinemann?

A. Presently I am Executive Vice President of the National Independent Meat Packers Association and also I am Secretary of the Eastern Meat Packers Association.

Q. What is the first organization?

A. The first organization is composed of a group of independent meat packers of which we have members in every state of the union. Our membership comprises 740 members and 147 associate members.

Q. What are your functions as Executive Vice President?

A. I am designated by the Board as the general manager of the affairs of the Association under the direction of its president and Board of Directors to carry out their policies.

Q. Do you keep yourself informed of the affairs of your members?

A. I endeavor to, yes, Mr. Gladson, in every respect.

Q. What other association are you secretary of?

A. Secretary of the Eastern Meat Packers Association.

Q. What is that group?

A. That is a smaller group composed only of independent packers of those states lying along the Atlantic Seaboard east of Pittsburgh and Buffalo. We have one member west of those two cities and that is a member at Cincinnati, Ohio, who was one of our charter members and he

[fol. 1012] has remained with the organization ever since.

Q. What are you duties as secretary of that organization?

A. Those customary duties having to do with again carrying out the orders of the Association, the Board and collecting and disseminating information as required by the Board from time to time as relating to matters affecting the meat packing industry.

Q. Will you tell us briefly the other experiences that you have had in the various phases of the livestock industry?

A. Well, Mr. Gladson, starting as a farm boy and I was reared on a farm and we had livestock and starting at the age of six, I had to carry my share of the burden and later on, my stepfather was engaged in the farming business down in south central Illinois, and what we call Egypt, and I think you call it that, too, along the line of the Illinois Central Railroad where he had a section of land that he had acquired from that railroad at the time it was built there.

In addition to engaging in general farming and livestock production and fattening and feeding, he had a small store in one of the small towns on that railroad and as is frequently the custom, he operated a grain elevator and was a buyer and shipper of livestock primarily to the Chicago market and it became a part of my duty when I was not in school to get over there and hustle around and help him all I could.

[fol. 1013] Shortly after I had finished my schooling, even in my vacation periods, I had a yen for railroad work and my older brother taught me the telegraph code and before I was 18 years of age, I was pounding brass in the little station and from there I served in various capacities in railroad work, station work, and finally landed in the dispatcher's office at the age of 19 and from there, the superintendent asked me to go to the National Stockyards, Illinois, which is that which we refer to generally as the St. Louis market, although it is on the east side of the river.

There I was in the general livestock agent's office and there I had my first real close contact with the stockyard

operations and with the meat packing industry as it existed there at that point.

I remained in that capacity, correcting certain things which he had asked me to look after until I went with Morris & Company, one of the owners of that stockyards and incidentally that ownership continues to the present day in the estate of Mr. Edward Morris, who has the controlling interest, I should have said, and from that St. Louis office, I came to the Chicago office on March 19, 1907, and in their Chicago office I was in their traffic department and in that department we had to do with the handling of matters affecting their stockyards interest.

The Morris family then, as now, was the dominant interest in these yards. The National Stockyards generally referred to as being at East St. Louis, but as a matter of [fol. 1014] fact, it is just outside of the city and at Kansas City they acquired the controlling interest after they had opened their plant there in 1905. Later they were one of the constructors of the Oklahoma National City Stockyards just outside of the city limits of Oklahoma City. They were the organizers of the El Paso Union Stockyards at El Paso, Texas, and they were still later the owners of the New York Stockyards which serves and in fact it is the only stockyards on Manhattan Island and it is the livestock terminal of the New York Central Railroad in New York City.

Our duties had to do with, as I said, the handling of stock yard matters and my superior officers designated and delegated to me such details as he wished me to handle. We had to do with the movement of that traffic.

In addition to that, Mr. Nels Morris, who was then living, the founder of that company, was unquestionably the largest livestock shipper in the world and part of our work had to do with the movement of his tremendous volume of livestock from Chihuahua, Mexico, into the Texas country and thence up into the sand hills of Nebraska and finally to Morristown, South Dakota, where he had tremendously large ranch properties.

From Morristown we distributed these animals primarily to the distilleries where he had contracts with their feeding and they were then fattened and went into export

trade and there again it was our job to see to it that that [fol. 1015] stuff was handled expeditiously and properly, with proper reservations made and see to it that the stuff was loaded on to boats for shipment to England, with such cut-outs as were necessary and which were diverted to our nearby plants. That had to be done where the animals were not suited to export purposes.

Q. When you speak of "our jobs" whose jobs?

A. In the traffic department, and I happened to be the one who generally had to do that until Mr. Park came along and relieved me of some of that work.

Q. All right, will you proceed?

A. I left Morris & Company in 1916 to go with the National Livestock Exchange, which is the National Association or organization of the livestock commission merchants then representing some 28 markets and I believe about the same number is still included. I was with them until 1920 except for a period when I was drafted into railroad administration at Washington under former Interstate Commerce Commission Prowdy, who was the Director of Public Service in the country, and in that capacity I had to pass on all of the regulations, rules, rates, et cetera, that were put forward as freight rate authority requests from the division of traffic, another division of the railroad administration, and, of course, that department kept me rather busy because they were making many changes, including the setting up of a system of uniform rules and regulations applicable to livestock traffic at that [fol. 1016] time.

I remained in that job until I was called back to the National Exchange at the insistence of the president, Mr. Everett Brown, but they only released me with the understanding that I would come back there whenever any matters affecting livestock or perishables came before that body for approval, and they then, of course, brought me down there under an arrangement whereby my expenses were paid with no salary.

I returned to Chicago and in July, 1920, I went with the then Institute of American Meat Packers, which was a reorganization of the old American Meat Packers Association representing the major packers of the country and

some 160 smaller concerns and representing, of course, by far, the largest volume of any association in the meat packing industry.

I was with them until the end of 1923 when I went to Atlanta to set up for Mr. Kendler and Mr. White, the Atlanta Union Stockyards on the property formerly occupied by the Miller Union Stockyards. That was understood to be merely a short job until we got the thing under way and I then went with the Kenneth-Murray Livestock Buying organization, which was and still is today the largest livestock buying organization in the world.

Q. What position did you occupy with that company?

A. I was the manager under Mr. Kenneth and Mr. Murray, of course. We had buying stations on 14 of the public markets, which were all of the markets east of the [fol. 1017] Missouri River and we had a number of buying stations which were set up at strategic country points where, for some particular reason, there was a supply of stock suited for our patrons.

I remained with them until 1932 and then I went with the Kansas City Stockyards for a short period, but they immediately volunteered my services to head the American Stockyards Association which had to be organized at about the time of N. R. A. in order to successfully present our case before the N. R. A. and some of the agencies at that time. I remained with them as secretary and I did not give up that position until the National Independent Meat Packers Association was formed in 1942, at which time I severed my connections with the American Stockyards Association and since that time I have been wholly connected with the Meat Packers Association which I have named.

Q. Have you made a study of the history of the Union Stockyards and Transit Company of Chicago?

A. I have, sir.

Q. Will you tell us when this study began and just what you did?

A. Well, I started this study, Mr. Gladson, right after I came to Chicago in 1907. I did so because of the interest our people had in the stockyard matters around the country and that was one of the things which they commis-

sioned me to do, that is, to gather data relating to the stockyards and stockyards operations, ownership, facilities, and matters pertaining thereto.

[fol. 1018] I have continued that study up to date and in the course of it, I probably have examined or in fact, I have examined thousands of documents and records, including a great many law cases, a great many government documents on this matter. I have interviewed many who were then living at the time this yards was established, and one of the most interesting witnesses of all was one whom I interviewed and whose history or biography I set out in a document relating his experiences in the handling of livestock out of Chicago long before the Union Stockyards was ever thought of.

That man, incidentally, was not a novice in the game and he was one of the smaller packers who was instrumental in the establishing of the stockyards at Louisville, Pittsburgh and was one of the substantial stockholders of the stockyards at Jersey City, New Jersey. That was Mr. Ira Brainard.

Q. Have you also made a study of other public markets?

A. I have, sir.

Q. Have you written any books on the livestock markets and the history of the livestock markets of the country?

A. Yes, I have, Mr. Gladson. I have written one that is available and that is the history of the American livestock market and in it I have set out in more or less brief manner, but in some cases rather extensively, such as the Chicago market, for example, much of the events leading up to the establishment of the various yards and that in-

[fol. 1019] cluded all of the major markets in these United States.

Q. What other historical work, if any, have you written?

A. Well, as you will recall, one of the major events was unearthing all of the facts concerning the beginning of the sleeping car service in these United States, the organization of the pioneer companies and their evolution. In the case of the Pullman Company and that occupied a period, as I recall it, something of a year, around actual time, and much more than that in actual hours, and that was summarized and presented with my testimony before

the Federal Court in Philadelphia at which point the anti-trust case was heard.

Incidentally, off the record, that document which was not filed in the exhibit was in the files of the Interstate Commerce Commission library down there and they were very thankful of getting it.

Q. Will you proceed to tell in your own way the history of the establishment of the Union Stockyards at Chicago?

A. Well, to do that I should like to take you back to 1848, which is the actual beginning of Chicago as a live-stock market. Prior to that time, there had been nothing in the way of a market at this point and in the year 1848 there was established what was known as, and in fact what was named as the Bullhead Yards here in Chicago. That was located over on the west side and as is customary at that time, and as was required by most of the city ordinances of the various cities, the livestock all had to be [fol. 1020] driven overland and the people who accommodated these drovers were required to provide not only facilities for their sleeping, but enclosures for the handling and safely securing of their livestock from allowing to roam the streets.

The Bulls Head Tavern was established in 1848. They were leased in 1855 and closed in 1856, and incidentally, that is where Mr. John B. Sherman, whom I like to think of as one of the real organizers of the Union Stockyards, got his first stockyards experience.

In 1858, the Michigan-Southern Yards was established at State and 22nd Street and in 1859, the Fort Wayne Yards was opened up at Mitchell Street and Stewart Avenue and in 1862, the Loomis Yard, later to be called the Cottage Grove Avenue Yard, opened at 31st and Cottage Grove Avenue, and in 1865, the last of the individual railroad stockyards was planned for and established by the Burlington west of the city limits of Chicago.

That was known as the Dole Yards and that seems to have been the last hair that broke the camel's back, because the Dole Yards petered out and the material planned for the use in that yard was acquired by the builders of the Union Stockyards.

Thereupon the railroads who could hardly help but recognize the failure of the establishment of these individual

yards scattered around a great area such as they were, and certainly with the rapid advancement and extension of that traffic, sought to do something about it. There were nine railroads entering Chicago at that time and that, [fol. 1021] incidentally, was what made Chicago the beginning and ending of more railroads than began and ended in any other place in this world, and incidentally, that is true today.

So these railroads, according to the minutes which I have studied in the official records of the stockyards before the fire, gathered together to discuss ways and means for meeting this situation. As a result of it and of their planning, they appointed a committee to see what they could do in the way of acquiring a site and working out plans for the establishment of a central stockyards to be open like on an equitable basis to all of the carriers then serving Chicago.

Out of this came the incorporation, or rather the chartering of the Union Stockyards and Transit Company of Chicago early in 1865. With that—should I proceed?

Q. Why was the logical place Chicago for the establishment of such a yard?

A. Well, because——

Q. You told us about the great number of railroads, but was there anything in respect to the grouping of the railroads that made this the logical place for the yard?

A. Yes.

Q. Will you tell us, please?

A. Because it was circumscribed on the north, of course, by Lake Michigan which prevented the overland driving of stock from the northwest and it naturally would have [fol. 1022] to drive around the lower end of Lake Michigan. The railroads coming in from the east as they were constructed were confronted with that same impediment in any attempt of extending their lines into the northwest and so Chicago became quite naturally the center of railroad construction to and from the east.

Now, going west, you have the lines radiating and starting in 1848—I should have mentioned in that year the construction of the first railroad line in Chicago, a part of which is now the North Western, began and by 1856

you had nine lines, none of them reaching the Missouri River at that time. But as they grew, the livestock industry developed by leaps and bounds along the territory served by the railroads and I don't think too much credit can be given to the railroads for being the stimulant which made the livestock industry what it is today. I, for one, want to give them plenty of credit for that. That was the only traffic they could get in that territory and it continued to be such.

Q. Isn't it true that the western lines tapped the producing territory and the eastern lines the consuming territory?

A. Absolutely true.

Q. Will you proceed to tell us what the railroads did about the construction of this yard?

A. After the committee had agreed upon the site, there then came the rather disconcerting problem of finding some way to do something about it. They were in a com- [fol. 1023] pletely pioneering field and without any precedent upon which they could rely. To meet that situation, it became necessary for them to bring in the best engineering skill they could find. The man selected for that purpose was Mr. Hough, who was then the manager of the yards, and that was the name of the stockyards after it was constructed. He in turn brought in Octive Chanute. Octive Chanute was born in France of American parents and as his name implies, he was the eighth child.

He came to this country as a young man, made engineering his profession, and he was the builder of a railroad with which you are more or less familiar, the Alton Railroad, and seven of the others, including his contribution to the old Hannibal and St. Joseph, which General Pershing's father was one of the contractors under him, and later on, Mr. Chanute furnished the engineering brains to the Wright Brothers, who were very fine brothers, but lacked that ability necessary to put over their dream of a lighter than air craft.

I am glad to see that credit has been given him for that work. Incidentally, too, you may be interested to know that Chanute Field down at Paxton is named after this same Octive Chanute. It was the engineering skill of these

gentlemen who made it possible to lay out these yards in a completely unfamiliar environment in a plain, out of the city here, which was completely out of the city limits and right out in the open prairie and the stockyards they [fol. 1024] built and the facilities which they established became the pattern for all future stockyards of any size throughout this country.

Q. What attributes of importance did this stockyards have?

A. Well, in carrying out, of course, the mandates of the railroads who were responsible for it, the first essential was to give all lines equal access to the property and with that in view, they laid out their track facilities and constructed those track facilities so as to serve all lines then existing with equal facilities and on equal terms as nearly as that could be done in view of the physical layout.

Q. In other words, the stockyards company built railroad lines to each trunk line carrier coming into Chicago?

A. That is right.

Q. Now, let me ask you this, Mr. Heinemann: Why was it necessary or desirable that this be done? What problem did these people have to meet that the other stockyard owners did not have to meet?

A. Well, there had been some little experimental work in a minor way with some little what you might call peanut stockyards at eastern points, but here was a stockyards of considerable magnitude and they had to work out a plan that would get these shipments into that market centrally located where they could assemble the available animals and they wanted to have the assurance that the buyers coming to this market would not have to move from [fol. 1025] stockyard to stockyard, seeking animals, only to find that they would be unable to move them from one stockyards to another to assemble them into carload lots.

It was then strictly a carload movement and they had to lay out their plans and designs on that basis and it was with that thought in mind that the entire structure was laid out as it was.

Q. Wasn't it true that there was a concentration in this yard of a large, extremely large number of animals that had to move in and out each day?

A. That was true from the very beginning and I might add I think it will be well to point out right at that place the year that these yards was opened was the year in which the war between the states terminated and it was of particular significance and of particular interest to the livestock people for this reason: Texas then, as now, was a very substantial producer of livestock. That state had been completely blockaded and they would not allow the livestock from Texas to reach the Confederate Army and they would not allow the livestock to be shipped from Texas into the Indian Territory, overland, and they had accumulated a substantial volume of animals there which they were very anxious to market and this afforded them the only market of its kind in the world to which they could come.

Q. In order to shorten this, isn't it true that the establishment of this market attracted a large number of buyers, [fol. 1026] buyers of livestock?

A. Yes.

Q. And also of commission men to handle the business for the shippers to this market?

A. That is true, and the volume is such that no producer could hope to continue to peddle his stock around. It was definitely to his interest then as now to employ commission men to do the job for him.

Q. What, if anything, did the yards do to insure fair treatment of the shippers to the market?

A. They set certain standards and enforced them rigidly first as to the quality of men performing these services in the yards and so as to assure that the old gyp game they had encountered in some of the other yards did not follow through this, to this new property. That gave the livestock owners a protection which they had theretofore lacked.

Q. What was the result of their efforts so far as this yard was concerned?

A. The result was the completion and the maintenance of a stock yards which has been and always has been the greatest livestock yards ever constructed in these United States or in any other part of the world and the greatest livestock market.

Q. What function does the Union Stockyards, Chicago, serve so far as the livestock producers or the livestock industry is concerned?

[fol. 1027] A. Well, I like to, Mr. Gladson, refer to it as it is frequently referred to, and that is that they operate a magnificent hotel for livestock to which the producers may come on equal terms to display their wares on huge showcases and be sure it is placed in capable, honest hands for sale and distribution at the best advantage of the livestock producers.

Q. You heard considerable testimony in this case to the effect that the Union Stockyards at Chicago is a livestock barometer which helps the producers in deciding the price at which they shall sell their livestock? Do you agree that that is correct?

A. I do and I don't make that statement lightly nor without examination. I think I have been in as many stockyards and at as many buying stations as perhaps any man in the country and anyone who can try to tell me that you can operate successfully without consulting the situation of the market at Chicago, just simply does not show what he is talking about.

I was one who was one of those who had the formulation of the distribution of the market service by telegraph wire that was made available by the Western Union through what they call their C and D services. That was mentioned by Mr. Swanson, who was very active and a lot of credit should be given to him for that work.

Another market which does not get that service plus the service offered now by the Bureau of Agriculture of Economics would be just as if he were operating blind [fol. 1028] folded and trying to get along over on State Street.

Q. Does that apply to all markets or just the public markets?

A. From the Golden Gate to Jersey City.

Q. And the buying stations and other places?

A. Yes.

Q. In addition to serving as a barometer, does the Union Stockyards act as a competitive force in the sale of livestock?

A. In that, they are constantly striving to make sure of a suitable supply of livestock and most of all that they are trying to make available to the producers who patronize that market adequate buying power through not only the buyers of the local packinghouses, but those representing the packinghouses located elsewhere through the medium of the so-called order buyers or traders operating on that market.

To do otherwise would simply be to dry up their stockyards and the market in a very short time.

Q. Isn't it true that the producers of livestock of any, or almost any kind, can be found on the Chicago market and a market for those animals can be found?

A. Mr. Gladson, more than any other market in the United States. You can ship any meat animal, regardless of its species, grade, its type or weight to Chicago and you will find there a buyer for it. As long as it will pass the proper inspection, you will find the buyer there and any buyer in these United States, regardless of the quality he likes to buy or sell, or the weights or grades or what- [fol. 1029] not, he can come to Chicago with assurance that unless there is some artificial barrier put in there, he will find the animals that he wants on this market.

Q. I believe, Mr. Heinemann, you stated that the Stockyards company built their own railroad to connect with the trunk line carriers?

A. Yes.

Q. Will you tell us how that railroad was operated so far as livestock was concerned?

A. Then and now and in all of the intervening years, it has been operated only in one way and that is with the roadhaul lines effecting delivery of the livestock to the unloading chutes and removing the empties from the unloading chutes.

Q. And of what importance is the prompt delivery of livestock?

A. Mr. Gladson, for a long time I have been meddling with livestock and I like to think of livestock as the efficient product of a producer who has spent either months or years in bringing it to fruition in its prime state and in what we like to call its bloom. Every hour or every

lapse of time of any consequence after that stock has been finished and is ready to market is going to have its effect on the value of that stock when it is displayed to the buyers on whatever market you patronize in Chicago and there is no exception.

Anything that holds that stock out is bound to have a depressing effect upon its price. A buyer who buys it knows it and bids accordingly. The seller knows that he [fol. 1030] is hooked with some stale stock and if he must sell it, he must expect to take a depreciated price on it. Therefore, it is to the interest of everyone to see to it that there is no lost motion between the time that the stock is ready for market and the time that it goes over the scales and becomes the property of that buyer.

Q. How many miles of tracking did the stockyards company first build?

A. Approximately 30 miles.

Q. Did that make any allowance for the handling of dead freight?

A. None whatever.

Q. In the yard except for feed and commodities of that kind?

A. It made no allowance whatever for dead freight, because at that time there was no necessity for it and no movement of any consequence as a matter of fact.

Q. Did the stockyards at that time have other facilities for receiving dead freight?

A. The stockyards company, so far as it was concerned, had no interest in the movement of dead freight or the handling of it.

Q. I had in mind the utilities that the stockyards company had. Did they have a slip?

A. What?

Q. Did they have a slip?

[fol. 1031] A. Incidentally, that is an important point. They did have a water transportation there and incidentally that slip was the sole means of transportation between the stockyards and the few little packinghouses located in the Bridgeport area of Chicago where those packinghouses were located at that time.

Q. And also lumber and grain and other commodities of that nature that the stockyards company needed were transported to Chicago and to the stockyards by means of boat?

A. In a great volume, yes.

Q. Were there any packing plants located at Chicago at the time of the building of the stockyards company?

A. In the district in which the stockyards company was built, do you mean?

Q. Yes.

A. None whatsoever.

Q. When did they come?

A. Starting about 1870.

Q. By 1874, how many were there?

A. Approximtely 15.

Q. Were they large or small?

A. All small.

Q. What became of most of the livestock that came to Chicago in the early days?

A. In the early days, Mr. Gladson, you had little choice on your livestock for slaughter. You did not have your refrigerator cars and you had little choice except to ship [fol. 1032] the livestock, or the live animals to the consuming areas alive.

Q. When was the dead freight that the yards facilities were called upon to handle developed in volume, or substantial volume?

A. The real growth began after the establishment of some of the packing concerns out in that area adjacent to the stockyards property.

Q. What facilities did the stockyards company establish to handle this freight?

A. They extended their tracks as the occasion arose. Likewise, they extended their tracks for the handling of the livestock trains in the chutes so as to connect with new lines reaching Chicago after the period of construction.

Q. Where were most of these tracks that handle the dead freight from the packing plants located?

A. Well, the stockyards company construction is located in what we call the busiest square mile on earth and that area went where now is located the Ashland Avenue yards

and its connecting yards. There was, of course, extended, Mr. Gladson, the lines, the old Lake Park line from Lake Michigan west to the yards. That was one of the extensions that they made.

Q. Will you tell us how the stock yards company handles its dead freight?

A. The stockyards company never did handle the dead freight except to afford tracks over which it could be [fol. 1033] moved until after the experimental stage when they established a transit department.

Q. What year was that?

A. June 1, 1893. They organized the transit department of the Union Stockyards and acquired locomotives and set them in motion to move that dead freight.

Q. Prior to that time the trunk line railroads that operated over that track?

A. Would you like to have it chronologically?

Q. Yes, I think so.

A. From 1865 to December, 1887, each railroad furnished its own power and delivered their cars to the industries without any central control or orderly procedure. They each paid to the stockyards a trackage charge.

In December, 1887, the railroad switching association was organized and from August 14, 1890, to August 21, 1890, not a very long period, virtually chaos reigned with great loss on perishables and that required some further attention.

From August 21, 1890, the line decided to try the system of each road handling its own delivery and this lasted only until September, 1890, when the railroads organized what was known as the Chicago Railway Transfer Association with a manager and an Executive Board. While this brought a semblance of order, the service was not satisfactory because of strikes, lack of orderly supervi- [fol. 1034] sion, et cetera, and on June 1, 1893, as I said before, the stockyards organized the transit department. Then the Chicago junction was formed in 1898 by the consolidation of two smaller lines and the railroad succeeded the transit department and took over the work of handling the dead freight, but not the livestock.

Then in 1922, the Chicago junction, railroad property, was leased as has been testified to by other witnesses.

Q. Was the Union Stockyards at that time as it is now the terminal of all of the trunk line railroads?

A. For livestock, yes.

Q. Yes, I mean for livestock?

A. Yes.

Q. In—Did the stockyards company at any time allow a trunk line carrier to transport livestock over the dead freight tracks in Packingtown?

A. No, sir.

Q. When was the first demand that you know of on the part of the packers that they be allowed to take delivery or get delivery of livestock at their own facilities?

A. 1891.

Q. That resulted in what, very briefly?

A. It resulted in suits filed by the three major packing companies and that has been covered by the exhibit previously filed.

[fol. 1035] Q. And the packers acted in concert in that particular matter?

A. At least they were all pursuing the same course, I will say that.

Exam. Diamondson: Are you referring to Exhibit No. 42?

The Witness: Yes.

By Mr. Gladson:

Q. And what was the outcome of that litigation?

A. The outcome was an agreement to settle it out of court.

Q. The agreement has been placed into evidence, has it?

A. Yes.

Q. Do you remember what exhibit it is?

A. It is in this volume right here, the first exhibit in the bound volume that was introduced by Mr. Smith.

Exam. Diamondson: That is Exhibit 42?

The Witness: Yes.

By Mr. Gladson:

Q. Now, Mr. Heinemann, what, if anything, happened between 1889 and 1907 which was the expiration of the period that the big packers agreed to buy their livestock

at the Union Stockyards with respect to the building up of the territory in Packingtown and the stockyards district?

A. Mr. Gladson, that area built up out there almost like mushrooms popping out of the ground. That entire area from you might say 47th Street to the then Bubbly Creek was built up almost solidly with permanent buildings owned by various industries primarily those engaged in the handling of meats, meat products or by-products of the packing industry. [fol. 1036]

Q. When did you say you came to this part of Chicago?

A. Mr. Gladson, I came up there permanently in 1907, but I came up there the first time the year after the World's Fair.

Q. Were you stationed at the stockyards district in 1907?

A. Yes, from 1907.

Q. That was the end of the 15-year period under the contract, wasn't it?

A. Yes.

Q. What would you say as to whether or not there was any room to expand the railroad facilities or the packing-house facilities by 1907?

A. When I came there in 1907, Mr. Gladson, I sometimes wondered how they could transact any business on that railroad at that time in view of that congestion. I am still wondering at it and I marvel at it.

Q. It was built up solidly?

A. Yes.

Q. Were you familiar with the Ashland Avenue Yards at that time?

A. I certainly was. I used to go over there with my hat in my hand sometimes to get some service.

Q. And it is practically the same as it is now?

A. Relatively speaking, yes. Of course, they have added some facilities like your track elevation and things of that kind and some improvements, but then, as now, you have your congestion. [fol. 1037]

Exam. Diamondson: Did they add any tracks?

The Witness: Yes, they added a few and they took up some.

By Mr. Gladson:

Q. Mr. Heinemann, will you tell the Examiner where the tracks were added?

A. Various extensions. For instance, since I came there, or after I came there in 1907, of course, they developed the 39th Street development of the central manufacturing district and you can see on there, Mr. Examiner, where the tracks led up to those industries and where the quartermaster depot and those buildings were.

Exam. Diamondson: Is the capacity of the Ashland Avenue Yards approximately the same now as it was then?

The Witness: I would say there has been very little difference so far as your handling capacity is concerned.

By Mr. Gladson:

Q. When was the stockyards company area added to the city of Chicago?

A. In 1889.

Q. What, if anything, did that do to retard or prevent further extension of railroad facilities?

A. Well, that brought in a very substantial development, not only of added industrial areas out there, Mr. Gladson, but it brought in the housing of thousands of employees employed by and in those industries. So that you had a stockyards a square mile that was virtually surrounded [fol. 1038] by that area which grew, as I say, almost overnight.

Q. Were streets opened up and laid out and dedicated shortly after this part of the country was added to the city of Chicago?

A. That is true. They met the requirements in that respect. Of course, there still remained some private streets in Packingtown and the stockyards area, but I presume you mean outside of that immediate area?

Q. Yes, outside of that immediate area.

A. That is right.

Q. The stockyards have been definitely termed a great public utility?

A. Yes.

Q. Subject to the jurisdiction of the Commission with respect to its activity as has been mentioned, and also to the Secretary of Agriculture and others?

A. Yes.

Q. Who are its patrons?

A. Well, I like to think that the six million livestock producers in the United States are all potential patrons and a great many thousands of them have actually shipped and are actual patrons of this yard. I like to think, too, that the many thousands and packers located outside of the city of Chicago are its patrons on the other side of the bargaining table as well as the packers located in the Chicago area.

[fol. 1039] Q. Do you know what the facts are as to its serving outside packers?

A. I know that they do serve a lot of them and I know that it is the logical place for hundreds of them to come for their source of supply.

Exam. Diamondson: What do you mean by outside packers?

Mr. Gladson: I mean outside of Chicago.

By Mr. Gladson:

Q. Are the customers of the stockyards company some of your members?

A. Yes, in and outside of Chicago.

Q. In and outside of Chicago?

A. Yes. We have members who patronize the Chicago market.

Q. Can you give us an approximate number?

A. There are 18 of my members in the Chicago area buying on the Union Stockyards and there are over 250 of them outside of the Chicago area that buy or have bought on the Chicago stockyards market.

Q. Traders are also buyers on the Chicago stockyards market, are they not?

A. Yes.

Q. What about the feeders of livestock that come to Chicago? Do they come to Chicago to buy feeder and stockers in substantial numbers?

A. Yes.

Q. They do?

[fol. 1040] A. Yes, and I think that is a very essential part of our general marketing scheme. It affects a tremendous saving in our national economy by preventing these animals from going to the abattoirs instead of returning to the feed lots for better finishing.

Q. What, in your opinion, would be the effect of granting the relief that is prayed for by Swift in this case?

A. Based on my experience and observation out in that area, I am convinced that if even a measure of the delay is encountered as has been testified to previous witnesses, it would effect the serious impairment of the Chicago market and its eventual destruction.

Q. Do you think that the other packers, other than Swift & Company would avail themselves of direct delivery to their plants if it were granted to Swift & Company?

A. I am convinced that that is true.

Q. Why?

A. I have talked with several of them, several of my members, and I know that they are not going to stand idly by and forego an opportunity to get this service if it is granted to one of their competitors.

Q. What would be the saving from the standpoint of yardage to a packer like Armour & Company, who sends in a good many directs to the Chicago market?

A. 21 cents a hog.

[fol. 1041] Q. On 200-pound hogs, how much is that?

A. Approximately 10 cents a hundred.

Q. Is that of any effect, that amount of money in competition in the packing business?

A. You give me a dime margin either on a market or off the market, and you won't get the hogs.

Q. Have you an opinion as to whether or not the direct buying in the country will be increased?

A. I think it is bound to be, Mr. Gladson.

Q. What, if any, limitations are there on the transportation of livestock of market by truck?

A. Primarily that of distance, secondarily that of injury, mortality and bruises.

Q. Upon what do you base your answer to that question?

A. I made a rather serious study of that as to shipments

moving to the markets. When I was with the National Livestock Exchange, we started that almost contemporarily with the use of the trucks. Since I have been with the packers, we studied that intensely to see there whether it would be good or bad economy for us to try to truck our shipments from them to the market so that I have tried to study both ends of it.

Q. Do you know from what sources the large packers buy animals in Iowa and western Illinois?

A. From what sources?

Q. Yes.

[fol. 1042] A. You mean the names of the cities?

Q. No, I have in mind the concentration yards, buying yards, et cetera?

A. Relatively few, Mr. Gladson. Most of those are operated by what I shall call independent operators of those buying stations.

Q. To what extent are such buying stations and other buying points supervised by the Federal Government?

A. Those owned or operated by a packer, of course, come under Part 3 of the Packers and Stockyards Act and they will act in case of a complaint against any service coming within the scope of that Act.

Those operated by the independent agencies come not at all under the supervision of that Act and you take your medicine and like it. Would you like me to illustrate that?

Q. Yes, will you please do that?

A. I was in one buying station down in Ohio—incidentally, this fellow was buying and shipping to Mr. Swift at that time, Mr. Ryder—he had his registering beam in his office upstairs wholly disconnected with his scale. He would weigh his drafts of livestock animals. Of course, he would weigh them as he brought them in and bought them from the producers and when we took title to them, and as he escorted his load, he would make out his scale ticket to fit the occasion and imprint the registration on the phony scale ticket and send that along with the invoice. [fol. 1043] Just to keep from disturbing Mr. Ryder, a Swift buyer happened to be there that day and he did not buy any more hogs from that man.

In another case, to show you the possible trouble that you may have there, one of my members bought from a buyer in Indiana two cars of animals and the man drew a draft against him and the draft was honored before the cars arrived at Newark. I happened to be in the Newark office of this packer about a week later and he said, "Listen, we just learned that those two cars of hogs that this man shipped us were diverted by this gentlemen to Buffalo and sold to the Buffalo market and the proceeds remitted to him. What on earth can we do about it?" And I said, "Well, I think I know what you can do if you will write me a letter."

So they wrote me a letter authorizing me to act for them and I went to St. Louis to the railroad on which this man was operating and I presented them a bill for the two cars of hogs on the grounds that it was shipped on an open bill of lading and they had no business taking a reconsignment order from this former owner. So he called up the station at which the man was located and found out he was headed to St. Louis en route to California and we went down to the station and intercepted him when he got off the train and the claim agent gave him his preference of either going over with him to the U. S. Marshall and to the Commissioner or reimbursing the packer for the amount of the hogs and he gave us a check [fol: 1044] right there for the full amount.

I could give you dozens of instances of that kind, but that illustrates the reason why you should go some place where you know you will have a measure of protection.

Mr. Kaylor: When you say dozens of cases, aren't those exceptional cases that you are speaking of?

The Witness: I can give you some, Mr. Commissioner, that will make your hair curl.

By Mr. Gladson:

Q. One of the witnesses this morning testified that he had to pay a meat inspection charge. Do you know what the total charges are that are assessed in the whole country?

A. Mr. Gladson, prior to July 1, 1947, the Federal meat inspection was absorbed out of the general funds of the government. On that date, that was transferred to the

industry to be borne by the establishments operating under Federal inspection. That amounts to $12,000,000.00 per year.

Q. Does that mean that the amount per head is very large?

A. Well, it probably—spread over the head it would not be so much, but we were told by the sponsor of that bill, go ahead and take it out of the producers and consumers. That sounds simple, but it is difficult to accomplish.

Q. The point I am getting at is this: Is it a substantial charge, this $12,000,000.00 for the whole industry?

[fol. 1045] A. Spread over the whole industry per animal it would be soon lost sight of, I grant you that.

Q. Have you made an investigation to determine whether Swift & Company have started the construction of the killing plant and other facilities that they expect to use if this complaint is acted favorably upon by the Commission?

A. Yes, yesterday morning, Mr. Gladson, instead of going on the tour, I went out there and I went over the property as outlined in Mr. Tally's exhibit and I could not find so much as a surveyor's stake. I called up the city hall to see if I could get the location identified. They knew nothing about it and I went this morning over to the city hall and saw Mr. Pat Barrett over there and we checked the plat and he assured me that there had been no application for a permit and hence no permit granted for the construction of any building whatsoever on that particular plot of ground.

Exam. Diamondson: I will ask Mr. Rynder this question: The construction of that building is to proceed on whether or not this complaint is or is not favorably acted upon, is that correct?

Mr. Rynder: Yes.

Mr. Kaylor: In what period of time do you think it would be constructed?

Mr. Rynder: Well, so far as the unloading facilities for livestock—by the way, that would be constructed partly in any event, because, of course, none of our friends can [fol. 1046] prevent a truck from bringing livestock in there. There are now located at that point certain buildings used

by the General American Transportation Company for the repair of cars. We had to give them a certain notice under a contract to vacate that property. That notice was given last year and accepted by them. We understand that they expect to have vacated that property within two or three months. As soon as they have vacated that property, we could throw up unloading pens there beside the tracks overnight without waiting any further for the construction of the plant and use it as a receiving depot with our present plant facilities.

So the construction of the receiving facilities for livestock does not need and probably will not await the construction of the plant. We cannot go ahead with the plant's construction, however, until the General American has its buildings off there, which they have promised to have within two or three months. After that I am told, and I am not the authority on the subject, it will proceed as promptly as matters can be handled, having in mind the present difficulties in building construction, materials, et cetera, but the plant construction would have nothing to do with nor with the holding back of the construction of the facilities there for the receipt of livestock.

Exam. Diamondson: If you should construct such facilities, what would you do with the stock that would be [fol. 1047] put into those pens?

Mr. Rynder: We can take them over our own grounds or our own plant as we do now from the Omaha location on Halsted Street. We have to bring them all in our own plant.

Exam. Diamondson: You would truck them over, or take them over on the hoof?

Mr. Rynder: I don't know whether that would be handled by trucking or building a wooden runway into an appropriate part of the existing plant. I am told it could be handled either way.

Mr. Smith: You will recall, your Honor, that that question exists apart from whether or not this building were constructed because the evidence shows that there is, as I recall it, no present purpose for constructing a hog killing facility there and most of their directs are hogs and they have to go over some place else into the yard.

Exam. Diamondson: And it was testified, as I recollect, that the present facilities are obsolete, isn't that correct?

Mr. Rynder: That is my understanding of it.

Mr. Smith: However, I don't think that related to hogs. I would like to ask Mr. Tally about that if there is any doubt about it at the appropriate time.

Exam. Diamondson: Can you tell us, Mr. Tally?

Mr. Tally: The program of this new construction contemplates slaughtering all species of livestock; hogs are [fol. 1048] not included in the first construction of the proposed building. That will come later.

Mr. Smith: Will it come a year later or five years later, or do you have any idea?

Mr. Tally: I don't know whether it would be one year or five years, but I don't think it will be five years because they are constructing this building to take over old facilities which will be on a much more efficient basis in the new building and they want to get into the more efficient basis as rapidly as they possibly can without interfering with the operation of the plant.

By Mr. Gladson:

Q. Mr. Heinemann, are you familiar with the handling of livestock and the physical layout at any of the points shown in Exhibit 10?

A. What exhibit?

Q. Mr. Tally's exhibit.

A. Yes.

Q. Where direct deliveries are taken at the packing plants?

A. I think so, yes.

Q. What are the facts? Will you take that exhibit and point out the ones with which you are familiar and state the differences, if any, existing in respect to such deliveries at that particular point and at Chicago is concerned?

A. Well, beginning on Page 18, comparing this with the Chicago situation, Mr. Tally shows Wilson and Swift & [fol. 1049] Company. Of course, Swift & Company is located immediately available to the yards there and they

have the choice of using directs or if they wish, they can move in as he testified.

The Wilson plant is located some distance away——

Mr. Rynder: You did not name the point, did you?

The Witness: Omaha, pardon me, south Omaha. Wilson & Company has two plants in Omaha and neither of them is immediately available to the yard and they would, of course, not be available for delivery to the yards.

Kansas City, Kansas and Missouri. Most of the packinghouses are located across the Kaw River in the state of Kansas, that is, the major packers; Armour & Company is located on the Missouri side there with one of their plants and there has been a feud, of course, between Armour & Company stockyards for many years and they don't patronize the yards regardless of convenience or otherwise.

The Cudahy Packing Company is located on the other side and they get their animals but they have to drive them a substantial distance in order to reach their plant because the railroad actually serving the plant does not have the facilities and that is not the stockyards railway in any of these four instances, I want to make that clear.

Q. What do you mean by a substantial distance?

A. I think it is around a block and a half.

[fol. 1050] Q. Yes?

A. Under the viaduct and up into their plant. Swift & Company, Mr. Tally described. Wilson & Company is on the Kansas City Southern. Now, the Swift, Wilson, Cudahy plants are on the west side of the Kaw River and the stockyards main property is located on the east side of the Kaw River so that you have to cross the river on one of these stockyards-owned bridges. Swift & Company in common with Wilson and Cudahy do get some of their livestock direct at their plants and at other times they patronize the market. They have a reduced rate on yardage for deliveries to the stockyards facilities and that is used particularly around the weekends when, of course, they would have to maintain a crew throughout the 24-hour day watch.

Exam. Diamondson: What is that reduced rate on yardage, Mr. Heinemann?

The Witness: Well, certain of the stockyards put in generally a one-half yardage rate applicable to direct shipments that move directly from the unloading chutes to the packinghouses.

Exam. Diamondson: They have a different charge than those that come on the open market?

The Witness: That is true, sir.

Mr. Gladson: Can you tell me anything about the history of that reduction, Mr. Heinemann?

The Witness: That was put in, I would say, comparatively recently. The Kansas City yard was the one that did not make that reduction for quite a long period and [fol. 1051] then it was finally effected. In other words, that is of recent origin.

Mr. Rynder: Is that true also at Omaha?

The Witness: Yes, they made a reduction on that. Incidentally, at Omaha there Mr. Tally does not mention the Cudahy plant, but that plant gets their direct shipments through the yards and when they do get an occasional truck shipment, they pay the yard company its yardage although the animals may be unloaded right at their own plant.

At St. Louis, Missouri we should not confuse the St. Louis and the National Stockyards Market.

The St. Louis Independent Packing Company is located in the southwestern area of the city and the only public market in St. Louis is located at the Mississippi Valley Stockyards which is up close to the Merchants Bridge, almost under the shadow of the bridge, far removed from the stockyards and the only packer in that immediate area is the Krey Packing Company and they get their deliveries through an arrangement with the stockyards company whereby they are permitted the use of certain of the stockyards facilities under a leasing arrangement.

At East St. Louis, one of the points brought up by Mr. Tally, I think this point might help clarify that. That was a plant built there as a result of the big 1904 packinghouse strike. The union lost that strike, but during the time that they were out, they helped to organize a packinghouse seeking to break the big packers who were oper- [fol. 1052] ating in the area of the stockyards and as is

so often the case, it did not prove to be a howling success and it became the East Side and later the Hunter Packing Company and it is now being operated as the Hunter Packing Company. They could not get property within the immediate stockyards area and they could not get property served by the East St. Louis Junction Railway, but they did acquire a site and built on what was then the Vandalia and now the Pennsylvania Railroad line.

Cudahy Brothers Company, of course, is not located where there is anything even resembling a public yard, although they do have a very substantial receiving yard in Cudahy, Wisconsin, south of Milwaukee.

At Newport, Minnesota, the Cudahy Packing Company plant is very remote or a considerable distance from the stockyards at South St. Paul and, of course, it would be difficult for them to receive their stock through the plant and they would have to be trucked or switched over to their plant.

Cedar Rapids. Wilson & Company's plant, of course, is located on the C&NW and that, too, has a substantial receiving yard.

Davenport, Iowa. The Kohrs Packing Company is operated by Oscar Maier, the present owners, and that is not located at a market. Mr. Tally has described the Des Moines situation except that Bookery Packing Company should be Bookey. Bookery operates two plants at Des
[fol. 1053] Moines. One is the Federally inspected plant and one is non-Federally inspected.

Dubuque Packing Company, of course, again we have a non-market point.

Mason City, Iowa, that was the old Jacob E. Decker plant. They have a very substantial and modern livestock handling building at that plant which was built and operated by Decker.

At Ottumwa, Iowa, Morrell has a very substantial packing house layout, including stockyards and at one time, and I am not sure about the present time, but at one time, they handled their own intra-plant switching with their own power.

Waterloo is not a market point, but the Rath Packing

Company gets their livestock or rather their deliveries direct. That is true at Storm Lake for Kingan.

At Fort Dodge, Tobin, of course, is located along the river there and get some of their stock direct, but most of it comes in there by truck from the producing areas around that point.

At Madison, Wisconsin, the main Oscar Maier slaughtering plant is located. No market. They get their shipments direct because that plant is far removed from anything resembling a stockyards or a stockyards terminal railroad.

At Green Bay, that is also true of Armour & Company and there is one other plant located at Green Bay, Leibman. At Austin, Minnesota, Hormel has a stockyards with no public market around there.

[fol. 1054] At Winona, Minnesota, that is the old Interstate Packing plant before Swift & Company acquired it and that has no stockyards available there.

Exam. Diamondson: Mr. Gladson, is the purpose of this testimony to show the conditions at this point or at these points that the witness is referring to as not being substantially similar to what they would be here at the proposed site of the Swift & Company plant?

Mr. Gladson: That is the purpose.

Exam. Diamondson: All right, you may proceed.

The Witness: Albany, Georgia. The Cudahy Packing Company is operated down there primarily as a beef killing plant after it was closed for some time and there is no way for them to receive through a market.

At Albany, New York, Newhof is located in downtown Albany and there is no public market there and the only stockyards is out at West Albany, which is the major plant in the area and it is now owned by the Tobin Packing Company.

Arkansas City, Kansas. The plant down there has no stockyards. That is the old plant of Keefe-Surgeon.

Atlanta, Georgia, when I opened that Atlanta Union Stockyards, that plant was operated by Mr. White as the White Provision Company. We arranged with Mr. White so that he could effect deliveries through our facilities and we received our unloading from the railroads and we

assigned a barn to him for the handling of his stock so [fol. 1055] that he could move it to his plant as he needed it. He did have tracks alongside of his plant as has Swift now so that by extending right across Howell Mill Road, he could put in his own receiving pens and to that extent he, of course, is independent of the stockyards which I believe the government witness testified had been deposted.

Shapiro & Sons at Augusta is similar in situation so far as no market right at the particular plant is concerned.

Birmingham you have this position: The Birmingham Packing Company, which was sold to Armour several years ago, was built long before the stockyards was built there by Brag & Millsap. The stockyards has no connection with any of the packers there, although they are all at liberty to patronize the market there and it has never been the custom for the packers in Birmingham, and there are several of my members located there, to take their deliveries through the stockyards facilities.

At Boston, there was some little confusion that was not cleared up there. We referred to the Brighton Stockyards which is on the Boston & Albany and which is leased and operated by the United Stockyards Corporation, which, in turn, had acquired the Swift interest in a number of these yards, including Brighton, and that does receive and effect delivery to certain slaughterers and I might say primarily kosher butchers operating in or near the Brighton abattoirs there, which is part of that property. But the main Swift plants are located over in Sommerville and East [fol. 1056] Cambridge and that is a very substantial distance from Brighton and they, of course, have completely independent facilities far removed from the only public market in the city of Boston.

Hygrade Food Products operate what was formerly the old Jacob Dole Packing Company, which lies west of the yard and independent from the stockyards facilities. Danahy, located at the side of the yards, and independent of the stockyards facilities and they can and do get some of their stock independently of the stockyards facilities, although they can and do occasionally get some through the stockyards facilities.

Hansen Packing at Butte is located north of the station

there and they do get their stock direct and have done so at all times.

The stockyards at Chattanooga was primarily a horse and mule market and it is not much value to J. H. Allison & Company as a place of slaughtering livestock.

Cincinnati, Ohio, the only firm mentioned is E. Kahns Sons & Company. That plant was sponsored by the Cincinnati Union Stockyards and as a matter of fact, it was built through their good offices and turned over to E. Kahns Sons & Company and under the arrangement, even though the stock may be delivered to E. Kahns Sons Company's immediate siding; they pay yardage thereon.

Columbus, Georgia. That operates independently of any stockyards. Columbus, Ohio, the only stockyards that was [fol. 1057] ever operated there was far removed from either the old Columbus Packing Company, now Armour & Company, and the Kroger Grocery & Baking Company now operated by Swift & Company. Both of those plants are in an entirely different section of Columbus, Ohio.

Dallas, Texas. Swift operates the old Armstrong Packing plant and Hormel operates the old Ben Rosenthal plant.

Dayton, Ohio. The stockyards are located independent of the plants and are not convenient for effecting deliveries there.

At Detroit, the stockyards are located in the west part of town in Hammond Standish and it is located down rather close to the station and Hygrade Food operates the old Sullivan Packing plant, which is located in that immediate area and it would be utterly impossible to effect those deliveries through the yards without a long trucking operation.

At Dolton, the Faulkner Packing Company now leased to Kingan has no stockyards facilities and they have also obtained their stock direct either by truck or by rail.

El Paso, the Peyton Packing Company is not convenient to the Union Stockyards and it has never been dependent on those facilities for their deliveries.

Erie, Pennsylvania, Schaffner has no connection with any stockyards there and their stock has always been de- [fol. 1058] livered right to their plant.

Mr. Smith: Your Honor, I wonder what is the significance of this testimony? So far as it relates to lines not served by the western roads, there are certain places named in the complaint in connection with the allegation under Section 3, but Mr. Heinemann has referred to many, as did Mr. Tally, that are located in other parts of the country.

Now, the reason I raise the point about it is that the complainant offered nothing to show any similarity in conditions at these other points with the situation at Chicago. I take it their only relevancy could be in relation to Section 1 of the Act and there was no effort made by the complainant to show any similarity of conditions and therefore it seems to me that that issue is not before the court. I think this is quite immaterial.

Exam. Diamondson: I don't understand that Mr. Rynder has withdrawn his Section 3 allegation, Mr. Smith.

Mr. Smith: The Section 3 allegation related to plants operated in the west and I made no point of Mr. Rynder going over those, but I say as to all of these points that are covered in that exhibit, that lie entirely outside of this western territory, they were not named in the complaint and I did not understand that they had anything to do with Section 3. I thought they were offered for whatever bearing they were supposed to have in connection with Section 1.

[fol. 1059] Exam. Diamondson: How about that, Mr. Rynder?

Mr. Rynder: I think——

Mr. Smith: I think Mr. Rynder so answered the Examiner at one time.

Mr. Rynder: I think that is substantially correct. We are certainly alleging this: We are alleging no Section 3 allegation on behalf of the Louisville & Nashville Railroad at Nashville, which is not a party to this complaint.

Exam. Diamondson: Why do you have Nashville shown in your witness' exhibit then?

Mr. Rynder: Is that by way of a criticism?

Exam. Diamondson: No, indeed, I am just asking for information.

Mr. Rynder: Because we were showing that this de-

livery of livestock direct to the plants is an established practice at some of the points throughout the United States that are not included in our complaint, that is, not in Section 3.

Mr. Smith: Here is Mr. Heinemann on behalf of the defendants undertaking to show that conditions are different and that it is not a reasonable request under Section 1, but the plaintiff offered nothing to show that the conditions are the same at those various points in the east and the south. We are rebutting something that is not in the record and there is no showing that has been made on it. That is my objection to it.

Exam. Diamondson: Mr. Gladson, do you have anything [fol. 1060] to say on that?

Mr. Gladson: Mr. Smith is responsible for that part of the defense, or that part of the complaint and if he objects to this portion of the testimony, I will ask that he does not proceed any further.

Mr. Smith: I don't want to concede that there is a word of evidence in this record to show there is any similar situation outside of this western area that Mr. Heinemann is referring to and Chicago. There is a complete dearth of evidence on that.

Exam. Diamondson: In other words, it is not necessary to rebut something that has not been presented?

Mr. Smith: That is my position.

Exam. Diamondson: I think the point is well taken.

By Mr. Gladson:

Q. You have covered all of the western points numbered in the complaint?

A. Not quite.

Exam. Diamondson: Just include the western points.

The Witness: At Fort Worth, it is true that some directs do move to the packers, the large packers, Armour, Swift and particularly Swift, the complainant, and unless conditions have been changed, they pay the yardage now on file with the Secretary of Agriculture.

Grand Forks, North Dakota, is not a market and the Armour shipments are still delivered as they formerly were.

[fol. 1061] At Houston, Texas, there is a market, but it is remote from the Houston Packing Company and there is a packing company located and owned by the stockyards company, the Belt Stockyards at Houston and those shipments are delivered through the facilities of the stockyards.

The Swift plant at Lake Charles, of course, is independent of any market.

Los Angeles, the plants of the larger packers are somewhat remote from the stockyards there and it would not be convenient, although stock is received and delivered through those yards to those plants, but there are no overhead runways and they must be moved by vehicle or car to their plants.

At Odgen, Utah, that plant is almost surrounded by the stockyards there and they can and do get delivery through the stockyards facilities, although they can get deliveries direct, because it is not on a belt.

At Oklahoma City, which is covered by that exhibit, Armour & Company operates the plant originally built there by Morris & Company and Wilson & Company operates the plant originally built by Sulzberger & Sons Company, and those deliveries are not made direct to those plants. They are served by the tracks of the Oklahoma City Junction Railway, owned by the stockyards and leased to the Oklahoma Railway, which is an electric line operating them and those shipments are delivered through the facilities of the stockyards and yardage paid thereon.

[fol. 1062] At North Portland, Oregon. It is true that some directs move to Swift & Company directly, but partly they are moved through the yards and yardage paid thereon.

At Pueblo, the Nuckolls Packing Company is now operating as part of the American Stores and that has never been served by a public stockyards, although it is convenient to a railroad-owned stockyards there and from the time Mr. Nuckolls established that plant, deliveries were made directly to it.

At Reno, Nevada, you do have your direct deliveries there.

At Salem, Oregon, they have this Valley Packing Company located outside of Salem, north of town there with no

stockyards within miles of it and there is no way but direct deliveries to reach that plant.

By Mr. Gladson:

Q. Mr. Heinemann, I think you have made most of the points that are set out in the complaint there.

Mr. Smith: To keep the record straight, all of those places that he referred to after he resumed are not named in the complaint. Utah, Oregon, California, Texas and Reno; none of those are in the complaint.

By Mr. Gladson:

Q. Mr. Heinemann, did you intend to imply that the yardage service rendered or available on directs at other stockyards that you mentioned was the same as those at [fol. 1063] Chicago?

A. Indeed I did not.

Q. Have you anything further to add to your testimony?

A. I recall one witness in commenting on the effect of shrinkage on these shipments, Mr. Gladson, and I thought it might be of interest to report on an actual study we made on it during the past year.

Mr. Examiner, my members of the Eastern Meat Packers Association took their last prewar year figures ending 1941 and took every shipment of hogs they handled in that period and gave me their shipping weights and their yields; their off car weights and their yields and then we took the 1947 figures, which was the first complete postwar year that we had available and made that same comparison. That was made because we had so many complaints indicating that they were suffering unusually heavy shrinkages because of the longer time in transit.

I tabulated all of that and I have it in my office and the net result was that we found the loss from excess shrinkage over and above what we classed as normal prewar shrinkage amounted to $3,700,000.00 in one year's time.

As a result of that comparison which I submitted at the next meeting, they designated committees to discuss the matter with the railroads and I am happy to say that the

improvement of the service as a result of these discussions has brought us back to very close to the prewar results of our operations. So that shrinkage is not a mythical [fol. 1064] thing, but it is something real and it amounts to a lot of money.

Q. And it results from delays, does it not?

A. That is right.

Mr. Gladson: You may cross examine.

Cross-examination.

By Mr. Rynder:

Q. Mr. Heinemann, I assume I am correct in my understanding because of your long and extraordinary experience and eminent standing in this line of business you were employed by the stockyards company to come here and make this study and testify in this case?

A. Well, I would want to add to that the fact that my people are very definitely interested in the outcome of this case.

Q. Well, before you got to that, what was the answer to my question?

A. Yes, I would say that is one of the reasons I am here.

Mr. Rynder: That is all.

By Mr. Smith:

Q. I have two or three questions. Mr. Heinemann, you made some references to the operations of the Chicago Junction as you saw it in 1907 and at the present time. Did you mean to indicate to the Examiner by anything you said that this Chicago Junction had not kept up with the development of the art of railroading, either in respect to its physical plants down there or to its operation of the plant?

A. Quite the contrary. I think they did a magnificent job and I marvel at their ability to keep up with it as [fol. 1065] good as they have through the developments that have transpired in that particular area.

Q. Mr. Heinemann, the points named in the complaint are Madison, Marshalltown, Mason City, Milwaukee, Mishawaka——

A. That is correct.

Q. Newport, Omaha, Ottumwa, St. Joseph, St. Louis, Storm Lake, Waterloo, Winona, Anderson, Austin, Cedar Rapids, Davenport, Des Moines, Dubuque, Eau Claire, Estherville, Evansville, Fort Dodge, Green Bay, Indianapolis, Joplin and Kansas City?

A. Yes.

Q. Are you familiar with the railroad operations involved in making deliveries at the Union Stockyards and at the Omaha plant in Chicago?

A. Yes.

Q. Would you say that the operations, the railroad operations involved in effecting delivery of livestock at these points that I have referred to that were named in the complaint have any similarity to the railroad operations involved in making deliveries to the Union Stockyards at Chicago?

A. May I answer that no, and then amplify it a bit?

Q. Certainly.

A. Mr. Smith, you have a situation at Chicago that is unparalleled in any terminal of the world and I think I have studied a lot of them. In this livestock traffic as it comes to the chutes of the Union Stockyards, you have [fol. 1066] solid trains whether they consist of one car of 60 cars. The trains move directly to the chutes and while the engine is cutting off and running around the train, the cars are being unloaded and in tests that we made out there on solid trains, we found cases where they averaged 55 seconds per car in unloading this livestock.

Q. Mr. Heinemann, that has been developed in some detail, but what I wanted to elicit from you was specifically whether or not at these other points there is any situation which parallels or is entirely similar to the situation that you would have in any of the Chicago Junction delivery of livestock to the packers through its Ashland Avenue yards?

A. There is nothing that will be comparable to it in my judgment.

Q. As a matter of railroad practice and operation?

A. Yes, that is correct.

Mr. Smith: That is all that I have.

Exam. Diamondson: You are familiar with conditions at the other points?

The Witness: I have been at all of them, Mr. Examiner, and several of them a great many times studying this very question.

Exam. Diamondson: Do you have anything further?

Mr. Quasey: I have a question or two, Mr. Examiner.

Exam. Diamondson: All right, proceed.

By Mr. Quasey:

Q. Mr. Heinemann, are you familiar with the number [fol. 1067] of packers who are located in Chicago who purchase livestock on the Chicago market?

A. Yes, Mr. Quasey, I think I am as reasonably familiar with that is almost anyone.

Q. Do you have any information as to, for instance, the number of packers who purchased livestock on the Chicago market during the months of January, 1948?

A. I do, sir. I have a complete list of all slaughterers in Chicago who purchased livestock in Chicago during that period, January, 1948, showing the species they bought and not the number. That appears in connection with the name of each one of the concerns of which there are 31 on this list. I wish to amplify that by saying that this is far from a complete list of the slaughterers in Chicago for this reason: There are quite a number of our members who have no killing facilities, but they do have their killing done under a custom killing basis at some abattoir located at or conveniently located with respect to the Union Stockyards and they would not be registered as an industry on the Chicago Junction with a switch siding to this abattoir.

So the actual number instead of being 31 within my own knowledge will run close to 50.

Q. Would you please state for the record the names of these various operators?

A. I can do that, or if you wish, I can let the reporter [fol. 1068] have this list to copy it into the record.

Q. That would be quite satisfactory if that is permitted.

Exam. Diamondson: Do you have any objection to that being done?

Mr. Rynder: No.

List of Chicago Packers
(Purchasers during Jan. 1948)

Armour	c	cf	h	s
Swift	c	cf	h	s
Abe Pfaelzer	c			
Wilson	c		h	
H. C. Bohack	c		h	
Illinois Packing	c	cf		
Russell Packing	c	cf	h	
Cee-Bee Packing	c	cf		s
Chicago Packing	c	cf		s
Siegel-Weller	c			
Hygrade	c			
H. Graver	c	cf		
Wimp Packing	c			
Lincoln Meat	c			
Crown Packing	c	cf		
W. Begin	c			
M. Sheehan		cf		
[fol. 1069] Agar			h	
Miller & Hart			h	
P. Brennan			h	
Illinois Meat			h	
Reliable Packing			h	
Fuhrman & Forster			h	
Richter Food Products			h	
Jourdan Packing			h	
Zuegel Packing			h	
Nea Agora Packing				s
M. Chiappetti				s
Halsted Packing				s
Arcadia Packing				s
Colias Bros.				s

By Mr. Quasey:

Q. That will include a designation as to the species of each packer?

A. That is on there by code, "c" meaning cattle; "cf" meaning calves; "h" for hogs; and "s" for sheep and lambs.

Mr. Smith: I would like to say this: I know you did not understand me a moment or two ago when I asked my question, but the point I made on Mr. Tally's testimony is this and I want it clear on the record. I know Mr. Tally referred to these points in the south in the way of reading his exhibit, but my point was he made no effort to show a similarity of conditions there that would serve as a measure [fol. 1070] that we or the Commission might determine as to whether or not there was any violation of Section 1. That is all I have to say on that.

Exam. Diamondson: Any further questions?

Mr. Rynder: No, I have nothing further.

Mr. Kaylor: I would like to ask you a question. Were you present yesterday?

The Witness: Yes.

Mr. Kaylor: Did you get a copy of Raasch's Exhibit 46?

The Witness: I did, but I don't have it with me.

Mr. Kaylor: My point is this: That shows the number of receipts of livestock at the Union Stockyards. This more or less covers hogs. I show you the exhibit and ask you if there has not been somewhat of a decrease in the number of hogs at the Union Stockyards in Chicago over the period of years indicated?

The Witness: A very painful decrease.

Mr. Kaylor: What about cattle?

The Witness: That is true on cattle, too.

Mr. Kaylor: That is also true of the packers' direct shipments, is it not?

The Witness: I don't have those figures available.

Mr. Kaylor: That is Exhibit No. 30.

The Witness: This shows a decrease in the case of rail hogs and rail sheep and lambs and an increase of your trucked in sheep and lambs and a decrease from the year

[fol. 1071] previous, but a substantial increase over 1938 down to 1944.

Mr. Kaylor: In your experience in the U. S. Yards, Chicago, has there been any decrease in the physical operations of the railroads in the taking up of any rail or anything of that kind?

The Witness: You mean within the yard or outside of the yard?

Mr. Kaylor: Within the yard.

The Witness: There have been changes made.

Mr. Kaylor: Are there as many tracks now as there were before?

The Witness: I would say there are more tracks. The best answer is by the amount of mileage now as compared to former years.

Mr. Kaylor: Is there more mileage than in 1909?

The Witness: Definitely.

Mr. Kaylor: Has that number of mileage increased from 1909?

The Witness: Yes.

Mr. Kaylor: Up to the present time?

The Witness: Yes.

Mr. Kaylor: Still there has been a decrease of the number of shipments to the Chicago Union Stockyards?

The Witness: That change in your track mileage does not reflect so much over there in the chute area, Mr. Commissioner, as it does in some of the other areas around [fol. 1072] the yard served by the junction tracks.

Mr. Kaylor: Well, the number of receipts taken from the report of the Union Stockyards and Transit Company shows a decrease?

The Witness: Yes. But those facilities are rather inflexible in that sense in that the tracks are, of course, permanent or we treat them that way and your chute facilities you have got to hold them always ready for your maximum capacity, never knowing what day will come when you will need them all.

Mr. Kaylor: If there were more tracks built, there would be additional chutes?

The Witness: To do that you would have to enter into your pen area and decrease your pen area and increase

your trackage chute area unless you went up into the air with them.

Mr. Kaylor: That is all that I have.

By Mr. Smith:

Q. Now the tracks over which the livestock is handled, are those running tracks of the CJ which have been referred to as Nos. 2, 3 and 4, the tracks that run down into the chutes of the Union Stockyards, is that correct?

A. That is right. You have your chute tracks paralleling your running tracks with each of those divisions there.

Q. And those are the only tracks that have been used on inbound livestock?

A. That is right.

[fol. 1073] Q. All the CJ's many miles of track are now and have been for years devoted to the handling of other traffic?

A. You mean other than those chute tracks?

Q. Yes, dead freight and perishables?

A. Yes.

Q. During the period that the Examiner has just referred to, the dead freight and perishable traffic handled through Ashland Avenue because of the increase of the number of industries served has greatly increased, has it not?

A. Very definitely.

Mr. Smith: That is all.

Mr. Kaylor: Do you attribute that increase in other freight traffic to a decrease in livestock?

The Witness: In part it is unrelated and in part it is related. For example, if a packer located in the stockyards with a killing plant is unable to get animals to kill, it is good business for him to bring in his green products from outside to process there to keep his plant busy and hold his overhead down. To that extent, they would be related, sir.

Exam. Diamondson: Is there anything else?

By Mr. Rynder:

Q. You have before you Mr. Heinemann, Mr. Raasch's exhibit of yesterday?

A. No, I did not get it, but that is the Commissioner's copy. Do you wish it?

Q. Yes.

[fol. 1074] A. Here it is.

Q. Maybe it is the single exhibit of Mr. Raasch's, but it is my recollection that he showed the number of cars from some years in the 20's as being about 267,000 delivered to the U. S. Y. & T. and for the last year shown on the exhibit, it was 65,000, is that about right?

A. I don't think he showed that. Some witness gave that figure, however.

Mr. Smith: May we have the question read? I don't think what is going on here at the moment has been heard.

Mr. Rynder: I would rather reframe the question because I now have the page of the exhibit.

By Mr. Rynder:

Q. Do I understand Page 2 of Mr. Raasch's Exhibit 46 shows 267,955 carloads of livestock delivered by rail at the chutes of the Union Stockyards Company in 1920 and 65,139 cars so delivered in 1946, a reduction of over 200,000 cars, is that correct?

A. That is correct.

Q. That would seem as if they had gotten rid of some congestion over that period of time by the elimination of 200,000 cars a year, might they not?

A. The trouble is, Mr. Rynder, you have gone from a wholesale to a retail business out there in a large measure. You have got to handle the driblets with the same facilities as the car lots.

[fol. 1075] Mr. Smith: Did the Chicago Junction touch any of those deliveries of livestock in the earlier years, or in the later years?

The Witness: No, sir.

Mr. Gladson: When you say you had to handle these driblets the same as the carloads, did you mean the trainloads?

The Witness: Yes, I would go even so far as trainloads.

Exam. Diamondson: Anything further?

Mr. Rynder: No.

Mr. Gladson: No.

Exam. Diamondson: The witness is excused.

(Witness excused.)

Exam. Diamondson: We will have a short recess.

(Whereupon a short recess was here had.)

Exam. Diamondson: The hearing will come to order.

Mr. Smith: Mr. Van Ingen.

D. K. VAN INGEN was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. Please state your name?

A. D. K. van Ingen.

Mr. Smith: Mr. Examiner, I would like to say a word about the testimony that the defendants are about to offer. There has been some discussion on this record of what revenue there is under the present livestock rates for the payment of terminal expenses. That is a natural inquiry [fol. 1076] and it is one that the Commission itself went into very carefully when it was considering the propriety of the terminal charge of $2.70 in the livestock exchange case reported in 219 ICC 531.

The Commission's report of that case does not leave any room for speculation now as to what was included by the Commission itself in the 17,000 rates for the payment of terminal expenses. The Commission makes it very clear what it believed because on Page 544 of this report, the Commission says this:

"Under the decision in livestock western district rates, Supra, the rates in Appendix H prescribe under cattle and double deck shipments of calves, hogs, sheep and goats a minimum of 20,000 pounds to 24,000 pounds a carrange from 11 cents for 10 miles to 20 cents for 100 miles, the rate of progression being one cent for each ten-mile block; higher rates were prescribed on single deck shipments of the cattle, hogs and sheep. The average loading of all shipments from the origin territory to the principal markets, including Chicago, was shown in Appendix B to the reports of 21,600 pounds;

"If, therefore, the progression of one cent for each 10 miles is considered as covering the linehaul in the initial rate, the allowance for each of the terminal services may be said to be about five cents per hundred pounds, or approximately $10.00 per car at the average weight stated. The total of the cost shown for the Northwestern is less than that amount.

[fol. 1077] "The testimony of the witness for the North Western indicates that not all of its service on shipments to the Union Stockyards is included in his cost figures. On the other hand, it should be noted that although the amount of the duplications included in the $10.53 figure shown for the North Western upon the rehearing cannot be definitely determined from this record, it seems fair to assume that they are probably a substantial portion of the Chicago Junction's trackage charge of $2.00 per car. If that duplication were deducted from the total of the costs shown, and the resulting amount plussed by a proper allowance for the omitted items of station and car detention expenses, the net amount would probably be about equal to the destination terminal allowance of $10.80 arrived at in the manner indicated, under the rate scales prescribed in livestock western district rates, supra."

Now it seemed to me that it would be of value to the Commission here if we could show how the present livestock rates compared with the allowance for terminal expenses ascertained in the manner that the Commission has indicated here.

In short, I wanted to find out whether, although the rates have been increased by the Commission, because the costs have been increased, there was still this approximate equilibrium between the allowance in the linehaul rates on the one hand and the existing terminal expenses on the other, and with that in mind, I have asked these two witnesses to bring down to date the studies which they offered [fol. 1078] in this case and upon which the Commissio was commenting in its report.

And to anticipate for a moment, I might say to the Examiner, so you can follow it as it goes along more easily and to counsel, the studies show that while the rate has increased a certain percentage of perhaps 16 to 18 per cent, the costs have increased still more so that there is

Division stock relief trains move on from Crawford Avenue. The Wisconsin Division stock relief trains run from Proviso to Union Stockyards.

Q. How many trains did you study during that period?

A. 123.

Q. How many of them moved with livestock directly to the Union Stockyards without any set-outs at Ashland Avenue as dead freight?

A. 90 were exclusive livestock trains.

Q. What percentage of 123 trains that made set-outs of dead freight or perishables at Ashland Avenue?

A. The difference between 123 and 90, or 33 trains made set-outs at Ashland Avenue, which amounts to 28.6 per cent of all trains.

Q. What was the time consumed in the livestock trains, that is, the straight trains of livestock to the yards?

A. The average?

Q. Yes, from the time they left Proviso until they returned?

A. The average time making delivery for these exclusive livestock trains from the time they left either 40th Street, that is, Crawford Avenue for the Galena Division or Proviso for the Wisconsin Division until the time that [fol. 1082] they returned the empty cars on both divisions to Proviso was five hours and fifteen minutes.

Q. What was it for the trains that made set-outs?

A. For the 33 trains making set-outs at Ashland Avenue, the average time per train was six hours and 29 minutes.

Q. Now, please go ahead with your explanation of the exhibit?

A. The actual cost, exclusive of trackage charges, taxes and return on investment, of handling a car of livestock from Proviso Yard to Union Stockyards, a distance of approximately 16 miles, about 14 miles over North Western tracks and four miles over Chicago Junction tracks, is $15.39, as shown on Line 1 of Sheet 1. The development of this basic cost as shown on Sheets 2, 3, 4 and 5 will be explained later. Each dollar expended to provide service should contribute equally toward covering taxes and return on investment. The total cost including taxes and investment return is determined, as shown on Lines 2

and 3, by the application of an adjusted operating ratio to the basic cost of $15.39 found on Line 1. This basis for the determination of the increment of the total cost representing taxes and return of 5¾ per cent on investment is the same as used in the 1935 study, in Docket 24847, Chicago Livestock Exchange vs. Santa Fe, et al. The development of the adjusted operating ratio is shown on Sheet 6, and is self-explanatory. The use of a ratio covering both freight and passenger operations is conser-
[fol. 1083] vative as the freight operating ratio is less than the passenger.

Q. Very substantially less, isn't it?

A. Yes, it is. Continuing on Sheet 1, the trackage charge of $3.00 per car is added: $1.50 for the load and $1.50 for the return empty. There is no duplication by this method of cost determination as the maintenance of way and structure portion of the expense included in Line 1 covers only the North Western facilities and none of the Chicago Junction facilities.

It should be noted that the principal elements of operating expense developed on Sheets 3, 4 and 5 have been based on actual operating experience during the month of December, 1947. In so far as it has been necessary to use divisional or system costs of prior periods, which do not include current wage and material price increases, for unit costs or in apportioning overhead accounts, the costs shown are understated.

Q. Have you the temperatures there for December?

A. Yes, I have.

Q. For Chicago?

A. Yes.

Q. Will you read those into the record, please?

Mr. Kaylor: For that test period?

Mr. Smith: Yes.

Mr. Kaylor: I thought that was in the record already?

Mr. Smith: The temperatures for that period, no.

[fol. 1084] The Witness: I have here the Chicago North Western Railway records for the Galena Division operation for the month of December, 1947.

By Mr. Smith:

Q. What is your Galena Division?

A. The Galena Division is the division reaching from Clinton, Iowa, to Chicago, including the Chicago terminal.

Q. Now, I wonder if we can show those to Mr. Rynder and the Examiner and have them copied into the record without reading the tabulation?

Mr. Rynder: What is it, just temperatures?

Mr. Smith: Yes.

Mr. Rynder: That is O.K.

Exam. Diamondson: That may be done.

Chicago and North Western Railway Company

Galena Division Weather Reports

December, 1947

Date	3:00 A.M. Condition	3:00 A.M. Temperature in degrees	3:00 P.M. Condition	3:00 P.M. Temperature in degrees
1	Clear	19	Cloudy	40
2	Cloudy	32	Cloudy	45
3	Cloudy	42	Cloudy—light rain and snow	38
4	Cloudy	28	Cloudy	35
5	Cloudy	38	Cloudy	40
6	Clear	25	Cloudy	37
7	Cloudy	30	Cloudy	25 max.
8	Cloudy	30	Partly cloudy	31
9	Cloudy	10	Partly cloudy	27
[fol. 1085]				
10	Partly cloudy	22	Cloudy	32
11	Cloudy	20	Partly cloudy	32
12	Cloudy	18	Cloudy	28
13	Cloudy	22	Partly cloudy	28
14	Partly cloudy	24	Partly cloudy	42
15	Partly cloudy	24	Cloudy	29
16	Cloudy	8 Min.	Partly cloudy	24
17	Partly cloudy	12	Partly cloudy	40
18	Clear	28	Cloudy	36
19	Cloudy	28	Cloudy	34
20	Partly cloudy	20	Cloudy	32
21	Clear	21	Clear	40
22	Partly cloudy	20	Cloudy	36
23	Partly cloudy	20	Partly cloudy	28
24	Partly cloudy	14	Cloudy	24
25	Partly cloudy) snow)	16	Partly cloudy	35
26	Clear	20	Cloudy	30
27	Clear	25	Partly cloudy	42
28	Clear	22	Clear	28
29	Clear	16	Partly cloudy	42
30	Partly cloudy	28	Cloudy	41
31	Cloudy	25	Cloudy-rain) and sleet)	31

The Witness: Maybe I should explain about the temperatures. The first temperature each day is 3:00 a. m., and the second temperature is at 3:00 p. m. Those are the two times that we have the temperatures.

By Mr. Smith:

Q. From your experience as a cost analyst and statistician and student of cost accounting, can you state whether those temperatures are such as to produce any appreciable distortion in the operating results?

A. No. These temperatures are very mild in my estimation for the month of December or for a month of December and there should be no distortion whatsoever in the cost as a [fol. 1086] result of weather conditions.

Q. All right, proceed, please.

A. As stated in note at bottom of Sheet 1, no stock unloading charges or Proviso Yard expense are included in this cost.

On Sheet 2 are shown the number of stock relief trains, the number of cars in total and the number of cars segregated between livestock to Union Stockyards, Omaha Packing Company and perishables set out at Ashland Avenue together with a segregation of trains as between those carrying livestock exclusively and those carrying livestock and other freight; also, a grouping of trains as to the number of cars they carry.

On Sheet 3, the maintenance of way and structure expenses have been based on divisional unit costs per gross ton mile of freight in 1946 and cover only the gross ton miles of road and stock relief trains on North Western tracks.

In maintenance of equipment on Sheet 4, car and locomotive repairs and depreciation are at system average costs per car or locomotive mile. Each class of locomotive was computed separately. These car and locomotive unit costs were adjusted for current wage increases but not for material price increases. Further, the locomotive repair costs represent five year averages for the various classes. The remaining maintenance of equipment accounts were apportioned according to the relationship

existing between them and the freight repair accounts in 1946 on the system.

[fol. 1087] By Mr. Smith:

Q. Did your failure to make that adjustment in the increase for materials and supplies result in an understatement in your results to that extent?

A. It results in an understatement of the final cost found.

Exam. Diamondson: Are these figures drawn from reports filed with the Commission, annual reports of the carriers, or were they computed separately from those reports?

The Witness: You mean the unit cost?

Exam. Diamondson: Yes.

The Witness: They are based on the same information as is reported to the Commission, but in some instances, by class of locomotive. For instance, locomotive repair. They are from the same foundation data, but not from the data furnished to the Commission.

Exam. Diamondson: You could not draw them from the reports furnished to the Commission?

The Witness: No, because that is not given by class of locomotive.

By Mr. Smith:

Q. You use the class of locomotive that is actually engaged in this service?

A. Yes.

Mr. Kaylor: On Page 4 I understood you to say that those were system costs, is that correct?

Mr. Smith: Will you answer the question?

The Witness: The maintenance expenses on Page 4, speaking of locomotives, steam locomotives repairs are [fol. 1088] based on the actual miles run in this service by the various classes of engines in this service to which is applied the unit cost on the system per mile for repairing the locomotives.

Mr. Kaylor: How about the rest of Sheet 4, is that system cost as applied to this operation?

The Witness: In so far as maintenance of equipment is concerned or transportation.

Mr. Kaylor: Maintenance of equipment?

The Witness: The miles of freight car operation were based on the actual miles in the month of December, 1947, in rendering this service to which was applied the system average cost per mile for freight car repairs.

Mr. Kaylor: I don't understand it yet. Never mind, go ahead.

The Witness: Under transportation expense on Sheet 4, the train and enginemen's wages are actual from the payroll. Enginemen's wages do not include pending wage increase. Fuel and water represent actual costs including transportation and handling of fuel. Lubricants, other supplies, enginehouse expense and train supplies and expenses are based on appropriate system car and locomotive mile unit costs adjusted for current wage increases, but not for material price increases.

By Mr. Smith:

Q. There again there would be an understatement because of that, would there not?

[fol. 1089] A. Yes, there would be.

Q. When you speak of the enginemen's wages not being included, the pending wage increase, you mean, of course, it does not reflect any increase which may or may not come out of the wage matter that is now in the process of hearing?

A. That is correct. Yardmasters and clerks, yard switch and signal tenders, yard supplies and expenses are included because of the use made of yard facilities by these trains and these accounts together with crossing protection and signal and interlocker operation are based on divisional unit costs per gross ton mile of freight in 1946 and cover only the gross ton miles of road and stock relief trains on North Western tracks. Station clerical cost covers only the portion of the livestock district agency expense applicable to this traffic. The remaining transportation overhead accounts were obtained by multiplying the 1946 divisional freight expense for these accounts by the ratio between December transportation expenses exclusive of these over-

head accounts and the 1946 divisional freight transportation expense exclusive of Accounts 371, 407 and 410 to 420.

General expenses, Sheet 5, were obtained by multiplying the 1946 system freight expense in these accounts by the ratio between the December maintenance of way and structures, maintenance of equipment and transportation expenses herein developed exclusive of depreciation and the 1946 system freight expense for the same [illegible] operating [fol. 1090] expense groups plus traffic less depreciation and amortization charges.

Payroll taxes are only those on train and enginemen's wages and stockyards district agency wages with allowance for wages in excess of $300.00 per month to any one employee.

Computation of the cost per car for operating expenses and payroll taxes is shown at the bottom of Sheet 5 and this figure of $15.39 per car is the one carried to Sheet 1, Line 5.

Q. What is the terminal cost figure per car as developed by your present study which compares with the amount of $10.53 per car figure produced by the previous study with the two adjustments to which I referred at the outset in the Commission's own language?

A. $22.19 per car.

Q. In other words, the Commission reverted to your previous figure of $10.53 and said that it appeared to the Commission upon its study that that included some small items which should have been excluded and excluded some small items that should have been included, with the result that it probably stood then at about $10.80, the amount that the Commission was allowing the North Western to perform its terminal service?

A. Yes, sir.

Q. Now, does this $22.19 compare then with the Commission's estimate of the correct figure in 1936 of $10.80?

A. It does.

[fol. 1091] Exam. Diamondson: Plus the increases that the Commission authorized?

Mr. Smith: Your Honor, this is cost. This is the cost. Now I am going to have him turn to the rate side of it.

and show the increase in rates in just a moment or two.

Exam. Diamondson: All right.

By Mr Smith:

Q. Have you prepared another exhibit showing first the destination terminal allowance of $10.80 per car arrived at by the Commission in Docket 24847, Chicago Livestock Exchange vs. Santa Fe, et al, and second, the current amount of such terminal allowances?

A. I have.

Mr. Smith: Mr. Reporter, will you mark this document Defendant's Exhibit No. 51 for identification?

(The document referred to was marked as Defendant's Exhibit No. 51 Witness Van Ingen, for identification.)

By Mr. Smith:

Q. I will hand you Exhibit No. 51 for identification and ask you if that is the statement on which you make that computation?

A. It is.

Q. On that exhibit, have you taken these three increases respectively of five per cent, fifteen per cent and twenty per cent which the Commission has allowed in the rates in the proceedings referred to on that page and determined in the manner that the Commission used in its report in [fol. 1092] Docket No. 24847, Chicago Livestock Exchange vs. Santa Fe, et al, the amount on the Commission basis which now exists in the existing rate for terminal services?

A. I have.

Q. Do you show at the bottom of Exhibit 51 how you arrived at the present terminal allowance?

A. I do.

Q. Will you just very briefly explain that? It is in Lines 11, 12 and 13, is it not?

A. Yes, it is. The Commission increased the price of $10.80 five per cent which equals $11.34 per car.

Q. And you followed that process through the several increases to arrive at $15.65 per car at the present time?

A. I have.

Q. So that the result of this showing is that there was

a substantial parity between the cost of performing the terminal service in 1936 and the Commission's allowance therefor in Docket 17000, and that now the relationship is between $22.19 per car terminal expenses and $15.65 allowance for terminal services?

A. That is correct.

Q. Would any increase in the terminal expense of the North Western increase the disparity presently existing between the terminal cost and the allowance of the Com-
[fol. 1093] mission in the rates for the performance of that service?

A. It would.

Mr. Smith: That is all.

Exam. Diamondson: You may cross examine.

Mr. Rynder: It is five o'clock, are we going to continue.

Mr. Smith: Mr. Examiner, I have got another witness of the Milwaukee Road who has made a study of that character, too. The Milwaukee and the North Western were the roads that made studies in the earlier case and in the light of what has been said now, that statement could be offered, I think, in a very few moments and then if Mr. Rynder wants to defer cross examination until tomorrow morning, it is entirely satisfactory to me and then you will have the entire cross examination material before you.

Will that be a reasonable suggestion?

Exam. Diamondson: It seems like it is a very reasonable suggestion.

You are excused.

(Witness excused.)

Mr. Smith: I will call Mr. Edman.

I would like to offer Exhibits 50 and 51 into evidence.

Exam. Diamondson: Any objection?

Mr. Rynder: No objection.

Exam. Diamondson: The documents will be received in evidence.

[fol. 1094] (Defendant's Exhibit Nos. 50 and 51, Witness van Ingen, were received in evidence.)

Mr. Kaylor: Exhibit Nos. 50 and 51 will be received by the Illinois Commerce Commission.

RUDOLPH N. EDMAN was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. Please state your name?

A. Rudolph N. Edman.

Q. Will you state your address and occupation?

A. I am a special accountant for the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the office of the vice president and comptroller, Room 749, Union Station, Chicago 6, Illinois.

Q. What is your experience in accounting and statistical matters and in railroad cost analysis?

A. With the exception of about one year and seven months, when I was an accountant for a pharmaceutical concern, I have been in the accounting department of the Milwaukee Road since 1922, having been employed in various capacities, principally in statistical and cost accounting work. The statistical section to which I am attached has as its assignments, the preparation of economic studies of varying characters for the management, studies as to abandonments of lines, acquisitions of lines, equipment requirements, forecasts of earnings, and the preparation [fol. 1095] of data for use before various regulatory bodies such as this Commission hearing this proceeding and the various state commissions.

Q. In ICC Docket 24847, Chicago Livestock Exchange vs. Santa Fe, et al, did the Milwaukee Road offer data as to the cost of handling livestock traffic from its outer train yard in Chicago Terminal to the Union Stockyards in Chicago?

A. It did.

Q. I call your attention to this language used by the Commission in its report, ICC 219, at Page 544:

"The Milwaukee's costs appear to be overstated to the extent that an item covering 'other costs,' which embraces return on investment, taxes and rents, includes both road and equipment, although very little trackage of the Milwaukee is used in the movement of the cars from their

train yard to the stockyards. That movement is over the tracks of the Indiana Harbor Belt Railroad Company and the Chicago Junction, for the use of which the Milwaukee pays trackage charges presumably sufficient to give the owners a return on their investment. Duplication, therefore, exists to the extent that both the trackage charges and an allowance for return on the Milwaukee's investment in trackage are included in the costs. As the record does not segregate as between road and equipment the Milwaukee's allowance for return on investment, no deduction can be made to eliminate the road portion."

[fol. 1096] I ask you this: Have you analyzed the costs of performing the terminal service on livestock for the Milwaukee Railroad from its outer train yard in the Chicago Terminal to the Union Stockyards, with the view of ascertaining the present day cost and to avoid the duplication referred to by the Commission in the statement which I have just read, and the inclusion of the costs omitted in the former study?

A. I have.

Q. In other words, is it correct, in respect to the Milwaukee study as the North Western study to which I have just referred, to say that the Commission's experts found that there had been an inclusion of certain small items which the Commission thought should not have been included and the exclusion of certain small items which the Commission thought should have been included?

A. That is correct.

Q. And you have made the necessary or proper corrections on the basis of the Commission's statements in your study, have you?

A. I have.

Q. Have you prepared an exhibit showing the methods employed in and the results of these calculations?

A. I have.

Mr. Smith: Mr. Reporter, will you please mark this document Defendant's Exhibit No. 52 for identification?

[fol. 1097] (The document referred to was marked as Defendant's Exhibit No. 52, Witness Edman, for identification.)

By Mr. Smith:

Q. I will hand you Defendant's Exhibit No. 52 for identification and ask you if that is a statement of your exhibit and the processes by which you have developed these costs?

A. That is.

Q. Please explain the data as shown by your Exhibit 52.

A. Page 1 of Exhibit No. 52 shows for the month of December, 1947, the number of cars handled by the transfer crews handling cars to the Union Stockyards livestock chutes from Bensenville Yards which is the outer train yard in the Chicago Terminal. Included with the livestock are cars of perishable which are interchanged to the Chicago Junction at their 42nd and Ashland Avenue Yard. On this page a grouping has been made as to the number of cars handled. This data has been prepared from reports made by the engine foremen or conductors who handle the livestock to the U. S. Yards. These reports show all of the pertinent data as to the time of arrival of the stock in Bensenville Yard, the time of departure of the transfer to the U. S. Yards and the arrival time at the CJ and at the chutes, together with the time of arrival upon their return to Bensenville Yard. During the month of December, 1947, these livestock transfer crews handled 1144 cars to the U. S. Yards, 877 of which were [fol. 1098] livestock destined to the chutes and 267 cars of perishable which were interchanged to the CJ in their Ashland Avenue Yard.

In this connection, I would like to say that there is a difference between the number of cars shown by Superintendent Kiesele of 931 cars of livestock as compared to the figure I show of 877. This is due to a difference in the cutoff time between the reports as made by the U. S. Yards as compared to the engine foreman's report.

By Mr. Smith:

Q. Mr. Edman, I don't want you to feel hurried about this and I want you to make any comments on it that you feel necessary.

A. I shall do that.

Mr. Kaylor: Is Mr. Kiesele with the Milwaukee Road?

Mr. Smith: Yes, he is a terminal superintendent and he has testified in this case.

The Witness: I might say there were three crews in November that started out of the Bensenville Yard and the count was made as of December 1 when they arrived at the yard, which caused the difference of about some 54 or 56 cars.

By Mr. Smith:

Q. You and he prepared different studies? You did not use exactly the same cutoff period?

A. That is correct. On Page 2 is shown the cost of handling these 1,144 cars. As will be noted on this page, there has been no maintenance of way and structures expenses included thereon due to the fact that the move- [fol. 1099] ment of the livestock transfer trains on the Milwaukee Railroad in the Chicago Terminal is very short. As a matter of fact, the distance from the east end of Bensenville Yard to the connection with the Indiana Harbor Belt Railroad over which these crews operate to get to the U. S. Yards is slightly in excess of one mile.

The maintenance of equipment expenses consist principally of steam locomotive repairs which has been calculated on the basis of the average cost per mile for the past three years applied to the locomotive miles made by the livestock crews in the month of December, 1947. Depreciation on locomotives has been calculated upon the basis of the depreciation costs of this particular class of locomotive per mile, applied to the miles run in the livestock service in December. The other accounts in maintenance of equipment known as the overhead accounts have been prepared upon the basis of the relationship of the overhead accounts of the Chicago Terminal Division to the direct expenses for the maintenance of equipment expenses.

Under transportation expenses, accounts 378 and 380, yard conductors and brakeman and yard enginemen are actual. However, for the yard enginemen, there has been included a wage increase of 15½ cents per hour, not yet

increase as the trainmen and non-operating employees. Station clerical cost covers the proportionate expense for the stockyards district agency which is a joint agency for [fol. 1100] all railroads at the U. S. Yards and handles the agency accounting for all traffic handled to the U. S. Yards. The balance of the accounts other than the overheads have been calculated on the appropriate averages per car, per locomotive mile or per car mile and again the overhead accounts are based upon the relationship of the overhead accounts of the Chicago Terminal Division to the direct expenses of transportation expenses. Likewise, general expenses are determined upon the basis of the general overhead expenses of the Chicago Terminal Division to the direct expenses in maintenance of equipment and transportation expenses.

Payroll taxes have been computed upon the basis of eight per cent of the labor in operating expenses. As payroll taxes are only applicable to earnings up to $300.00 per month, which amounts to about 92 per cent of payrolls or labor, the lawful amount of 8¾ per cent would result in about eight per cent of labor expenses.

The resulting cost per car for operating expenses and payroll taxes excluding trackage charges over foreign lines of handling these cars to the U. S. Yards and CJ for the month of December, 1947, is $11.15.

Page 3 of this exhibit carries forward this cost per car of $11.15 for the handling of livestock to the U. S. Yards, to which is added a cost of classifying cars in Bensenville Yard. Inasmuch as there is no current study as to the cost of doing this work, which would require a time study, I [fol. 1101] have used the classification cost as used in Exhibit No. 90 introduced in ICC Docket 19610, the Chicago Switching Case, which amounted to $.42 per car.

Q. That is the same case that we have been talking about?

A. That is correct.

Q. The Chicago Livestock Exchange case?

A. Yes.

Q. All right, proceed.

A. This figure was used in Exhibit No. 40 in Docket 24847, 219 ICC 531. I have adjusted this figure to present

day costs which brings it up to 75 cents per car. This classification cost applies equally as well on the empty car when it is returned to Bensenville Yard from the Yards. Applying an operating ratio of 84.8 per cent as shown on the bottom of this page, produces a total cost of $14.92 per car.

In addition to the foregoing expenses, there should be added trackage charges over the Indiana Harbor Belt and Chicago Junction Railways of 90 cents and $1.50 respectively per car for the loaded movement and the same amounts for the return empty movement. The grand total of these expenses amounts to $19.72 per car.

As expressed in the note at the bottom of the page, it is stated that these expenses or costs do not include any maintenance of way and structures expenses on the Milwaukee Road for these livestock transfers, nor considera- [fol. 1102] sideration of car hire which, if calculated at the present per diem rate for carrier owned cars would add $1.50 per car per day. Also, there has been omitted the unloading charges of the Union Stockyards and Transit Company of $1.73 per car for single decks and $2.08 per car for double decks as per Agent Raasch's Tariff No. 20X, ICC 584, effective March 13, 1948, which includes increases under X 162 and 166.

Mr. Smith: I might say there, your Honor, I have not been able to perceive why the Commission eliminated those elements of terminal expense in its consideration of these studies in the Chicago Livestock Exchange case. However, we followed their lead on that in order to make them comparable.

By Mr. Smith:

Q. You may go ahead.

A. It is to be noted, on this page, that there has not been included any calculation to show a return on investment.

Q. That was to take care of the decision by the Commission in connection with the duplication referred to?

A. Yes.

Q. In the previous study in Docket 24847 there was produced a cost of $13.69 per car for the handling of Mil-

waukee Road livestock from Bensenville Yard to the U. S. Yards. What is the cost per car as developed by your present study in comparison to the prior study which included a duplication?

A. $19.72 which excludes a return on investment. There has been included as previously stated an element of cost [fol. 1103] for station clerical expense not included in the prior study.

Q. Do have any comments you care to add?

A. No, sir.

Mr. Smith: Do you have any questions, Mr. Examiner?

Exam. Diamondson: The only question I have is the C&NW did seem to include their maintenance of way and structure charges and you have not; why is that?

The Witness: They have a good bit of their movement to the U. S. Yards over the North Western and whereas we only have a comparatively short distance from the east end of our Bensenville Yard to the connection with the Indiana Harbor Belt at Franklin Park which is approximately one mile in distance.

Mr. Smith: There is just one thing more. You gentlemen understand that you are to return for cross examination in the morning?

The Witness: Yes.

Mr. van Ingen: Yes.

Mr. Smith: I can complete my case by offering a few exhibits here in about five minutes, if you care to have me do so.

Exam. Diamondson: Yes, go ahead. You are excused.

(Witness excused.)

Mr. Smith: I would like to offer into evidence Exhibit No. 52.

Exam. Diamondson: Exhibit No. 52 will be received.

[fol. 1104] (Defendant's Exhibit No. 52, Witness Edman, was received in evidence.)

Mr. Kaylor: Exhibit No. 52 will be received by the Illinois Commerce Commission.

Mr. Smith: Your Honor, our principal showing with reference to these outlying points which are named in the

complaint is embodied in what, for convenience, has been designated here as Plaintiff's Exhibit 12. The plaintiff asked us to stipulate on certain matters in connection with those points that we thought were quite inadequate to show the Commission the full situation at those yards and we agreed to stipulate if they would embrace in the stipulation a great deal additional data which they checked and agreed to and their showing and ours are thus embodied in Exhibit No. 12.

We also have had a stipulation here with reference to to maps as the Examiner noted in respect to the maps that *would* offered by the plaintiff. We have prepared some exhibits which show the maps at these outlying points in order to put before the Commission the physical layout at these various points. I should say that we have not included the map of a number of points, perhaps six or eight where there was no delivery to any packer such as exists at the Omaha yard here and such as exists at these yards for which we have shown maps as embraced in these exhibits.

So your Honor will understand, with one exception that I will refer to in a moment, these maps cover all of the [fol. 1105] points at which there are deliveries to the packers.

Now we have not been able to embrace or to complete exhibits for all of the parties of record. We have these two volumes which we want to hand the Examiner and if the Examiner will allow us 10 days, we will see that all parties are supplied copies.

Exam. Diamondson: That may be done. Are those exhibits being tendered at the present time in relation to——

Mr. Smith: Section 3 allegation.

Exam. Diamondson: And also in relation to the complainant's Exhibit No. 10, I believe it was?

Mr. Smith: No. 12. I am not sure that I am answering your Honor correctly. We want these maps, if you please, considered along with the data shown on Exhibit No. 12.

Now the same points were referred to by Mr. Tally in an exhibit that he offered, that is, a part of them—what exhibit was that?

Mr. Tally: My Exhibit No. 10, but I have forgotten what page.

Exam. Diamondson: That is the one I had in mind.

Mr. Smith: But these maps which I ask to have identified as Exhibit No. 53, Parts 1 and 2, we ask that those maps be considered particularly in connection with the data shown on Exhibit 12.

[fol. 1106] Exam. Diamondson: The maps will be identified as Exhibit No. 53, Parts 1 and 2, for identification.

(The maps referred to were marked as Defendant's Exhibit No. 53, Parts 1 and 2, Witness Smith, for identification.)

Mr. Smith: Exhibit 12 will show, Mr. Examiner, of all of these points named there is just one point where a packer which is a competitor of Swift, and by that I mean any packer other than Swift, which is located on a terminal railroad such as Swift here at Omaha and in the vicinity of the stockyards that receives livestock shipments direct, just one point, and that is Sioux City, Iowa.

At Sioux City, Iowa, Cudahy, which is located in the vicinity of the stockyards there does receive a few direct shipments between certain hours. Cudahy is located there as is Swift here on a terminal railroad and because of that circumstance and that being the only one of that character, we have asked Mr. Rynder to stipulate that if witnesses were called, they would testify to certain facts respecting the situation at Sioux City and I want to say just a word about the facts that we have particularly in mind. At Sioux City, the livestock to the yards there averages about 14,500 cars which is about the amount of livestock that one of the larger roads brings into Chicago.

Mr. Hamilton: For what period?

Mr. Smith: The last 10 years.

[fol. 1107] Mr. Hamilton: Per month or per year?

Mr. Smith: Per year. There are two yards there, one used for livestock and one used for dead freight, distinguishing that from the situation at Chicago where it is proposed that the livestock and the dead freight be handled together at the Ashland Avenue Yard. The point that I direct attention to is that there the linehaul car-

riers do not bring the stock directly to the Union Stockyards as they do here. They take the stock that goes to the Union Stockyards and a few cars that go to Cudahy and set them both out at the same place on the line of the terminal railroad and the terminal railroad takes those two cars or however many there may be set and delivers Cudahy's livestock to Cudahy and sets the other at the chutes. It is a very different operation.

Here are the facts. Swift agrees the witnesses would testify to these facts if they were called:

Sioux City is served by six trunk line railroads, CB&Q, C&NW, CSTPM&O, CMSTP&P, Great Northern and Illinois Central. There is in addition a terminal railroad known as the Sioux City Terminal Railway. Its line encircles the stockyards and packinghouse district and it covers an area about one mile long on a north-south axis and something less than a half a mile wide.

I would like to have this document marked Defendant's Exhibit No. 54 for identification.

[fol. 1108] (The document referred to was marked as Defendant's Exhibit No. 54, Witness Smith, for identification.)

Mr. Smith: The Terminal Railway has two main yards designated on Exhibit 54 as A and B. Yard A on the west side of the property is used almost exclusively for the handling of livestock. Yard B is used almost entirely for cars other than livestock. The linehaul carriers interchange with the Terminal Railway at both yards. Dead freight and empty cars for the packers is interchanged at Yard B. Livestock for the yards is generally interchanged in Yard A.

The Sioux City stockyards is immediately adjacent to Yard A between the Yard A and the Floyd River to the east. This public stockyard has been in operation for approximately 60 years, since 1887. During the past 10 years, the annual average number of cars of livestock delivery to the yards has been 14,554.

Armour & Company, Cudahy Packing Company and Swift & Company all have plants in Sioux City. Their location is indicated on Exhibit A by the letters C, D and

E, respectively. Neither Armour nor Swift take delivery of livestock at their plants and neither has any facilities for the unloading of rail deliveries. All livestock consigned to these two packers is delivered at the public yards and driven to their respective packing plant.

The only direct deliveries of livestock now being made are sheep to Cudahy Packing Company. In 1946, Cudahy [fol. 1109] received 211 cars, in 1947, 289 cars. Deliveries of this sort have been made to Cudahy for a good many years.

Cudahy has two unloading chutes for handling sheep. In other words, only two cars can be spotted to unload at any one time.

The linehaul carriers do not set the livestock at the public stockyards with their own crews as they do at Chicago. In so far as the linehaul carriers are concerned, a carload of sheep consigned to Cudahy involves exactly the same operation as if the livestock were going to the public stockyards. Both cars are interchanged with the Terminal Railway at Yard A. The Terminal then sets the car going to the stockyards at the unloading chutes and switches the car to the Cudahy facilities.

I should like to offer Exhibit Nos. 53, Parts 1 and 2, and Exhibit No. 54, and I ask permission as has been given in respect to 53, to supply the parties with the necessary copies within a short period of time on Exhibit 54.

Exam. Diamondson: That may be done. Is there any objection to these documents?

Mr. Rynder: None.

Exam. Diamondson: The documents will be received.

(Defendant's Exhibit Nos. 53, Parts 1 and 2, and 54, Witness Smith, were received in evidence.)

[fol. 1110] Mr. Kaylor: Exhibits 53 and 54 will be received by the Illinois Commerce Commission.

Mr. Smith: Unless I think of something overnight, your Honor, that is our case.

Exam. Diamondson: We will adjourn at this time until 9:30 o'clock tomorrow morning.

(Whereupon, at 5:20 p. m., an adjournment was taken until 9:30 a. m., Wednesday, March 3, 1948.)

[fols. 1111-1112] Wednesday, March 3, 1948.

Met, pursuant to adjournment, at 9:30 o'clock A. M.

APPEARANCES:

Same as heretofore noted and the following additional appearances:

E. W. LARSEN, 821 LaSalle Street, Station, Chicago 5, Illinois, appearing for C. R. I. & P. Railway.

H. O. MALM, Chicago, Illinois, appearing for Chicago Great Western Railroad Company.

[fol. 1113] PROCEEDINGS

Exam. Diamondson: The hearing will be resumed. You may proceed with cross examination.

D. K. VAN INGEN resumed the stand and testified further as follows:

Cross-examination.

By Mr. Rynder:

Q. Mr. Van Ingen, I want to ask you just a few questions to be sure that I understood your cost computation. Referring to exhibit 50, sheet 6, are all the figures on there system figures and used solely to obtain the operating ratio shown in line 10?

A. They are.

Q. On sheet 4 under the caption "Transportation", the figures there depend upon hours of service, such as for train enginemen, trainmen, and so forth. I suppose you obtained first the number of hours?

A. Account 392, train enginemen, and 401, trainmen, are actual wages paid the men which operated these 123 trains in December 1947 from the payroll record.

Q. Did you assign all of the payments to them to this account?

A. Yes, I did. The stock relief trains and enginemen are solely in this service for these 123 trains. They performed no other work other than these cars, beyond these cars shown on sheet 2.

[fol. 1114] Q. Do they have a substantial amount of dead time, or did you look into that?

A. They have no dead time other than the time incurred in performance of this service.

Q. You mean to say that there is work for them to perform every hour of the twenty-four hours and that they do not spend time at Proviso waiting for another train to come in, waiting a couple of hours for purposes of that kind or something like that?

A. On occasions they may have to wait because the road train is delayed, but the procedure is to call these crews, these stock relief crews to relieve the road train in time, to relieve the road train upon the arrival of the road train.

Q. How did you obtain the items that you charged against this service for maintenance of equipment?

A. Account 308, steam locomotive repairs, from the operating record we knew the points between which these locomotives operated and we were thus able to determine the locomotive miles operated by each locomotive for each of these trains. To that mileage we applied the system five year average cost of repairing that class of locomotive per mile.

Q. That figure is not obtained by determining the amount of repairs actually applied to the locomotives that were in this service during the month of your study?

A. No, they were not. I might add the use of a five year average, five year system average there was, as I [fol. 1115] said yesterday, correct for wage increases but not for material price increases and serves as a leveling out on these costs of repairs and any excessive repairs that were made in December, of course, would not be in here.

Q. On the other hand if the repairs varied substantially

from that of the system average, that would not be reflected here either, would it?

A. No, they would not but in this instance because these locomotives run relatively few miles in comparison to locomotives on the system I believe these costs if anything are understated.

Q. That is your opinion of the whole study, isn't it, that the costs are understated?

A. In various instances as I have cited.

Q. And in total?

A. And in total. It reflects on the totals, yes, sir.

Q. How did you obtain the amounts charged for maintenance-of-way and structures for this particular haul?

A. Knowing the locomotive miles and the car miles operated on only the North Western tracks by these trains and in turn, of course, the gross ton miles for the same cars and locomotives, we obtained the gross ton miles of this service over the North Western tracks which was related to the gross ton miles of freight operation on the Galena Division and that proportion was taken of the [fol. 1116] maintenance-of-way and structures for the accounts listed on sheet 3 of exhibit 50 to arrive at the proportion of the Galena Division maintenance-of-way and structures expense which was applicable to this traffic in December 1947.

Q. It was not obtained by determining the actual cost of maintenance-of-way and structures of the North Western track from Proviso to your place where you went around the Chicago Junction tracks?

A. No, it wasn't determined on that. In fact you couldn't get that on an actual basis. That would be impossible to obtain. You wouldn't know whether this installation of any one tie was assignable to the handling of this traffic shown in this exhibit for delivering livestock to the Union Stock Yards or whether it should be assignable to the handling of some suburban trains or some road freight train, so of necessity we have used the gross ton mile basis of apportionment to obtain this maintenance-of-way and structures expense.

Q. That is, in your opinion the exact figures could not have been obtained?

A. That is correct.

Q. Now, when you get down to the cars on sheet 2, first in the lines 12 to 15, total of all trains, I just want to be clear on this. Where does the 168 cars come from?

A. May I ask in what line?

[fol. 1117] Q. Pardon me. The last line under the word "Total". Line 12 under the word "Total".

A. Yes. The 168 cars shown in column F, line 12, are the total number of cars destined both to the U. S. Yards, amounting to 164, 3 cars in those 55 trains which were set out for the Omaha Packing Company and one car which was set out at Ashland Avenue yard. These 55 trains which carried the 168 cars were trains which had only from one to five in them in this month of December 1947.

Q. And you have determined an average cost for this switching movement, whether the train moved with, say, 3 cars behind the engine or 20 cars behind the engine; that is right, isn't it?

A. That is right.

Q. You have assigned the same cost to each?

A. The final determination has shown the same cost to each, yes. $22.19.

Q. As I understand this, the grand total of trains is 123 and the grand total of cars 1213, is that right?

A. That is right.

Q. So that the overall average, including the trains 11 and over, would give an average of 10 cars per train, or approximately?

A. Approximately. 9.86 cars per train.

Q. According to your method of figuring costs would this cost per car be proportionately reduced if that num-

[fol. 1118] ber had amounted say to 15 cars per train?

A. The resultant cost would have been reduced, yes, sir, provided you had the same number of trains.

Q. That is what I mean. In other words, as an end proposition you divide the total cost that you have computed by the total number of cars in the total number of trains?

A. That is the way it has been done, yes, sir.

Mr. Rynder: That is all I have on cross examination and I might say this, Mr. Smith, that if Mr. Edman's cost study was computed in the same way and if his answers to similar questions would be substantially the same, I do not need to call him.

Mr. Smith: I will inquire in just a moment. I want to ask the witness just a question or two.

Redirect examination.

By Mr. Smith:

Q. Mr. Rynder referred to the use of certain system figures. In what, if any, instances did you resort to system figures that were not used in the previous study in Docket 24847, which the Commission has analyzed? Is that question clear to you, Mr. Van Ingen?

A. I would like to look at what I have here of the old study. The question is clear.

Q. Yes. I might add to that question, except as was necessary to make the corrections suggested by the Commission.

A. I understood that as far as your question went. I don't believe I made any further use of system figures in [fol. 1119] this study than was made in the original study.

Q. With reference to the possible existence of dead time, is it the duty of the caller of the crew to call it at the latest possible moment that is feasible to have it on the job in order to be ready to perform the necessary service at the appropriate time?

A. That is correct, but he, of course, has to give the crew enough time ahead of time to go to work. I think there is a certain limitation there that I am not quite familiar with.

Q. Now, Mr. Rynder referred to the use of certain system figures on the maintenance of equipment for these classes of locomotives rather than the actual repairs on the locomotives during December. Would the repairs on the locomotives during December, in a period when they were actually on the job and in service, give any reflection at all of the actual repairs to that equipment that should be borne by this service handled in December?

A. No, they would not because while on the job they would not be in the shops for repair and, therefore, the use of a five year average as has been done in this case serves to charge this service with its portion of the cost of general repairs that has been made to the locomotives, for instance, over and above the running repairs and certainly service of this kind, this service, should bear its portion of the cost of general repairs to these locomotives, [fol. 1120] which is the major portion of locomotive repair costs.

Q. Yes, but the repairs are a sort of cyclical period and they occur periodically

A. That is right.

Q. And they occur when the locomotive is in the shop rather than when it is in service, do they not?

A. That is right.

Q. You experience most of your automobile repairs while the automobile is in the shop rather than out on the highway, do you not?

A. Yes, sir.

Q. The same thing here?

A. Yes, sir.

Mr. Smith: That is all. Well, now, Mr. Edman, have you heard these questions that Mr. Rynder asked Mr. Van Ingen and the answers given by Mr. Van Ingen?

Mr. Edman: Yes, I have.

Mr. Smith: If asked the same questions would you make substantially the same answers having relation, of course, to the Milwaukee and to your own operations?

Mr. Edman: I would make substantially the same answers.

Mr. Rynder: Just one question.

Recross-examination.

By Mr. Rynder:

Q. Isn't it a fact that the North Western and the Mil- [fol. 1121] waukee have the longest terminal service between the break-up yards and the U. S. Yards of any of the trunk lines entering Chicago?

A. I don't know that to be a fact with respect to all carriers. I know we have a longer operation than some. As I testified yesterday, it is approximately 18 miles from Proviso to the Union Stock Yards, four of which is over the,—approximately four miles of which is over the Chicago Junction tracks.

Mr. Rynder: Did Mr. Edman state the number of miles for the Milwaukee?

Mr. Edman: I believe it is approximately 23 miles.

Mr. Rynder: Approximately 23 miles?

Mr. Edman: Yes.

Mr. Smith: I believe that is in the operating testimony, Mr. Rynder.

Mr. Rynder: I think that is all I have of this witness.

Exam. Diamondson: Any further questions? You are excused.

Mr. Gladson: Mr. Examiner, one more brief witness. I call Mr. O'Connor.

Mr. Smith: Mr. Kaylor has just asked me whether exhibits 53 and 54 were received. I thought they were, but if not may the record show they are received?

Exam. Diamondson: Exhibits 53 and 54 are received in evidence.

[fol. 1122] Mr. Kaylor: Show them received for the Illinois Commerce Commission also.

(Exhibits Nos. 53 and 54, Witness Van Ingen, received in evidence.)

William J. O'Connor was sworn and testified as follows:

Direct examination.

By Mr. Gladson:

Q. Will you state your name?

A. William J. O'Connor.

Q. Where do you live, Mr. O'Connor?

A. 7468 South Carpenter Street, Chicago, Illinois.

Q. What is your occupation?

A. General Manager of the Union Stock Yard & Transit Company.

Q. How long have you been connected with the Union Stock Yard & Transit Company?

A. 41 years.

Q. And you are, of course, familiar with its properties and operations?

A. Yes, sir.

Q. Early in the hearing Mr. Rynder asked one of the witnesses some question about the viaducts that you use and we advised the Examiner that we would supply that information. Will you give us a description of the viaducts?

A. We have seven viaducts extending across our yards from the north to the south. These viaducts vary in length from 500 to 3200 feet. The most easterly of these viaducts, of these north and south viaducts is located [fol. 1123] about 175 feet west of our stone gate. That is the point where we boarded the car the other day when we went through the yards.

The most westerly of these north and south viaducts parallels the west line of our stock yard property. The other five north and south viaducts are conveniently spread between these other east and west viaducts.

We also have six viaducts extending east and west across our property. These east and west viaducts vary in length from 300 to 1700 feet. The most northerly of these viaducts parallels the south line of our number 1 and number 2 hog house. The most southerly one is located at what would be 44th Street extended. These east and west viaducts connect with or intersect one or more of the north and south viaducts.

In addition to these we also have what is commonly called the Wilson viaduct. This viaduct extends from the west end of our number 3 dock,—or our number 3 sheep house to the west line of Ashland Avenue, a distance of 2780 feet. It parallels the C. J. right-of-way and passes the site of Swift's proposed new stock yards on the north.

We also have tunnels, a tunnel that goes under Pershing Road at Laurel Street, which would be Morgan Street on the city maps. This tunnel is about 108 feet long.

We also have an overhead passage over the Junction right-of-way which is about a hundred feet long. These

two passages enable the packers who are doing business [fol. 1124] on the south and east of the yards to get their livestock out of the yards and into their plants without crossing a public thoroughfare.

We also have a tunnel extending from our number 3 to number 4 hog houses. This is to enable the packers and others to drive their hogs from one hog house to the other without crossing Laurel Street, which this day is pretty well cluttered up with tracks. The tunnel is about 200 feet long.

All of these viaducts and tunnels are owned by us and all of them are maintained by us with the exception of the concrete section of the Wilson dock, which is cleaned by Wilson & Company.

Q. Will you tell us the route taken by cattle going to, say, Armour & Company?

A. Yes. Armour & Company will cross on one of our westerly docks to what we call the packers' dock, which crosses Racine Avenue at about 41st Street. This crossing to the west line of Racine Avenue is owned by us.

Q. And cattle going to Swift would take what route?

A. If Swift is driving to their north house they would take this so-called Wilson dock. They turn off of this Wilson dock before it reaches the concrete section. Their dock extends as far as the west line of Packers Avenue and it is about a 250 foot drive, I believe, from there to Swift's killing plant.

[fol. 1125] Q. And how would cattle reach Wilson & Company?

A. There is a "Y" on this so-called Wilson dock. Swift takes the left fork and Wilson takes the right fork. This is a two deck concrete dock. They drive their cattle on the lower deck and their hogs on the upper deck.

Q. How do hogs move to the various large packers?

A. Well, Swift & Company would use one of our docks to this same so-called packers' dock at about 41st Street, where they would cross Racine Avenue.

Exam. Diamondson: These docks and runways, are they shown on an exhibit in the record?

Mr. Gladson: Yes, they are shown on the large map. I forget the exhibit number. They probably also show in the aerial photograph that was introduced in evidence.

Mr. Smith: Can they be readily identified, though, by looking at the exhibit, I wonder? I just wonder if it would be worth while to designate them.

Exam. Diamondson: I was just wondering if we could connect up this witness' testimony with the actual exhibit.

Mr. Smith: That is what I am wondering, whether it would not be of some assistance if Mr. O'Connor could draw a red line to mark out those viaducts. Would that be of any assistance to you?

Exam. Diamondson: I believe it would.

Mr. Smith: Why isn't that possible?

[fol. 1126] Mr. Gladson: I think it could be done.

Exam. Diamondson: Could that be furnished after the hearing?

Mr. Gladson: Yes, we will be glad to do that.

Exam. Diamondson: Within twenty days?

Mr. Gladson: Yes. And we could also on that Mr. Examiner, if you would care to have it, the tunnels that Mr. O'Connor referred to.

Exam. Diamondson: Yes.

Mr. Smith: One in red and one in blue, perhaps.

Exam. Diamondson: Yes.

By Mr. Gladson:

Q. Would you care to amplify the statement of what services the yardage charge covers?

A. Yes.

Q. Will you proceed to do so?

A. The transportation of an animal consigned by rail to the Chicago Union Stock Yard ends when it is unloaded into a chute pen at a platform of The Union Stock Yard & Transit Company. When it is driven out of this pen it begins to use the market services, facilities and privileges of the public stockyard for which yardage is charged under the supervision of the Department of Agriculture.

This yardage charge is uniform for each animal of the same species arriving by rail and currently is 65 cents

for cattle, 40 cents for calves, 21 cents for hogs, 15 cents [fol. 1127] for sheep and 67 cents for horses.

It entitles the animal to the use of a very extensive system of alleys, streets, underpasses, runways, inclines, bypasses and overhead viaducts, all frequently divided by fences and gates for keeping various lots of animals from becoming mixed, as this is the only way their identity can be maintained while being driven from one part of the yard to another.

These avenues of passage are on different levels, so arranged after long years of experience to facilitate the movement of livestock on the property efficiently and safely. The expensive overhead driveways are used extensively by the packers in driving their stock toward their packing houses. All avenues of egress for livestock from the stock yards must, of course, be policed as a protective measure. Since operations are conducted on a continuous round the clock baris, these driveways must be provided with lights at frequent intervals, the constant replacement of which is in itself a considerable expense.

The yardage charge also entitles the animal to the use of pens for as many days as it may remain in the yards, without any limit. These pens are provided with running water which can be, and frequently is, used without restriction and without cost. This flow of water requires a very extensive and expensive sewerage system to handle the overflow as well as the natural rainfall, the mainte- [fol. 1128] nance of which is a continual expense. The cost of providing this enormous supply of water is a very considerable item.

The pens used for yarding must be of various sizes to accom-odate different sized lots of livestock. They must be located at various places in the yards so as to be conveniently available wherever and whenever needed. The pens are of wood construction and must be constantly maintained so as to safely restrain the animals. They must be provided with gates and these must be equipped with padlocks, also a continual expense for maintenance and replacement.

The holding of livestock in pens necessitates the constant removal of the resulting accumulations of manure,

bedding and unused feed. This is a very expensive operation because of the varying sizes of the pens, the interference from water troughs, fences and gates, the distance necessary to haul and the handicap of frozen, wet and other natural conditions. The equipment used in the cleaning operations is expensive to acquire and maintain.

The yardage entities the animal to one weighing. For this purpose a large number of scales are provided in convenient locations and variously equipped for the weighing of different species of animals in different sized lots. The approaches to and the exists from the scales are especially constructed, with driveways and pens needed to handle the animals across the scales and confine them [fol. 1129] after weighing in identifiable lots. The scales are located in scale houses which are heated, lighted and provided with water. The scales are the very best obtainable and are frequently tested and maintained in accurate condition.

The weighing is done by weighmasters of long experience, who together with the counter-offs and yardmen are all employes of the Stock Yard Company. Scale tickets and counter-off tickets are furnished by the company and other records are made by its employes in connection with weighing. The weights furnished by this disinterested party are accepted as official by the owners and buyers of the livestock in making settlements and by the railroads in computing the freight charges.

Employes of the company also furnish many other services and make many other records in the handling of the animals for the yardage charge paid. They may yard the livestock away from the unloading chutes so as to make room for the next arrivals, carefully recording the changes in location so as to maintain their identity. They make delivery of the animals to the owner or his agent and keep a record of the count, location and party involved in this action.

Accidents and errors may occur and this risk of claims for damage or loss is part of the risk assumed by the company under the yardage charge.

The yardage charge also covers a proportional share of the many general expenses connected with the main-

[fol. 1130] tenance and operation of the stock yard. Among these are overhead salary and labor costs, taxes, insurance, depreciation, return on the investment in land and improvements and general overhead expenses.

Q. Mr. O'Connor, will you show on the exhibit that is to be furnished the boundary line in the case of each viaduct which marks the separation between the portion of the viaduct that you maintain and that someone else maintains?

A. Yes, sir.

By Mr. Smith:

Q. In other words, when we see these lines marking these viaducts we will know that is a property that is maintained by the Union Stock Yards?

A. Yes, sir.

Q. And will the property line of Swift and Armour and these other packers be shown so that we can see the relationship between those two facts?

A. I haven't seen the exhibit, but if it the map I think it is I think the exhibit itself will show that.

Mr. Quasey: Mr. O'Connor, that will also include the tunnels that are maintained by the Yards Company, will it not?

The Witness: Correct, yes, sir.

Mr. Quasey: Thank you.

By Mr. Gladson:

Q. What, in your opinion, will be the effect on the [fol. 1131] Yards Company by a decision in favor of Swift in this case?

A. If the Commission finds in favor of Swift, it is reasonable to assume that all of the other packers who now receive direct shipments at the Union Stock Yards will adopt the same practice and order livestock delivered by rail direct to receiving facilities which they will provide.

Q. Why do you make those assumptions, Mr. O'Connor? Take the first one, take the one you just mentioned.

A. Well, naturally they would do that to meet the competition of Swift.

Q. Does Wilson have any place where it could build facilities for unloading livestock?

A. Yes, he has.

Q. And where are they located?

A. They are south of the Wilson plant and west of Ashland Avenue.

Q. Does Armour have any place where unloading facilities might be built?

A. Yes.

Q. Where are they located?

A. They are west of Packers Avenue and east of Ashland Avenue at about 45th Street, I would say.

Exam. Diamondson: How about some of the other packers?

By Mr. Gladson:

Q. What about the facilities of other packers, Mr. [fol. 1132] O'Connor?

A. I will cover that later on.

Q. You will cover that later on?

A. Yes.

Mr. Gladson: Will that be satisfactory, Mr. Examiner?

Exam. Diamondson: Yes.

By Mr. Gladson:

Q. Will you proceed?

A. It is also reasonable to assume that some, and perhaps all, of these packers will extend their direct buying operations in the country and have additional livestock shipped direct to their plants, thus reducing their buying operations on the Chicago market, which will result in reducing the flow of animals to the open competitive market. Most of these other packers now have rail connections for their dead freight and those who do not have such rail connections can provide unloading yards on tracks within a very short hauling distance of their killing beds.

If and when this comes about it will deprive the Stock Yard Company of the revenue it now derives from handling the large volume of packer directs.

The present charges of the Stock Yard Company are based on the existing volume of livestock it handles. As this volume is reduced the per unit cost of maintaining the market will increase and the increase must be borne by those still shipping to it if the market is to survive. Should the Commission find in favor of Swift the Stock [fol. 1133] Yard Company cannot reduce its expenses so as to overcome any substantial part of the loss in revenue which it will undoubtedly suffer because of the diversion of the direct receipts which the other packers now handle through the Yards.

Q. Incidentally, Mr. O'Connor, you heard Mr. Zelinski's testimony, did you?

A. Yes.

Q. Would the loss of revenue be greater or less than Mr. Zelinski showed? Well, refreshing your recollection, would you lose any feed charge on directs?

A. We would lose whatever profit we made, that we now secure on the feed, the corn and hay that is sold for the packer directs.

Q. Is it true that Armour & Company often feed their directs?

A. Yes.

Q. Will you proceed?

A. The Stock Yard Company is obliged to render service 24 hours each day, seven days a week. It is therefore necessary for it to maintain a working force sufficiently large to cover all of its peak requirements over the 24 hour period. Its operating force has now reached almost the irreducible minimum so far as the number of men required to carry on its stock yard operations is concerned.

If it lost all of its direct shipments it is doubtful if it could materially reduce its operating force because, as [fol. 1134] before stated, it requires the number of employes which it now has to cover all of its facilities and operations and practically the same number of employes will be necessary to handle the smaller volume of business.

Under its contract with the labor union it is obliged to give all of its employes 40 hours employment each week, or the equivalent in pay, if they work one hour during the week. Any reduction in the receipts would not enable

it to dispense with the services of many of its employes but would only result in these employes having additional leisure time.

Furthermore, there is always the possibility that receipts, even though small in total, may arrive during a short period of time and the owners of the livestock expect, of course, to find an adequate operating force available to render the satisfactory stock yard service to which the shipper is entitled.

Neither could the Stock Yard Company reduce its other expenditures such as maintenance, taxes, and so forth, because it will still have to use all of its property to handle whatever receipts are offered to it and practically the same amount of maintenance, and so forth, will be necessary.

If Swift & Company succeeds in having their directs by rail delivered to their proposed stock yards it will be very detrimental to the shippers to the Chicago Union Stock Yards because of the interference with the handling [fol. 1135] of the shippers' cars.

The congestion and delays in the Ashland Avenue yard, as outlined and described by the representatives of the railroads who testified in this case, would undoubtedly result in even later arrival of the livestock at the Stock Yard Company chutes. Such delays will unquestionably create a feeling of dissatisfaction in the minds of the shippers who are delayed and might also result in their shipping their livestock to other markets where their livestock can be delivered more expeditiously.

Q. Well, now, you say that might be the result. Have you an opinion as to whether that would result?

A. Well, I can cite as an illustration that 15 per cent of our cattle which now arrive by rail is shipped to the Union Stock Yards by traders on other markets. The railroads run fast trains between these other markets to Chicago. These traders buy the livestock on the market, ship them out that night with the expectation that they will be sold on the early market in Chicago in the morning. If these trains are held out, we will undoubtedly lose that business.

Q. What about the producer of livestock who ships mar-

ket stock to the Stock Yards Company for sale? What will happen if he meets delays?

A. There have been many complaints from shippers that under present conditions their stock is held out west of [fol. 1136] Ashland Avenue, almost within sight of the market, due to the congested conditions which greatly delay the arrival of the livestock at the Yards. If Swift can force the delivery of livestock to the yard which they propose to locate only a short distance east of this bottleneck, the present unsatisfactory conditions will be greatly aggravated and, as I said before, will doubtless result in still later arrival of the shippers' animals on the market, with all of the disadvantages which this late arrival will entail.

Since order buyers and others who can pay the most for stock usually operate early, the late arrivals will miss this competition; or, if the order buyers can wait, the late arrivals in turn will cause late sales, late weighing and late collection of stock and these delays in turn will result in late loading out of stock for Eastern packers.

Undue delay and additional switching of trains might cause additional dead and cripples, all of which will not only delay the unloading of the cars but will also result in the railroads being obliged to pay the shippers for these dead and crippled animals.

Carried through to its logical conclusion, the loss of its packer directs and a resulting reduction in open market receipts, will bring about a vicious cycle of higher and higher marketing costs per animal and lighter and lighter receipts. The result can be only one thing. As the net earnings of the Stock Yard Company become smaller and [fol. 1137] smaller, so as to yield little or no profit, the owners of the property will probably have to find some other use for it than as a livestock market and the great Chicago livestock market would then become a thing of the past.

Q. Mr. O'Connor, have you any figures which show the number of animals coming to the Stock Yards which move through the Ashland Avenue yards?

A. I have.

Q. Will you tell us about that?

A. During the year 1938 81.9 per cent of the animals arrived from the West, which is through the Ashland Avenue yard. During the year 1939 the figure was 81.8 per cent. In 1940 the figure was 81.7 per cent. In 1941 it was 82.4 per cent. In 1942 it was 81.2 per cent. In 1943 it was 78.5 per cent. In 1944 it was 85.4 per cent. In 1945 it was 81.8 per cent. In 1946 it was 83.6 per cent. In 1947 it was 77.1 per cent, the weighted average being 80.5 per cent.

Mr. Smith: May I ask one question there, Mr. Gladson?

Mr. Gladson: Yes.

By Mr. Smith:

Q. By coming through the Ashland Avenue yard you mean that that stock reaches the yard through the running tracks that lie between the Ashland Avenue yard proper and the Ashland Avenue north yard, do you not?

A. I mean the livestock that arrives on line haul car-
[fol. 1138] riers' trains that come in at the west of the yards.

Q. Yes.

A. Yes.

Q. The reason I mentioned that, Mr. O'Connor, is that these operating men think and speak frequently of traffic moving through the Ashland Avenue yard only when it is set out in the Ashland Avenue yard as dead freight and perishables are and then is classified and distributed and sometimes they do not speak of traffic moving through the Ashland Avenue yard where it simply moves through that running track that is between the north yard and the Ashland Avenue yard proper, but you mean it doesn't set out at the yard, of course.

A. No.

Q. But moves through those running tracks.

A. The kind of livestock that is delivered at our chutes is that which comes in from the West.

By Mr. Gladson:

Q. That is what you mean?

A. Yes.

Mr. Gladson: I think the record is amply clear that all livestock coming to the stock yards via certain railroads moves over the running tracks into the yards.

Mr. Smith: Yes.

By Mr. Gladson:

Q. Mr. O'Connor, do you have any further statement to make?

A. Again referring to what might happen in the event that Swift & Company succeeds in doing what they are [fol. 1139] attempting to do, the Chicago Stock Yards would lose its function of establishing values for livestock and be no doube transferred to some other center, for what would happen at Chicago would simultaneously or shortly thereafter be happening at other markets, and the producer of livestock would be left helplessly wondering if the price he was offered was what his livestock was really worth or not, for there would no longer be any such thing as a market value to use as a measuring stick.

The Union Stock Yard & Transit Co. is a public utility. It appears to me, therefore, that the Commission must decide in this case whether the services rendered to the thousands of patrons of this utility are to continue, or whether Swift & Company and the other packers at Chicago are to be given the right to have their directs switched to their plants.

The present facilities for unloading livestock in the Union Stock Yard are adequate to handle all of the livestock which Swift and all the others who patronize the Stock Yard will require.

In effect Swift is asking the railroads to perform a service for it which will be to the detriment of another utility and which may ultimately lead to the destruction of the latter.

By Mr. Smith:

Q. Mr. O'Connor, the pens of the Stock Yards which are immediately adjacent to the tracks occupied by the trains which bring in the livestock are called the chute [fol. 1140] pens, are they not?

A. Yes, sir.

Q. I noticed when we went through there the other morning some time after nine o'clock,—that was Monday morning,—the chute pens were pretty well cleared out. Is that customary, to take the animals out of the chute pens as rapidly as possible and are they usually out by that time?

A. If we anticipate another arrival of trains in that section we always move that livestock back into other pens, and that does happen, yes, sir, so that we try to keep the chute pens clear for any train that might be set at the platform.

Q. Well, I take it, in any event, in view of the testimony here of the early market being the best market, you move out whatever you have in those chute pens and get it to the commission men or to the packers as quickly as possible and as quickly as it is feasible to do it, is that so?

A. The commission men want them just as early as possible, yes, sir.

Q. Because of the intervention of Sunday does the livestock get in a little bit earlier on Monday morning than it does on other days?

A. Usually trains will start coming in perhaps at six o'clock on Sunday night and continue from that period on.

Mr. Smith: That is all.

Exam. Diamondson: As General Manager of the Stock [fol. 1141] Yards would you say that the present operation is satisfactory?

A. Very satisfactory.

Exam. Diamondson: You may cross examine.

Cross-examination.

By Mr. Rynder:

Q. Mr. O'Connor, a previous exhibit in this case by Mr. Raasch, I haven't it in my hands at the moment, shows, I believe, that in 1920 267,000 cars of livestock were received or delivered to the U. S. Y. & T. Company chutes and in 1947 65,000. Would that be about in accordance with your understanding?

A. Well, I haven't the exact figures before me but that is close enough there.

Q. Or something like 200,000 cars less in 1947 than in 1920.

A. Yes, sir.

Mr. Gladson: You are talking about rail shipments, are you, Mr. Rynder?

Mr. Rynder: I am talking about rail shipments. I understand that they are the only kind that go to the chutes at the north end of the Stock Yards.

Q. You were with the Stock Yards Company in the 20's, were you?

A. Yes, sir.

Q. Were those rail shipments at that time, 200,000 cars more per year, delivered with reasonable promptness at the unloading chutes?

[fol. 1142] A. Yes, sir.

Q. Did they require a greater amount of motive power than is now in use?

A. That I wouldn't be able to answer you. I will have to ask the railroad men to answer that. I will say that there was an entirely different picture in the old days than we have now. In the old days it wasn't unusual for an entire train of livestock to come in consigned from one consignor to one consignee and they were coming in in a very orderly fashion. They were unloaded promptly and we handled far more cars than that, by the way, in some years, I think. Nowadays, for your information, Mr. Rynder——

Q. Not for mine. I am satisfied.

A. Well, for the information of the record, we receive many cars now with multiple ownership and the trains are short, there are not so many cars to a train. Nevertheless, we have to keep our platforms open all the time to take care of our peak requirements and to be ready to handle any livestock that are set at the chutes promptly.

Q. But, nevertheless, if Mr. Raasch's figures are correct and I have correctly quoted them, there were 267,000 cars delivered in 1920 as against 65,000 in 1947.

A. We didn't have 65,000 in 1947 according to my records, or we didn't have 67,000.

Q. Or 65,000?

[fol. 1143] A. 53,561, according to my records.

Q. O. K. Do you know in a general way what proportion of your total receipts now come in by truck?

A. Yes, sir. In 1947 about 67 per cent of the cattle arrived by truck, 53 per cent of the calves, 51 per cent of the hogs and 31 per cent of the sheep.

Exam. Diamondson: That would be both interstate and intrastate shipments?

The Witness: Yes, sir.

Mr. Kaylor: What percentage of the total received according to head?

The Witness: I don't have that broken down into percentage by head. I have just gotten it by species.

By Mr. Rynder:

Q. Roughly we could say that approximates 50 per cent of your receipts, does it?

A. I think so.

Q. And those receipts do not use the rail facilities of the Ashland Avenue yards of the Chicago Junction, do they?

A. No, sir.

Q. I suppose in connection with your predictions as to what might result from this Swift complaint, you are probably aware that Swift has been operating the facility for the receipt of livestock at the Omaha Packing Company location since about 1912?

A. Well, I know they have been operated for many years [fol. 1144] but I couldn't set the exact year.

Q. Now, I wanted to get as accurately as you could give me the basis for your prediction that if this Swift complaint were granted the other packers in the Yards would desire to have a similar delivery.

A. Well, I can't see any reason why they would not. If I were another packer I would want it.

Q. But why do you think you would want it is what I am trying to get at?

A. Because that is the way I would want.

Q. Would it be cheaper? Is that the reason you would want it?

A. I don't know, but I wouldn't want to have Swift or anybody else have any advantage over me in the transportation of livestock. If it was an advantage, I would want it.

Q. Well, the net advantage to Swift is that it doesn't pay the yardage charge, is that right?

A. I don't know. There may be other advantages in it I don't have in mind.

Q. Well, let's say that is one advantage to Swift. You would say that is one advantage to Swift?

A. I don't know whether it is an advantage or not.

Q. Well, then, we can agree that on direct delivery at the Omaha Packing Company or at any other place it was made that Swift would not pay yardage there?

A. They would not pay yardage on it to the Stock Yards [fol. 1145] Company.

Q. They would not pay yardage on it to the Stock Yards Company?

A. No.

Q. Well, do you think that would be one of the reasons that would induce the other packers to want the same delivery?

A. I wouldn't know.

Q. In other words; you think they would do it merely because Swift had it, without knowing or determining whether there was any financial advantage to them, is that right?

A. If there is any advantage to Swift & Company in doing that, the other packers would certainly avail themselves of that same advantage.

Q. And you do not in your own mind analyze the thing to determine what the possible advantage might be to Swift or to another packer, is that right?

A. Well, I can only say that Swift & Company must think that it is an advantage to them if they are going to do it.

Q. When you say an advantage wouldn't you think it was a financial advantage?

A. Probably.

Q. An advantage in dollars and cents?

A. Probably.

By Exam. Diamondson:

Q. How about the advantage in time, Mr. O'Connor?
[fol. 1146] A. Sir?

Q. How about the advantage in time, getting the direct delivery to the proposed plant versus having to truck down from the Omaha plant?

A. Well, after having listened to the testimony of the railroad men I would say it would take them longer to have it put in than it would to have them brought in by truck, but I am not sure about that, I couldn't say.

Mr. Smith: That is out of your bailiwick.

The Witness: That is entirely out of my bailiwick. I don't know.

By Mr. Rynder:

Q. So that I take it the point is that even though this delivery might result in a financial advantage, let us say a financial saving to Swift & Company and to other packers, such as Armour, Wilson and so forth, that they should, nevertheless, be required to continue to accept and pay for services which you have fully described and which they do not need, is that right?

Mr. Gladson: That is argumentative, Mr. Examiner.

Exam. Diamondson: Read the question, Mr. Reporter.

(Question read.)

Exam. Diamondson: Do you object to it?

Mr. Gladson: I object to it, yes.

Exam. Diamondson: Objection sustained.

By Mr. Rynder:

Q. You are aware that Swift and the other packers at
[fol. 1147] the Yards bring in many supplies other than livestock that are necessary for their packing houses?

A. I presume that that is true.

Q. You must know, I suppose, that they bring in salt and coal and lumber and boxes and meats for further processing, and so forth.

A. I am assuming that that is true.

Q. Is it your position that the Stock Yards might reasonably assess a toll on that class of traffic?

A. You mean the Stock Yard Company?

Q. Yes.

Mr. Gladson: I object to that. There has been no suggestion of that kind in this record.

Mr. Smith: Besides that it is silly.

Mr. Gladson: Yes.

Mr. Rynder: Well, there has been a suggestion that an unnecessary charge should be assessed on our traffic because it is livestock, but I don't know why the theory is not equally good for meats and salt or anything of that kind.

Exam. Diamondson: No charges are actually assessed on this dead freight?

Mr. Rynder: Sir?

Exam. Diamondson: No charges are actually assessed on this dead freight, no accessorial charges are assessed on dead freight?

[fol. 1148] Mr. Rynder: No, of course they are not.

Exam. Diamondson: What is the purpose of the question?

Mr. Rynder: The thing is so obvious. The Stock Yards is here trying to assess a toll for one of the principal supplies coming to a packing house, although under the circumstances presented that service and that toll would be an unnecessary expense to the packer. I was simply asking him whether he would extend that theory to dead freight and I think he won't and so I will let the question go. I believe that is all.

Exam. Diamondson: Any further questions?

Mr. Quasey: I have a question.

By Mr. Quasey:

Q. Mr. O'Connor, do you know whether Swift & Company has ever filed a complaint or petition with the Secretary of Agriculture under the Packers and Stock Yards Act seeking any change in the yardage charges on directs?

A. Not to my knowledge.

Mr. Quasey: Thank you.

Exam. Diamondson: Any further questions? You are excused. Are you through, Mr. Gladson?

Mr. Gladson: Yes.

Exam. Diamondson: You have no other witnesses?

Mr. Gladson: No.

Exam. Diamondson: Have the parties anything further?

Mr. Smith: No, we have nothing, your Honor, for the defendants.

[fol. 1149] Mr. Day: I wanted to cite a few tariff references. I haven't them here but I expect to have th m here in a very short while.

Mr. Smith: You will have them here this morning?

Mr. Day: I will have them here this morning, yes.

Exam. Diamondson: Do you have anything further, Mr. Rynder?

Mr. Rynder: Yes, when it is my turn.

Exam. Diamondson: Proceed.

Mr. Rynder: Mr. Examiner, I would like to offer in evidence copy of a bulletin which is called, "Miscellaneous Publication No. 222, United States Department of Agriculture, Washington, D. C. March 1935", entitled "The Direct Marketing of Hogs, prepared by the Bureau of Agricultural Economics." The original is certified in the office of the Secretary of Agriculture and I offer it at this time without comment other than that I believe it to be perhaps the most authoritative and exhaustive study of that subject that has been published by any government agency. We believe it is all relevant and material on that subject insofar as it may be in this case.

Mr. Belnap: Mr. Examiner, might I inquire as to what relevant to the issue in this case the exhibit is offered as tending to prove?

Mr. Rynder: We believe that all of the document is relevant and material in this case and upon brief we shall [illegible] to show the parts to which we particularly refer, but to [fol. 1150] answer your question as definitely as I may, the summary statements in the front are those upon which we principally rely, but they cannot well be separated from the details in the rest of the report which support what is said in the summaries.

Mr. Belnap: Mr. Examiner, I inquired as a predicate to an objection on the ground of relevancy first and I am still without an answer as to what, in the mind of counsel, that document tends to prove with respect to a fact which is relevant to the issues in this case.

Mr. Rynder: Well, it covers very completely marketing costs by both systems, the service rendered at public stock yards and service rendered at other places and I think in one way or another it touches practically every phase of the problems that were presented by Mr. Belnap's witnesses.

Mr. Belnap: May I have that read, please?

(Statement read.)

Exam. Diamondson: I notice that this was issued in 1935, Mr. Rynder. Is that the latest publication?

Mr. Rynder: That is the latest publication.

Mr. Belnap: Mr. Examiner, I have two grounds for objection. One of them is the matter of relevancy. I do not understand that there is in issue here the question of which method of marketing livestock is the best method, or the preferable method, or the cheapest method. The issue here relates to matters of public interest, the reason-[fol. 1151] ableness of rates and practices. Nothing Mr. Rynder has said as to the document he has tendered indicates that there is any fact in that document which is relevant to that issue.

Now, a second ground for objection, of course, is the matter of the time of the study. I have seen the study. It relates to a period a good many years ago. The title shows the basic years for which certain statistics are compiled. They certainly do not relate to the present time. On the grounds of antiquity, if for no other reason, the Commission could not possibly take from that document any fact which would be helpful to it in the determination of the issues which are presented relating to conditions in 1948.

I see no reason to clutter the record with a document such as that, which goes so far afield from the issues which the Commission is here called upon to decide.

Mr. Smith: I would like to ask this about it, if I may.

I assume, from the fact that Mr. Rynder has offered it, that somebody in the Bureau of Agricultural Economics back 12 years ago, 13 years ago, had some kind words to say for direct buying and direct marketing of hogs and it relates, apparently, only to hogs; but I would like to inquire, Mr. Rynder, inasmuch as it was written 13 years ago, had this tendency toward year after year increase in direct buying progressed to the point as early as 1935 that it offered some threat to the continuance of the terminal [fol. 1152] markets and the prices made at those markets and does this brochure discuss that possible threat?

Mr. Rynder: I can't undertake to say anything about that. I don't think there is anything in this document which indicates that direct buying was any threat to the continuance of terminal markets.

Mr. Examiner, this is the only official study on that subject which I know of. It was made in 1935 but this study is the latest study the Department has made upon the subject.

Exam. Diamondson: It is a public document.

Mr. Gladson: Mr. Examiner, may I add one further ground for objection? It is not only stale because of the age, but it is different from the ordinary public document in that it contains a great number of opinions by the authors of it concerning which we have no opportunity to cross examine.

Now, as far as the statistical data are concerned, I realize that government publications are ordinarily authentic sources for such information and are admissible, but here we have got a series of conclusions which obviously reflected the opinion of the gentleman who was then Secretary of Agriculture and we should not be called upon to try to answer in our briefs opinions where we have no opportunity to cross examine those who are responsible for the opinions.

Mr. Belnap: Mr. Examiner, if I might add to what I was saying, that is the third ground of my objection. [fol. 1153] I have an objection on the ground of relevancy, I have an objection on the ground of antiquity of the document, it does not relate to present-day conditions and my third ground is the same ground as has just been stated by counsel.

In other words, in addition to statistical information, many of which we do not question, there are conclusions, some of which are statistical conclusions, in which there is no predicate laid in the document itself for the conclusions. Others are conclusions on economic questions.

Now, all of those, if the document were to be admitted, I would suggest, your Honor, should be excluded. That is, if for any purpose you admit the document, it should be subject to the ruling that it is not admitted with respect to proof of anything stated therein as a conclusion, whether arrived at by statistical processes or by the opinions peculiar to the man who wrote the document.

Mr. Quasey: Mr. Examiner, I wish to join in the objections stated by Mr. Belnap and Mr. Gladson.

Mr. Smith: I haven't made any objection to this document on behalf of the railroads because I think that my views in respect to the matter go rather to its weight than its admissibility. That is without prejudice to the objections that have been made, of course. But I would like to make one observation and ask a question.

[fol. 1154] I don't understand that this purports to be an expression of view by the Department of Agriculture but is more like a publication by some department of the Commission, which does not represent the views of the Commission, and I assume in view of the appearance of the Department of Agriculture here as distinguished from this statement which is by one of the departments, and that appearance was apparently adverse to the complaint, I take it this is not offered as any present statement of the view of the Department of Agriculture.

Exam. Diamondson: Well, all of the comments of counsel have been noted and the exhibit will be received as exhibit No. 55 for such consideration as the Commission may deem proper in the premises. Of course, it is understood that I am not passing upon the weight that is to be attached to this exhibit.

(Exhibit No. 55, Attorney Rynder, received in evidence.)

FRANK E. KNUTZEN was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name, residence and occupation.

A. Frank E. Knutzen, Hinsdale, Illinois; in charge of hog buying, Swift & Company.

Q. How long have you occupied that position?

A. Approximately 25 years.

[fol. 1155] Q. Prior to that time what was your business experience?

A. For twelve years prior to that I worked in other departments of Swift & Company.

Q. Are you familiar with the practices followed and the growth of the so-called direct selling of hogs as well as with the sales and purchases on the large public livestock markets?

A. I am.

Q. Do the operations under your immediate control have to do with purchases and sales on the public markets as well as the so-called direct selling?

A. Yes, they do.

Q. Did the origin or the direct marketing of hogs precede your own business experience with Swift & Company?

A. Yes, they did.

Q. Have you any idea by how far or over what period?

A. It would be a good many years before that, so I don't know just when.

Q. Was there a later period within your experience during which there was a large increase in this method of marketing hogs?

A. Yes, based upon my own knowledge and also upon statistics published by the Department of Agriculture and which are a part of the document entitled, "The Direct Marketing of Hogs", Miscellaneous Publication No. 222, exhibit 55, published by the Bureau of Agricultural Economics, U. S. Department of Agriculture in March 1935. [fol. 1156] The great initial growth in this method of marketing took place between 1925 and 1929. These figures published by the Department of Agriculture show

that the direct marketing of hogs amounted to 24 per cent of the total in 1925 and that this percentage had increased to 40.2 per cent for 1929.

Mr. Belnap: Might I inquire about those figures? Are those related to the Chicago Market?

Mr. Rynder: I think those are total for the U. S. A.

The Witness: Those are total for the U. S. A.

Mr. Quasey: Under federal slaughter.

The Witness: Under federal slaughter, yes, sir.

By Mr. Rynder:

Q. Are you acquainted with some of the major causes which lead to this increase in the direct marketing of hogs during the 1920's?

A. I think so. In my opinion some of the principal reasons are found in the transportation developments, especially of the motor truck, in comparative labor costs among packers in different areas, the difference between direct and public market channels with respect to the costs of marketing, including shrinkage, commission charges, yardage fees and other marketing costs and in producer preferences, which play a part in the choice of marketing.

So far as Swift & Company is concerned and especially with regard to its operations at Chicago, it found it is in a situation similar to that of other packers at such [fol. 1157] terminal markets, which was, in substance, that hog receipts at the terminal markets had substantially decreased during the early 1920's and the relative amount of slaughter carried on at the interior packing plants, especially in Iowa and at points nearby, had substantially increased. If Swift & Company was to maintain its relative position in the packing industry, and by that I mean to buy enough hogs to run its plants upon a profitable basis, to supply its normal amount of product to its customers, and so forth, it was under the necessity of going into the interior and proceeding with the purchase of hogs by the same methods that were being followed by the producers and the interior packing plants.

Most of the interior packing plants were located at points which were not public livestock market points.

For the most part, therefore, they purchased their hog supply, so far as it was available, from the surrounding country. Very frequently this involved comparatively short hauls by motor truck. If the producer located in interior Iowa consigned his hogs to the public market of Chicago, he had to incur the risk of loss or damage in railroad transportation to Chicago, take the risk of what the market might be a day or two later than the day of shipment and after the hogs had arrived in Chicago he necessarily incurred the public market charges, consisting principally of charges for yardage, feeding and the [fol. 1158] commission merchant's commission for selling.

On the other hand, if he marketed his hogs at a nearby interior packing plant, the transportation was frequently performed by himself and consumed only a few hours. The price was generally quoted to him even before he shipped the hogs from his farm so that he had no uncertainty as to the price situation. He did not incur the transportation risks as mentioned, nor the various substantial charges at the terminal market.

There was perhaps another point I might mention that the producer considered as advantageous. After his hogs had been shipped to a terminal market such as Chicago, they had to be sold normally on the day on which they reached the market; otherwise, the producer would incur large additional charges for feeding and additional shrinkage. On the other hand, so long as the hogs were on his own farm he was not required to sell on any particular day unless he desired to do so and if he thought the market might be a little more favorable a few days later, he could hold the hogs a few days and market them according to his best judgment.

In addition to the fact I have mentioned, it will also be recalled that during the '20's the dissemination of information to the hog producers made great strides. For many years at earlier periods the producer had had to depend upon market papers published at terminal markets for his information as to his prospective hog prices, [fol. 1159] but with the almost universal use of radios all of this information was made available to the ordinary producers two or three times daily or oftener.

Authoritative sources, such as the Department of Agriculture, broadcast several times a day information as to the various prices of various grades of hogs on the market. Similar information was sent out over the radio by livestock exchanges at the principal livestock market points and I understand that local packing houses often put the same information on the radio every day within their own area. Thus, the producer was given up-to-the-minute information as to the market situation.

All of these factors brought about a situation where the producer was enabled to market his hogs at the point most convenient or nearest to him at the lowest possible cost to the producer and with complete and up-to-the-minute information as to market conditions. The fact is that the large increase in the proportion of hogs marketed would indicate that this method of marketing had a strong appeal to a substantial percentage of the producers.

By Mr. Ryndér:

Q. This situation having come about, what alternative faced your company if it was to maintain its relative position at points like Chicago and in its selling markets?

A: It seems to me that in order to maintain an adequate operation of a plant at Chicago or similarly situated it [fol. 1160] was necessary for Swift & Company to buy hogs direct in the territory of the interior Iowa packers for shipment to the public market plants. This course was followed by us extensively during that period and it has been necessary to continue that practice up to the present time.

Another alternative suggested by the Department of Agriculture in its report was that the public market packer could acquire or build plants at interior points in the northwestern corn belt. Swift followed this plan to a certain extent and we now have packing plants in that general territory at Des Moines, Marshalltown, Perry in Iowa; Winona, Minnesota, and Watertown, South Dakota.

However, the acquisition or construction of plants in the northwestern corn belt would not meet the problem existing at a point such as Chicago. At that point Swift & Company, as well as other packers, had in earlier years

made tremendous investments in plant and equipment. If that large investment were to be profitably operated, it could only be done by obtaining an adequate supply of hogs for processing at Chicago. This we had hoped to do by competing in the corn belt with the companies who were therein engaged in operating packing plants or in the direct purchase of hogs.

I should add, however, that we were not entirely successful in this effort. In the late '20's and early '30's Swift & Company had three pork plants at Chicago. [fol. 1161] Because of factors mentioned we were forced to abandon two of these plants, so that we now have only one small unit left at Chicago. Even with this one small unit it is necessary to buy some hogs in the country to operate on a small basis.

Q. Based upon your experience, have you any opinion as to whether the direct marketing of hogs has been detrimental to the interests of the livestock producer?

A. I have such an opinion that that method of marketing has increased over a substantial period of years during the time when all available information has been immediately in the hands of the producers through many sources. I cannot believe that producers would have continued this method of marketing and increased it substantially if it had been found to be detrimental to their interest.

It should be remembered that no producer of hogs is under compulsion to follow either method of marketing. At any time that he has hogs ready for market no one but himself controls the decision as to whether he will send them to a terminal public stock yards or will market them through the agencies available in his own immediate territory.

There is another factor, too, that influences my own opinion. Many of these producers have been marketing their hogs through the direct market channels over a period of years and frequently to the same company. For example, there are many producers who have been mar- [fol. 1162] keting their hogs direct to Swift & Company over a substantial period of years. It is not likely that this course would have been followed by the producer if he had been in any way misled, injured, or been treated

other than fairly. It might be possible to take advantage of a producer once, but it is not likely that it could be repeated.

Q. Have you any opinion as to whether the prices paid for hogs upon the public stock yards markets has been influenced adversely by the direct marketing of the hogs at other points?

A. In my opinion the method of marketing has nothing to do with the price that is or can be paid for hogs. The price that can be paid for hogs at any particular time is governed wholly by the price which the packer is able to obtain for the edible products and by-products of the animal. Having estimated that available price for the by-products as nearly as possible, the processing packer must, of course, try to obtain his hogs at a price that will enable him to perform his function, cover his own necessary costs and leave at least a slight margin of profit.

The total supply upon products is, of course, the possible outturn of all the hogs available in the United States at a given time. In my opinion it could not make any substantial difference, therefore, in the price paid for hogs at any given time if all the terminal markets and all hogs were marketed directly or if all direct marketing was [fol. 1063] abolished and all hogs were marketed through the terminal markets.

A very interesting statement upon this point was made by the Secretary of Agriculture and appears in Senate Document No. 184——

Mr. Smith: Whom do you refer to there?

The Witness: Sir?

Mr. Smith: Whom do you refer to there, the former Secretary? There have been so many.

The Witness: I don't know which one. I would have to look that up. I don't remember the one.

Mr. Rynder: He has the date of the document.

The Witness: I have the date of the document. I don't know just which one it is.

A very interesting statement upon this point was made by the Secretary of Agriculture and appears in Senate Document No. 184, Seventy-second Congress, Second Session (Washington, Government Printing Office, 1933), pp.

17-18, entitled "Economic Situation of Hog Producers". There is there quoted a letter from the Secretary of Agriculture in which certain statements are made which I would like to adopt as my own and are as follows:

"The immediate demand for hogs is found in the hog markets, where the buyers of hogs and the supply of hogs meet. This demand is not for something to be consumed by these buyers; it is for a raw material that goes by [fol. 1164] different stages to the actual consumer, who is the buyer of meats and processed products. The ultimate demand then is the demand of consumers for the products of hog slaughter. . . . The actual meeting place of consumer demand and the bulk of supply, which is meat, is at the retail counter or at hotel and restaurant tables. The effective or organized meeting place is in the wholesale meat markets of all kinds where sales are made to retailers and to buyers for many hotels and restaurants. Here the retail buyers, who represent consumer demand, and the wholesale salesmen, who represent hog supplies, do the bargaining that determines directly the price of hogs for slaughter and indirectly the price for all hogs."

Q. You have been referring somewhat to the conditions that brought about direct marketing of hogs as well as marketing upon the public markets, particularly in the '30's. Has that method of marketing continued to increase in volume through later years?

A. Yes, the latest authoritative publication that I have available is "Livestock Market News, Statistics and Related Data—1946, Compiled by the Livestock Branch September, 1947, CS 24 U. S. Department of Agriculture Production and Marketing Administration, Washington, D. C." On page 49 this document indicates that the percentage of hogs obtained from sources other than the public markets was 40.1 per cent in 1930 and that this percentage had [fol. 1165] increased to 64.4 per cent in 1946.

Mr. Belnap: That again is for the entire United States?

The Witness: Yes, sir.

Mr. Ryndér: I may say that I have the document here to which Mr. Knutzen has referred. Wanting to use only that one figure I have hesitated to reproduce all of this statistical data, but anyone can examine this if they wish.

Mr. Belnap: May I see it?
Mr. Smith: Have you concluded, Mr. Rynder?
Mr. Rynder: Yes.
Mr. Smith: Do you want to examine about that?
Mr. Belnap: No.
Exam. Diamondson: You may cross examine.

Cross-examination.

By Mr. Smith:

Q. We had another gentleman here earlier in the hearing who had some official relation to the hog purchases at Swift. Was it Mr. McCaw?

A. Yes, sir.

Q. Is he an assistant of yours or are you an assistant of his?

A. No.

Q. Or what is the relationship?

A. I am his assistant. I follow hogs, where he has charge of the entire provision department, which m-ans hog buying and processing and selling of pork.

[fol. 1166] Q. Now, you gave a figure or figures to show the increase of hog purchases by direct buying back in the '20's from 24 per cent in 1925 to 40 per cent in 1929, I think.

A. I believe that is right, yes, sir.

Q. And the comparable figure recently has been 64 per cent, has it? Is that it?

A. Yes, sir. In 1946 it was, yes, sir.

Q. So that increase has continued throughout the years, has it?

A. Yes, sir.

Q. And what percentage of the hogs which you kill at Chicago do you buy on the Chicago market as compared with the percentage that you buy directly?

A. The hogs that we buy direct in the country that are killed at Chicago constitute about one-third of our total.

Q. That is, here you buy on the market at Chicago about 64 per cent?

A. No.

Q. I am sorry.

A. One-third are bought in the country direct. There is about a half of our hogs are bought direct at the Omaha Packing Company, which is another method of buying. The balance are all on the Chicago market.

Q. Well, now the fellow that ships his hogs to the Omaha Packing Company, he is pretty much committed to sell it [fol. 1167] to Swift, isn't he?

A. That is right. It is a direct purchase.

Q. Will you be good enough to tell me just what percentage of the hogs that you kill at Chicago are purchased direct and what percentage are purchased throughout the corn belt, at the Omaha and Chicago yards?

A. It will run about 65 per cent that are purchased direct, 35 per cent that are purchased on the terminal market. We would like to buy more on the terminal market but they have not been available because of factors mentioned here.

Q. Have you thought of the possibility of permitting more to become available by buying less in the country?

A. If we bought less in the country someone else would buy them. They wouldn't come to the market.

Q. That is hypothesis on your part, I take it.

A. We have had experience in many parts of the country where we formerly bought direct and we have discontinued the direct buying and we found someone else bought them direct. They didn't come to the markets.

Q. I suppose it is obvious if the packers quit buying direct in the country the hogs which they are now buying directly would be available on the competitive markets. That is obvious, isn't it?

A. If they all discontinued buying, if they were forced to discontinue buying direct it would be obvious, but it would be inconceivable that packers with plants in Iowa, [fol. 1168] including ourselves, would do that.

Q. Now, you say in justification for direct buying or direct selling from the point of view of the shipper that he always has the advantage of knowing before he sells the competitive price which has been established at the terminal markets. I think you mentioned that, did you not?

A. Yes, sir.

Q. Do you regard that as information which is of value to him in dealing with your buyers in the country?

A. When we buy in the country, depending on the location, the Chicago market may not have a thing to do with the price that is paid in that area. Each market in the country is a competitive market of its own.

Q. I wonder if you couldn't answer that question a little more directly, Mr. Witness. In your prepared statement, in order to show the information which was available to the country seller on which he could fairly act in making his direct purchases, you refer to the fact that a number of agencies broadcast the price at the terminal market and my question is simply this:

We may understand, may we not, from your itemization of that fact that you were pointing out that it is of value to him in protecting himself in selling to you in the country?

A. Yes, sir.

[fol. 1169] Q. Now, may we understand that as a corollary that the seller in the country would be at a disadvantage if he did not have the benefit of that advantage?

A. I would say not because we get back to the same argument that he sells competitively in the area in which he is located.

Q. So that although you mentioned that as one of his advantages, you do not attach any value from the standpoint of the producer to the maintenance of a competitive price at these terminal markets at all, do you? Isn't that a fair statement?

A. Depending on the location of the producers.

Q. Well, let us take producers in the West. We have been talking a good deal about those.

A. In Iowa, all right.

Q. Do you want to confine it to Iowa?

A. Well, West is a large territory. I will confine it to any territory you say or any area.

Q. You mean by that that you will say as to any territory in the West that it doesn't make any difference to these producers whether the terminal competitive price

exists or whether it goes out of existence? Is that what you are saying now?

A. Well, you say "West". Now, that is a big territory. Now we are talking of Chicago.

Q. That is right. You said I could take any territory and I am taking the West.

A. That is taking half of the United States. O. K. That is a pretty big field and I think we should confine [fol. 1170] to a smaller area. We will take a producer in Iowa who has all of the Iowa markets at his command. They are a highly competitive market. They have no relation with the Chicago market or with other river markets, Missouri River markets. It is a competitive market of its own.

Q. I understand there are some interior packers in Iowa and that you would prefer to talk about Iowa, but will you be good enough to state, then, whether what you are saying in effect is that the Iowa hog producer does not need this competitive market price in order to protect himself but that hog producers in other parts of the West, other than the State of Iowa, do need it? Is that what you are saying, or what are you saying?

A. They have other competitive situations in other states. Take Nebraska: You have to take into consideration the purchases in Nebraska for West Coast and for East Coast and for interior packers in that state.

Q. All right. Then are you saying that the competitive prices are not of value, the terminal market competitive prices are not of value to the Western producers? Is that what you wanted to say? I thought first you wanted to talk about Iowa but now you say the same thing is true in Nebraska, so that shall we put that down as being your opinion for the West as a whole?

[fol. 1171] A. I didn't understand that statement there or your question. Would you repeat it, please?

Q. Is it your testimony now that the terminal price, of which the seller is advised before he sells to you and to other packers, to which you referred in your prepared statement as to his source of information, that that is not of any substantial value to him in selling hogs on the farm?

A. It must be of some value to producers because there are a certain number of producers who are selling their hogs through the terminal markets.

Q. I am talking about the value of that information to the man that sells direct. Don't misunderstand me.

A. Sells direct?

Q. Yes.

A. Well, I can't answer for the man who sells direct.

Q. I thought you were intending to say these sources of information he used only for protecting himself?

A. I said that they are available to him and I said that is the reason direct marketing has grown to such an extent. In other words, he has more information at his command today than he ever has had in the past and as he got more information that picture on marketing has changed.

Q. Direct buying, you say now, has increased because the man in the country that sells directly does have the advantage of knowing the competitive price in the ter-
[fol. 1172] minal market, is that it?

A. No, sir, I didn't say that.

Q. That is not it?

A. No, sir, that is not.

Q. I see. Again will you please tell us?

A. The growth of direct marketing,—these are some of the factors for growth of direct marketing, is really caused by the economics of the packing houses located elsewhere than at the terminal markets. They have a definite trading advantage and other advantage so that they can buy more hogs in the country and slaughter them at the source of supply and thereby create a strong local competitive condition.

Q. Let us be sure we understand each other. The most direct reply that I am conscious of that you have given to my question is that whether or not knowledge of the competitive terminal market price is of any advantage to the direct buyer is something that the direct buyer would have to answer for himself and you don't know. Is that where we come to?

A. In some cases, yes, that is right.

Q. Well, generally is that your answer here to that question?

A. Generally, yes.

Q. Well, if the terminal market price should be thought by any of these producers, as some of them indicated yesterday, to be of any advantage to them, that advantage is one that seems to be in jeopardy, does it not, at the present moment on the basis of the very market increase [fol. 1073] in your direct buying and that of other packers?

A. Yes, you are right.

Q. Let us take some hogs originating in Kansas that, as the thing works out, would ultimately be sold as meat in the East. In the movement of those hogs to Chicago certain shrinkage would be involved, would it not?

A. Well, if they came that route, yes, there would.

Q. Certain hazards of transportation, such as possible injury?

A. Yes, right.

Q. And the market might change in the meantime while they were being shipped here?

A. That is right.

Q. Markets go both up and down, don't they?

A. That is right.

Q. Now, if you buy directly in the country from the farmer on his farm do you assume those risks arising out of the vicissitudes of transportation?

A. Yes, we do.

Q. Do you reflect those in your price in the country?

A. They naturally have to be taken into account in the price.

Q. Yes. How have you convinced these producers that by making them a firm price on the farm they relieve themselves of all these incidents of transportation that are involved in getting the meat to the consumer?

[fol. 1174] A. We don't go out of our way to try to convince them of it. We bid them a price and from there on they know what their marketing costs are, what the shrinks are and other risks.

Q. Some of them seem to have the impression, do they not, that this direct market buying and selling is a formula by which they transfer all those risks to you, don't they?

A. That I don't know.

Q. Well, if that is so it would seem rather funny to you, wouldn't it?

A. Yes.

Q. Knowing what you know about it?

A. That is right.

Mr. Smith: That is all.

Exam. Diamondson: Any further questions?

Mr. Belnap: Yes, I have a few questions.

By Mr. Belnap:

Q. In the course of your direct you said it was necessary for you to buy some hogs,—I don't know whether that is the phrase you used,—some hogs in the country in order to operate?

A. Yes.

Q. Now, do I understand that in response to questions from Mr. Smith you made a statement that that sum constituted two-thirds of your actual purchases at Chicago?

A. That is right.

Q. I can't quite reconcile your percentage or fractions. I thought you said that one-half of the hogs that you [fol. 1175] bought for your Chicago plant were shipped in to the Omaha Packing Company location and bought at that place.

A. That is right.

Q. Then I thought you said that one-third of the hogs slaughtered by you in Chicago were bought out in the country and shipped by Swift & Company into the Omaha Packing Company plant location.

A. That is right.

Mr. Belnap: Well, I wonder if Mr. Rynder would give me his mathematics on that. Doesn't that make about six——

The Witness: I mentioned an approximate figure.

Mr. Rynder: I would rather that Mr. Knutzen stated it.

Mr. Belnap: I have got to allow for that third.

Q. By taking a third and then a half of it, how much of it have you left?

A. To be exact about 37 per cent. I think that is right, after using a pencil. A half and a third, 63.

Q. I am not very good on fractions, but it looks like a sixth to me.

A. All right.

Q. Or 16 plus per cent.

A. O. K.

Q. Does that agree now with your knowledge of the matter after you have reviewed it?

[fol. 1176] A. That is right, yes.

Q. And so we may know what this amounts to in numbers, what was your slaughter in 1947 in Chicago in round figures?

A. In round figures a half a million hogs about and this is in comparison too, with formerly when we killed around two million hogs at the Chicago plant prior to the growth of direct selling, and when most of the hogs stopped coming to Chicago.

Q. So there were half a million hogs that you slaughtered and you bought one-sixth on the Chicago market?

A. That is right.

Q. I think that is about 85,000 head.

A. That is about right, approximately.

Q. Yes, out of total receipts of salable hogs at Chicago of 1,900,000 plus?

A. That is right.

Q. And it is because that 1,900,000 plus did not provide you with an adequate supply that you found it necessary to buy hogs by other means?

A. The hogs on the Chicago market have been sold every day, with a few exceptions, and we have been competit-ve every day up to a point where we thought the hogs,—up to a point of the actual value of the hogs based on the market and evidently others felt they could pay more money or Eastern packers paid more money and for [fol. 1177] that reason hogs have been cleaned out every day.

Q. And you could buy them for less in the country?

A. No, sir.

Q. Is that right?

A. No, sir.

Q. You would pay more for them in the country rather than pay Chicago prices?

A. Not Chicago market, no, sir. We buy hogs in the country competitive to the markets in the country and I am sorry to say that it cost us more delivered at Chicago than hogs on the Chicago market, even though we continue to bid on them at Chicago.

Q. And so you wouldn't pay the higher prices that other packers are willing to pay in order to get your hogs in Chicago, is that it?

A. We have bid up and up and our competitors still take hogs away from us. Another thing, many of the commission firms on the Chicago market don't even give us an opportunity to buy some of their hogs or even look at them. They are sold long before we ever look at them. They are sold to speculators and to Eastern packers and to other packers and what have you and we have no chance to look at them?

Q. Is that because you are slow getting down?

A. No.

Q. You are there but they refuse to sell you?

[fol. 1178] A. Absolutely.

Q. Will you give us the names of the commission firms who indulge in that practice, please?

A. I don't have the names of the commission firms in my mind.

Q. Can you give us even one who declined to sell to Swift?

A. I can't tell that, no, but the Exchange knows very well who they.

Q. But you don't know?

A. I am not in the yards every day, but my buyers in the yards do know.

Q. And your buyers don't report these names to you?

A. They tell us in a general way and we don't bother taking the names of the commission firms.

Q. The percentage of the salable hogs which Swift purchased, let us say in 1947, has been proportionate to their purchases of salable hogs, let us say in the pre-war period, 1941 and before, or are you purchasing less proportionately today on the public market?

A. On the Chicago public market?

Q. Yes.

A. It has run less, not through any choice of ours.

Q. But because somebody else would pay better prices than you were willing to pay?

A. Because the commission man is willing to sell to somebody else even for the same money at times.

[fol. 1179] Q. But you will not give us the names of anyone who indulged in that practice?

A. No.

Mr. Belnap: Mr. Examiner, we come peculiarly in an Interstate Commerce Commission proceeding to a dispute of facts. We have had representatives of the Commission firms who emphasize they maintain a free, open market, offer them at the same price to everybody. The witness now comes and says that is an untruth. If the witness wants to stand on his statement, I must have an opportunity to rebut it and I ask you to require him to secure and give me the names.

Mr. Smith: That is the names of any commission firm that sold to a particular individual where Swift had bid a higher price, is that what you mean?

Mr. Belnap: Where Swift had bid a higher price or where Swift was willing to offer what the man was willing to sell them for and he declined to sell to Swift.

Mr. Rynder: That is not what he said.

The Witness: That is not what I said. I said there are many times they won't even offer us hogs or they won't show us hogs or they will sell them to somebody else at the same bid. I didn't say they were higher.

Mr. Belnap: Well, the equivalent of that. I must have the names.

Mr. Rynder: I don't think we have to enter into a prosecution here under the Packer's and Stock Yards [fol. 1180] Act.

Exam. Diamondson: I think the witness can stand on his statement and not to furnish the names if he wants to stand on it.

The Witness: I do.

Exam. Diamondson: Of course, that would be con-

sidered by the Commission in weighing the evidence that he is giving here.

Mr. Rynder: Well, there are very good reasons for not giving the names of that kind unless you should want to really start a prosecution. The commission man who does that, and of whom we have knowledge that does it, I think would have his registration suspended for doing it.

Mr. Belnap: My clients are willing to take that chance.

Mr. Rynder: And I am not willing to enter into a thing of that kind, although we may in a general way know it to be a fact.

Mr. Belnap: Well, the fact is disputed, Mr. Examiner, on this record.

Exam. Diamondson: The witness can stand on his answer if he so desires. I won't require him to furnish it, Mr. Belnap, if he doesn't want to.

By Mr. Belnap:

Q. In respect to these instances where you claim that Swift has been discriminated against in the selling of hogs, have you filed any complaints with the Secretary of [fol. 1181] Agriculture?

A. No, we haven't.

Q. Have you reported the matter to the Chicago Livestock Exchange so that they may deal with him under their rules and regulations?

A. Not in any individual case. We have in a general way several years ago.

Q. What do you mean "Several years"? Fifteen, twenty, ten or what?

A. Probably five or six years ago.

Q. And five or six years ago you bought, I understand, proportionate to the sale of livestock more than you do now, more hogs than you do today on the Chicago market?

A. I wouldn't say five or six years ago. It would run about the same as it would be now.

Q. How far back was it when you bought more hogs proportionate to the total salable than you buy today?

A. Way back in the '20's.

Q. But you would think in, let us say, the five years just prior to the war, 1940 and prior thereto, you bought

proportionately to the total salable hogs on the Chicago public market as much as you do today?

A. As much as we could, yes.

Q. As much as you do today. Today you buy 85,000 out of 1,900,000.

[fol. 1182] A. In some years it averages more than that and in some years less.

Q. What was the situation? Let us take it over a period and forget the peak of any particular year. Let us take the five years 1941 and prior thereto, what was the situation?

A. From the statistics that we have we could show that the receipts at the Chicago market decreased. For some reason or another Swift & Company's proportion decreased also

Q. So you have decreased continuously over this period?

A. Over this period of time, yes, sir.

Q. Insofar as your proportionate purchases of salable hogs.

A. For the reason I have mentioned before, that we haven't always had the opportunity to get all the hogs we wanted on the Chicago market.

Mr. Belnap: That is all the questions I have.

Exam. Diamondson: Any further questions? Do you have any further questions, Mr. Rynder?

Redirect examination.

By Mr. Rynder:

Q. Mr. Knutzen, some questions were asked you as to the value to the producer of these radio reports of market conditions. I would like to ask you whether it is your view that the price that can be paid for hogs is fixed by any public market or any private market or both of them put together?

A. Supply and demand at any given spot determines the price. It doesn't make any difference whether it is [fol. 1183] Chicago,—in my opinion, whether it is Chicago, Kansas City or Iowa or any place else. It is the supply and demand at any given point.

Q. And the demand depends upon factors such as freight

rates as to how much the buying public is willing to pay at a given time?

A. That is right.

Mr. Ryndер: That is all.

Exam. Diamondson: You are excused.

GARLAND RUSSELL was sworn and testified as follows:

Direct Examination.

Q. Please state your name.

A. Garland Russell.

Q. Your residence?

A. LaGrange, Illinois.

Q. Your occupation?

A. Assistant manager of the beef, lamb and veal department for Swift & Company.

Q. How long have you occupied that position?

A. About twelve or fourteen years.

Q. Prior to that time what was your position?

A. I have worked in various ends of the beef, lamb and veal department for a total of twenty-three years.

Q. In that position have you familiarized yourself with the purchase of cattle, calves, sheep and lambs for Swift [fol. 1184] & Company?

A. I have.

Q. Have you from time to time visited practically all of the public markets from which those species of livestock are purchased by Swift?

A. Yes, I have.

Q. Are you familiar with the methods and practices followed by livestock producers in their marketing of cattle, calves, sheep and lambs as well as the methods followed by Swift & Company in purchasing those species of livestock?

A. Yes.

Q. Are these species of livestock purchased by Swift & Company to a substantial extent on the public livestock market?

A. Yes, they are.

Q. Will you please name the principal markets at which such species of livestock are purchased by Swift & Company?

A. Chicago, Illinois; National Stock Yards; Kansas City, Missouri; St. Joe, Missouri; Sioux City, Iowa; Sioux Falls, South Dakota; Fort Worth, Texas; Denver, Colorado; Ogden, Utah; Billings, Montana; and a number of others.

Q. Of these market purchases by Swift & Company are a certain portion transported to Chicago for processing at its Chicago plant?

A. Yes.

[fol. 1185] Q. If such a shipment were consigned to the Union Stock Yards at Chicago for unloading and delivery, would it thereby incur the public market charges at two public markets?

A. At the originating market the shipment would be assessed with all charges normally assessed at a public stock yards such as yardage, commission, feed, and so forth. At Chicago we would be assessed the yardage charges plus any feed that might be fed.

Q. Have you been in the room and heard testimony of Mr. Frank E. Knutzen relating to the direct marketing of hogs?

A. I have.

Q. Has a similar marketing practice grown up with respect to the sale and purchase of cattle, calves, sheep and lambs?

A. Yes.

Q. What is your information as to the origin and growth of this direct marketing of the species of livestock you have mentioned?

A. The direct selling or marketing of cattle, calves, sheep and lambs was practiced in a very small way in the early period of direct marketing or selling of hogs. The direct marketing or selling of these species of livestock has not increased as rapidly and the increase has been more general. Today there is a substantial proportion of the cattle, calves, sheep and lambs so marketed, but the proportion is not so great as that of hogs, particularly in the case of cattle.

[fol. 1186] Q. Have you any publications of the Department of Agriculture which show the percentages of these species of livestock marketed directly over a period of years?

A. Yes, we do. The authority is given in a publication by the U. S. Department of Agriculture entitled, "Livestock Meates and Wool Market Statistics and Related Data, Compiled by the Livestock and Meat Branch under the direction of Edna M. Jordan, Assistant Agricultural Statistician".

This same publication now is called the "Livestock Market News, Statistics and Related Data, Compiled by the Livestock Branch, U. S. Department of Agriculture, Production and Marketing Administration." We will review each species individually.

According to this publication, in 1923 10.4 per cent of the federally inspected slaughter of cattle was obtained from sources other than public stock yards. This percentage, with slight variations, has steadily increased to 25.5 per cent in 1946, with little change from 1940 when it reached 24.9 per cent. On calves, in 1923 13.98 per cent of the federally inspected slaughtered was obtained from sources other than public stock yards. This has increased to 40.7 per cent in 1946, there having been only slight increase since 1940, when 39.1 per cent of the slaughter was obtained from sources other than public stock yards. On sheep and lambs, in 1923 14.63 per cent of the federally inspected slaughter was obtained from sources other than [fol. 1187] public stock yards. This percentage had increased to 41.8 per cent in 1946, with only a slight increase from 1941 to 1946, as the percentage in 1941 was 39.2 per cent.

Q. Have you read the document entitled, "The Direct Marketing of Hogs", issued by the U. S. Department of Agriculture, which has been offered in evidence as exhibit 55?

A. I have.

Q. Have you also heard the testimony of Mr. Knutzen upon that subject?

A. Yes.

Q. Will you please state in your own way what condi-

tions in your opinion lead to the initiation and subsequent increase in the direct marketing of cattle, calves, sheep and lambs?

A. The same general economic principles that brought about the direct selling of hogs worked in bringing about the direct selling of cattle, calves, sheep and lambs. There has, necessarily, been some variation in detail, but the same economic principles which induced the producers to sell their hogs direct influenced them in determining the method of selling other species of livestock.

To be more specific, as previously mentioned the growth of the direct selling of hogs was much faster than that of cattle, calves, sheep and lambs. It was only natural to expect the producer, if he found the direct selling of hogs to be satisfactory to him, to want to sell his other livestock in [fol. 1188], the same manner. As I understand it, many of the interior Iowa and Minnesota packing companies were originally pork packing companies. We would naturally assume that with the growth of their pork business they would want to get into other phases of the meat business and this is what happened. It is natural to assume that with the producer probably wanting to sell his other livestock in the same manner he sold his hogs and the interior packer desiring to expand his operations to other meat that the direct selling of other livestock would be an expected result.

With the increase of purchases of cattle, calves, sheep and lambs by the interior packers, the supply for the packers at the central markets was reduced and it became necessary for the central market packer to augment his purchases at the central markets to go to the place where the sellers would sell their livestock.

Q. Can you name several of the interior packing plants in the northwestern corn belt which, according to your information, process not only hogs but also the other species of livestock you have mentioned?

A. Yes.

J. H. Morrell & Company, Ottumwa, Iowa and Sioux Falls, South Dakota.

Rath Packing Company, Waterloo, Iowa.

George A. Hormel & Company, Austin, Minnesota.

[fol. 1189] Kingan & Company, Estherville, Iowa.

Tobin Packing Company, Fort Dodge, Iowa.

Wilson & Company, Cedar Rapids, Iowa and Albert Lea, Minnesota.

Armour & Company, Mason City, Iowa and West Fargo, North Dakota.

Cudahy Packing Company, Newport, Minnesota.

Oscar Mayer & Company, Madison, Wisconsin.

Cudahy Brothers Company, Cudahy, Wisconsin.

Dubuque Packing Company, Dubuque, Iowa.

Swift & Company, Des Moines, Iowa and Winona, Minnesota.

These represent the larger ones and there are many other smaller ones.

Q. Mr. Russell, have you found that in certain instances certain people who were dealing on the market as livestock commission men sell certain of their livestock to you direct rather than putting it on the market?

A. Yes, we have a number of instances of that happening.

Mr. Smith: May I have that question and answer read, please?

(Question and answer read.)

Mr. Smith: I am not sure I understand that.

Mr. Rynder: In a minute or two I think it will be developed.

Mr. Smith: All right.

[fol. 1190] By Mr. Rynder:

Q. I have before me what appears to be a statement published by the National Livestock Producers Association, 139 North Clark Street, listing under its subsidiaries "Livestock Marketing Agencies", and the first one named is Chicago Producers Commission Association. You are familiar in a general way with that Association?

A. Yes.

Q. Mr. D. L. Swanson, their manager, is listed here and I believe testified the other day, did he not?

A. I was present during most, if not all, of his testimony.

Q. And also their president, Mr. Funk?

A. I was present during part of his testimony.

Q. Have there been instances in recent times when the Chicago Producers Commission Association have sold livestock direct to you for direct delivery to you?

A. Yes.

Q. Could you give one or two instances where you have been able to obtain car numbers, and so forth?

A. Yes. On December 24, 1946 the Chicago Producers Association,—the Chicago Producers Commission Association for the account of A. McPherson sold to us at the Omaha Packing Company a car of lambs. The car number was North Western 34645. On December 26, 1946 the Chicago Producers sold to the Omaha Packing Company two cars of lambs with a few ewes mixed in. The car numbers were North Western 34645 and 25735, 18227. There [fol. 1191] have also been other instances of the same. I do not have the other car numbers with me.

Q. But you have a recollection that there have been other transactions of that kind?

A. That is right.

Q. Now I find listed as a subsidiary of the National Livestock Producers Association also the Producers Livestock Marketing Association at Ogden, Utah. Have they made similar sales to you direct?

A. They have made a great number of sales direct to Swift and, we are told, to many other packers.

Q. Now, have you a memorandum of certain other sales?

A. Well, I can cite a few.

Q. Do you want to give a couple of theirs?

A. Yes, I can give a few of theirs.

Shipped from Craig, Colorado on October 10, 1947 one carload of lambs to the Omaha Packing Company, Chicago, in car number NKP 43625. Shipped from Hayden, Colorado on 10/8/47 1104 lambs. The car numbers: SG 36930; CB&Q 59182; UP 14974; RG 37566; UP 41453; And then at the Omaha Packing Company from John Clay——

Q. Now, John Clay is another commission man in Chicago?

A. That is right. John Clay & Company.

Q. One of their witnesses testified at this hearing.

A. I understand so, although I was not present when he testified. The date was May 10, 1947. The car num-
[fol. 1192] bers, all CB&Q, and there are twelve car numbers. Do you wish me to read all those car numbers?

Exam. Diamondson: It isn't necessary.

Mr. Rynder: Maybe you can give just the first one and others.

A. All right. 59045, and I have numerous other instances with car numbers if they want to take the time.

Q. You have them with you at the present moment?

A. I have a number with me and many more that I do not have.

Mr. Rynder: That is all of the direct.

Exam. Diamondson: You may cross examine.

Mr. Smith: I have no questions.

Cross-examination.

By Mr. Day:

Q. I believe you referred to Wisconsin or points in Wisconsin as in the northwestern corn belt.

A. I believe that I named two packing houses in Wisconsin, yes. I don't recall whether that was a direct reference to the corn belt or not.

Q. I think you referred to several points in what you called the northwestern corn belt.

A. Yes, I believe that is correct.

Q. Well, your understanding of what is included in the northwestern corn belt does not agree with the writer of Direct Marketing of Hogs, exhibit 55, does it.

[fol. 1193] A. I think that the term "northwest corn belt" perhaps is not—there is no such definition for that term. I think different people would probably give you a little different definition.

Q. Well, you do know that the author of this exhibit 55 defines each section of the corn belt, do you not?

A. Yes.

Q. Northwestern, southwestern?

A. That is right.

Q. Eastern?

A. Yes, I am aware of that.
Q. Yes.

Mr. Rynder: We will accept his definition of the particular spot he states it was.

Mr. Day: I understand the witness to say that each person might have a different understanding of what is included in the corn belt and its various subdivisions.

A. I don't know of any definition of the northwest corn belt that has been accepted as being absolute and authentic.

Q. What is your understanding of what is meant by the northwestern corn belt.

A. Perhaps it would have been better if I had stated in my answer that these were packing houses in nearby states which are tributary to the northwest corn belt and to the Chicago market.

[fol. 1194] Q. Will you state what you understand to be the northwestern corn belt?

A. I will attempt to do that. The northwest corn belt, in my understanding, would be South Dakota, Minnesota, Iowa, Nebraska, Wisconsin and northern Illinois.

Mr. Day: You disagree with exhibit 55 in two respects. That is all.

Exam. Diamondson: Any further questions? You are excused.

Mr. Rynder: I call Mr. Bruckner.

Mr. Day: I might say, Mr. Examiner, if anyone is interested in the definition of the corn belt as stated in exhibit 55, it is in the footnote at page 34.

A. L. Bruckner was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Will you please state your name?
A. A. L. Bruckner.
Q. Your residence?

A. 8108 Kimbark Avenue, Chicago.

Q. Your business or occupation?

A. Assistant Treasurer, Swift & Company.

Q. Are you as such assistant treasurer of Swift & Company, under the supervision of the Treasurer, Mr. William B. Traynor, the official custodian of all the securities of every kind held by or on behalf of Swift & Company, [fol. 1195] whether by the parent corporation, its subsidiaries or affiliates, or by an individual beneficially for Swift & Company?

A. As assistant treasurer of Swift & Company, subject to the direction and control of the treasurer, Mr. William B. Traynor, I have custody of the securities.

Q. As such assistant treasurer of Swift & Company do you have in your custody any of the securities of any of the three Chicago Stock Yards corporations, namely, the Union Stock Yards & Transit Company of Chicago, the Chicago Junction Railways and Union Stock Yards Company of New Jersey, or the Chicago Union Stock Yards of Maine?

A. I do not.

Q. Have you at any time since you have been assistant treasurer of Swift & Company had in your custody as such asssistant treasurer any of the securities of those corporations?

A. I have not.

Q. As assistant treasurer of Swift & Company do you have in your custody any of the securities of any public stock yards corporation?

A. I do not.

Mr. Rynder: That is all.

Mr. Smith: How long have you been assistant treasurer?

The Witness: About a little over three years.

Mr. Smith: That is all.

[fol. 1196] Exam. Diamondson: You are excused.

Mr. Rynder: I want to recall Mr. Tally for a minute.

G. F. TALLY recalled as a witness herein, having been previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Rynder:

Q. Mr. Tally, we were asked some questions yesterday as to when the unloading chutes at the new Swift location might or could be ready. Can you tell what the physical conditions are in connection with the side track that will serve those pens when they are erected?

A. At the present time the location is used by the General American Transportation Company and they have been served notice to vacate within a given period. The present plan is that they will be out of there by May and not later than June. They have a different location to which they are transferring their operations. When that transfer has been completed the track lay-out of Swift & Company's new location may be begun, after which they are prepared to erect unloading pens within a very short time. They will be equipped to accept direct delivery of livestock any time this year, and certainly within a reasonable time after a decision might be reached in this case.

Exam. Diamondson: Such pens could not be constructed until you had revised the track lay-out?

[fol. 1197] The Witness: Yes, sir, they would not be constructed until the General American removes their facilities from that location.

Exam. Diamondson: And you have to rearrange the trackage that is now on the property?

The Witness: They will be rearranged, yes, sir.

By Mr. Rynder:

Q. The construction of those pens, or the proposed construction of them, does it need to await the erection of the new packing plant?

A. No, sir.

Q. Once the ground is free I take it the pens can be erected in a very short time.

A. Yes, sir. I would say they could erect satisfactory pens for the receipt of livestock in a period of two or three weeks.

Q. Mr. Tally, in connection with your direct examination I believe you were asked whether exhibit 10, pages 9 to 12, inclusive, did not include certain intrastate shipments, is that right?

A. Yes, sir.

Q. Have you now determined how many intrastate shipments are included on pages 9 to 12 of exhibit 10?

A. There are 45 shipments from points in Illinois.

Mr. Rynder: That is all, I believe.

Cross-examination.

By Mr. Smith:

Q. Mr. Tally, how many yardmasters does Swift & Com- [fol. 1198] pany have that work in and around and about the Ashland Avenue yard in this industry?

A. We don't have what we call a yardmaster. We have employes in our operating department, I can't tell you how many, that try to identify the location of our cars through that area.

Q. Well, aren't they called yardmasters down there at the yard?

A. Oh, I suppose you can identify them as yardmasters because they are associated with the Chicago Junction.

Q. How many are there?

A. I don't know. We have one man in charge. I don't know how many he has got under him. It is under the operating department. It is not under the transportation department.

Q. These men spend their lives in and about the Ashland Avenue yards, don't they?

A. Their working days.

Q. Yes. Presumably they are quite familiar with those operations, aren't they?

A. Yes, sir.

Mr. Smith: That is all.

By Mr. Day:

Q. Where is the plant of the General American Car Company moving to, Mr. Tally?

A. Over in a location west, adjacent to the Ashland Avenue yards.

Q. Near the Dameh Avenue yards, more specifically?

[fol. 1199] A. Yes, sir.

Q. The General American is one of the largest of owners of refrigerator cars, is it not?

A. It is a large owner of refrigerator cars. I guess the railroad owned refrigerator cars are much larger.

Q. It supplies cars to Swift & Company for loading out its various products at its various plants?

A. Yes, sir, including other packers.

Q. And it repairs your cars, does it not?

A. We don't own any cars, Mr. Day. They repair their own cars, they service them to take care of the people that they serve, which includes Swift & Company, yes, sir.

Q. Well, when I went through their house the other day I saw some Swift Refrigerator cars there.

A. That is an identification that still continues, SLR cars.

Q. In any case they belong to General American now?

A. Yes, sir, they are owned by them.

Q. The General American does all the necessary repair work on them?

A. Yes, sir.

Q. And this new facility of the General American is located, of course, on the Chicago Junction, isn't it?

A. Yes, sir.

Q. There are thousands of cars moved for its account, are there not, by the Chicago Junction?

[fol. 1200] A. Yes, both loaded and empty, for account of the General American.

Mr. Day: That is all.

Exam. Diamondson: Any further questions? You are excused.

Mr. Rynder: Mr. Day, I inquired of you if Mr. Kinsella was here this morning and I think you told me he was not.

Mr. Day: That is right.

Mr. Rynder: I had one question I would have asked of him and that was,—he stated their present number of locomotives on the Chicago Junction. If he were here I would have liked to ask him how many locomotives they were maintaining in the '20's. If it was a fairly constant figure one year would be enough.

Mr. Day: Any particular year in that decade?

Mr. Rynder: Well, If during that period there was a wide change, we will say then I would like to have the high and low. If it was rather constant during that period, then you could just say that.

Mr. Smith: If your Honor please, I think I will object to the furnishing of that information. A locomotive as such does not mean anything. It all depends on the tractive effort and the ability of the locomotive and if the question had been asked timely and Mr. Kinsella were here we would go into that. We are foreclosed from going into that now. I think it is quite improper to try to introduce evidence of that character at this juncture in this man-
[fol. 1201] ner.

Mr. Rynder: It has something to do with the speed and expedition with which the yard can be cleared.

Mr. Smith: I am not talking about its relevance. It is because I think it might have some relevance I am objecting to it as incompetent. I don't think this is the way to put that evidence in.

Exam. Diamondson: If the witness is not present I don't know how that evidence could be put on the record.

Mr. Rynder: I understood Mr. Day had no objection to furnishing it within a reasonable time.

Mr. Smith: But I have objection to him furnishing it, on behalf of the defendant carriers.

Mr. Rynder: I think it is relevant and competent evidence.

Mr. Smith: I don't think it is competent. I don't think any argument could be made on its competency. It is obviously incompetent to put in evidence of this kind at this time, in this manner.

Exam. Diamondson: Do you want Mr. Kinsella recalled?

Mr. Rynder: If he were recalled I assume the same objection would be made and I would not like to recall him and bring him down here unless I knew whether or not your Honor would sustain the objection.

Exam. Diamondson. I think if the witness were present I would permit him to put it in.

[fol. 1202] Mr. Rynder: Well, then, it simply comes down to that, Mr. Examiner, that we can inconvenience Mr. Kinsella and Mr. Day and everybody else here.

Mr. Smith: Who is it that is inconveniencing him, Mr. Rynder? Is it I?

Mr. Rynder: I think so, because if the Examiner is going to admit this evidence it merely comes down to whether we recall Mr. Kinsella or whether we allow Mr. Day to send it to us at some later date.

Mr. Smith: Mr. Kinsella was here for a week. You could have asked him that.

Exam. Diamondson: I will overrule the objection if Mr. Day is willing to submit that information after the hearing.

Mr. Day: I stated to Mr. Rynder that we would furnish it if there was no objection.

Exam. Diamondson: Can it be furnished within twenty days?

Mr. Day: Yes, sir.

Exam. Diamondson: That may be done. Off the record.

(Discussion outside the record.)

Mr. Day: I have just this very short statement. I don't think it is necessary to put a witness on because it is just a tariff matter, with the tariff authority.

Exam. Diamondson: It will be marked exhibit 56.

(Exhibit No. 56 marked for identification.)

[fol. 1203] Mr. Day: We offer this statement as exhibit 56.

Mr. Day: It is nothing but excerpts from the tariff cited at the top of the page.

Mr. Kaylor: It will be received for the Illinois Commission.

(Exhibit No. 56 Attorney Day, received in exidence.)

Int. Comm. Comm. Docket 29800
EXHIBIT NO. 2
Witness

THE UNION STOCK YARDS [P. 1041].

STOCK YARDS SOUTH HALF

Mr. Rynder: There is one thing more, Mr. Day. I had asked you if you would produce a copy of a letter written by Winston, Strawn & Shaw to your law department on September 4, 1947 relating to this case. Do you have it here?

Mr. Day: I don't have it here, Mr. Rynder. I thought you had abandoned it.

Mr. Rynder: I sent you a letter.

Mr. Day: Well, I did have it here for all of last week and I think Monday.

Mr. Rynder: I am wondering if you can recognize that as being a correct copy of the letter?

Mr. Day: Yes, that is the letter.

Mr. Rynder: I would like to offer that in evidence, Mr. Examiner, before we close our case, principally because it constitutees the only authority I have for the terms of a certain contract between the Chicago Junction and the New York Central.

Mr. Day: Have you made the offer, Mr. Rynder?

[fol. 1204] Mr. Rynder: I offer it now.

Mr. Day: I want to object to the relevancy and materiality of it. I don't see that it has anything to do with anything in relation to the issues in this case.

Mr. Rynder: Well, I think the contractual relations of the two parties have something to do with it and I think one thing one is always able to prove in any case is purpose, intent, bias or anything of that kind that may have any reasonable bearing on it.

Mr. Smith: May I make an objection for your consideration, sir, on that exhibit?

Exam. Diamondson: Yes.

Mr. Smith: I object to it as not proper rebuttal. Here is the reason I do that: I take it that the inference which Mr. Rynder seeks to draw from that exhibit, and I think he does seek to draw an inference from it that is quite apart from the terms of these contracts,—I wouldn't make the slightest objection to Mr. Rynder offering this now, although it is not proper rebuttal, the part of the contract which he just said is his real reason for offering this, I wouldn't object to that although it is not proper to offer it now, it should have come as part of his case in chief be-

fore he closed, but I do object to it now for the reason that the inference is sought to be drawn from it that the Chicago Junction is here because of that letter and would not have come here and stated the facts as to the impossibil-
[fol. 1205] ity of handling livestock through the Ashland Avenue yard if the Yard Company had not called their attention to this contract in this letter.

Now, I would like to make a statement off the record, if you please.

Exam. Diamondson: Off the record.

(Discussion outside the record.)

Exam. Diamondson: On the record.

Mr. Smith: Mr. Rynder, will you stipulate that if Mr. Kinsella and Mr. Sorenson, who previously testified in this case, were again called to testify they would testify that they were called into the office of the vice-president of the Chicago Junction last August, advised of the allegations of the Swift complaint and asked whether or not they could handle livestock through the Ashland Avenue yard and that Mr. Sorenson and Mr. Kinsella stated no, that they could not without the disruption of the operations of that yard?

Mr. Rynder: I will stipulate that they would testify to what Mr. Smith has said.

Exam. Diamondson: The exhibit will be received as No. 57.

(Exhibit No. 57 Attorney Rynder received in evidence.

Exam. Diamondson: Is there anything further from the parties?

[fol. 1206] Exam. Diamondson: A proposed report will be issued in these proceedings and briefs will be due May 20, 1948. There being nothing further, the hearing will be closed.

[fol. 1207] Mr. Kaylor: Our briefs will be due May 20th and, as indicated by the Examiner, our hearing is closed.

(Whereupon, at 12:28 P. M., Wednesday, March 3, 1948, hearing closed.)

LIBRARY
SUPREME COURT, U.S.

LIBRARY
SUPREME COURT, U.S.

Vol. III

TRANSCRIPT OF RECORD

(Pages 1040 to 1979)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED AUGUST 27, 1951.

PROBABLE JURISDICTION NOTED OCTOBER 15, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

VOL. III

INDEX

EXHIBITS

		Original	Print
1	Map showing proposed new location, Swift & Co. livestock pens, near 41st Street and Ashland Avenue, Chicago	1205	1040
2	Map showing tracks of Chicago Junction Railway within stockyards district of Chicago	1209	1041
3	Map showing entire line of the Chicago Junction Railway	1210	1042
4, 6, 8	Photographs showing switch connecting Swift & Co.'s sidetrack with rails of Chicago Junction Railway	1211	1043
9	Map showing Chicago Terminal (Switching) District	1216	1046
10	Compilation of correspondence, statistics, and rates referred to in the testimony of the witness, Mr. Tally	1217	1047
11	Excerpts from Swift & Company's Year Book for 1947	1246	1074

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 14, 1951.

—8925

EXHIBITS—CONTINUED

		Original	Print
12	Statement on information furnished by railroad defendants concerning deliveries of livestock to plants at points in Western Trunk Line Territory	1260	1083
13	Large map of Chicago Junction Railway and the Chicago River and Indiana Railroad Co.	1268	1091
14	Map of Ashland Avenue yards, Chicago Junction Railway	1269	1092
15	Large scale aerial photograph of part of stockyards district of Chicago	1270	1094
16	Data furnished by railroad defendants showing consist of certain trains moving to stockyards area	1271	1095
17	Data furnished by railroad defendants showing carload delivery of livestock on team tracks in Chicago	1276	1101
18	Data furnished by N. Y. C. & St. L. R. Co. showing certain train consists	1277	1103
19, 20, & 21	Aerial photographs of Ashland Avenue Yards, South and North	1278	1104
22	Record of receipts of direct and other livestock at Chicago and certain other stockyards	1281	1107
23	Union Stock Yard & Transit Co. Tariff No. 14, effective August 11, 1947	1286	1112
28	Compilation of percentage of rail shipments of livestock billed direct to packers at Chicago, 1938-1947	1291	1117
29	Statement of receipts of direct shipments of livestock by individual packers at Chicago, 1936-1947	1292	1118
30	Statement of direct shipments of livestock received by packers by rail and by truck, 1938-1947	1296	1122
31	Record of direct shipments of livestock received by packers by truck, 1944-1947	1297	1123
32	Copy of transcript of hearing in I.C.C. Docket No. 29467, Neuhoff Packing Co. v. Louisville & N. R. Co., 268 I.C.C. 271	1298	1124
33	Schedule of departure time of C. B. & Q. trains to stockyards area	1347	1156
34	Map of Central Manufacturing District in Chicago	1350	1159
35	Report of cars of livestock handled for Omaha Packing Co. in 1947	1351	1160
36	Report of cars of livestock handled by C. B. & Q. and from connecting lines to Omaha Packing Co., 1942-1947	1352	1161
37	Record of trains to Union Stock Yards showing average cars per trip and average trips per day	1353	1162
38	Statement showing time consumed in movement of C. R. I. & P. trains to and through Chicago Junction	1354	1163
39	Record of time consumed by C. R. I. & P. crews to C. & N. W. Potato Terminal	1362	1171
40	Tabulation showing effect of consolidation of trains at Bensenville Yard	1363	1172

EXHIBITS—CONTINUED

		Original	Print
41	Tabulation of representative movements from Bensenville to Union Stock Yards	1364	1173
42	Large exhibit containing documents relating to the history of the Union Stock Yards at Chicago. (For detailed description of papers included, see the two pages in front of this exhibit, listing and describing Sub-Exhibits 47-78, inclusive.)	1365	1174
43	Record of statistics relative to receipts of livestock at Chicago	1880	1639
45	Statement of statistics relative to time of confinement for certain livestock trains arriving at Chicago	1921	1681
46	Statement of shipments, receipts, and valuation of livestock at Union Stock Yards, Chicago	2083	1843
47	Statement of scale of Western livestock rates	2094	1854
50	Cost study, delivery of livestock, C. & N. W. Ry. Co.	2096	1856
51	Statement of interstate livestock rate increases and destination terminal allowances included in the rate, C. & N. W. Ry. Co.	2103	1863
52	Cost study, livestock delivery, C. M. St. P. & P. R. R.	2104	1864
53	Maps showing local packing plants and terminal areas at various points in Western Trunk Line Territory	2108	1868
54	Map of stockyard and terminal areas, Sioux City, Iowa	2136	1896
55	Excerpts from U. S. Department of Agriculture Miscellaneous Publication No. 222, "The Direct Marketing of Hogs"	2138	1897
56	Statement of provisions contained in official list of open and prepay stations Tariff No. 62	2180	1960
57	Letter Winston, Strawn & Shaw to General Counsel, New York Central Lines, September 4, 1947	2181	1961
58	Statement showing motive power on the Chicago Junction Railway	2183	1963
59	Union Stock Yard & Transit Co. tariffs of August 24, 1936, and June 13, 1938	2185	1965

Int. Comm. Com. Docket 29800
✓ EXHIBIT NO. 9
Witness

OFFICIAL MAP (P.1046)

CHICAGO TERMINAL DISTRICT.

ISSUED UNDER SUPERVISION OF THE
CHICAGO SWITCHING COMMITTEE
ILLINOIS FREIGHT ASSOCIATION
UNION STATION CHICAGO ILLINOIS

COPYRIGHT 1942

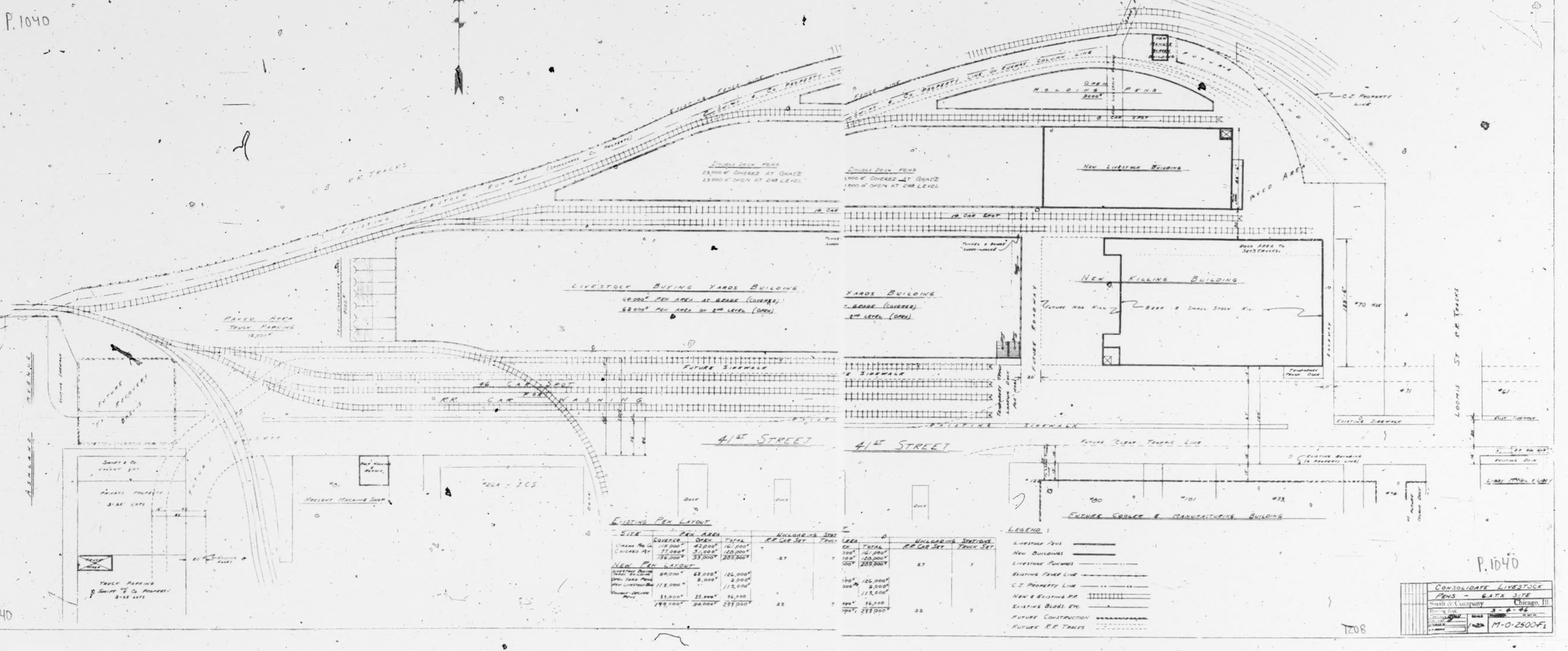
BOUNDARY OF SWITCHING DISTRICT
BOUNDARY OF SWITCHING DISTRICT - INNER ZONE

DOWNTOWN CHICAGO AREA

LEGEND
FREIGHT HOUSES
TEAM TRACKS
GANTRY CRANES
CHICAGO TUNNEL CO. R.R. CONNECTIONS
EXPRESS TERMINALS
SCALE

(P.1046)

P. 1040



EXISTING PEN LAYOUT

SITE	PEN AREA			HOLDING STALLS	
	COVERED	OPEN	TOTAL	RR CAR SET	TRUCK SET
CHICAGO AV.	118,000 ft²	42,000 ft²	160,000 ft²		
CHICAGO AV.	77,000 ft²	51,000 ft²	128,000 ft²		
	136,000 ft²	33,000 ft²	289,360 ft²	27	7

NEW PEN LAYOUT

LIVESTOCK BUYING YARDS BUILDING	69,000 ft²	62,000 ft²	126,000 ft²		
OPEN YARD PENS		8,000 ft²	8,000 ft²		
NEW LIVESTOCK BUILDING	113,000 ft²		113,000 ft²		
COVERED DRIVE WAYS	33,000 ft²	33,000 ft²	66,000 ft²		
	199,000 ft²	94,000 ft²	293,000 ft²	22	7

AREA		HOLDING STALLS	
CR.	TOTAL	RR CAR SET	TRUCK SET
000 ft²	160,000 ft²		
000 ft²	128,000 ft²		
000 ft²	289,000 ft²	27	7
000 ft²	126,000 ft²		
000 ft²	8,000 ft²		
	113,000 ft²		
000 ft²	66,000 ft²		
000 ft²	293,000 ft²	22	7

LEGEND :

- LIVESTOCK PENS
- NEW BUILDINGS
- LIVESTOCK RUNWAYS
- EXISTING FENCE LINE
- C.J. PROPERTY LINE
- NEW & EXISTING RR.
- EXISTING BLDGS. ETC.
- FUTURE CONSTRUCTION
- FUTURE R.R. TRACKS

P. 1040

CONSOLIDATE LIVESTOCK PENS - 64TH SITE
Swift & Company Chicago, Ill
Drawing Dept. 3-6-45
M-0-2500-F1

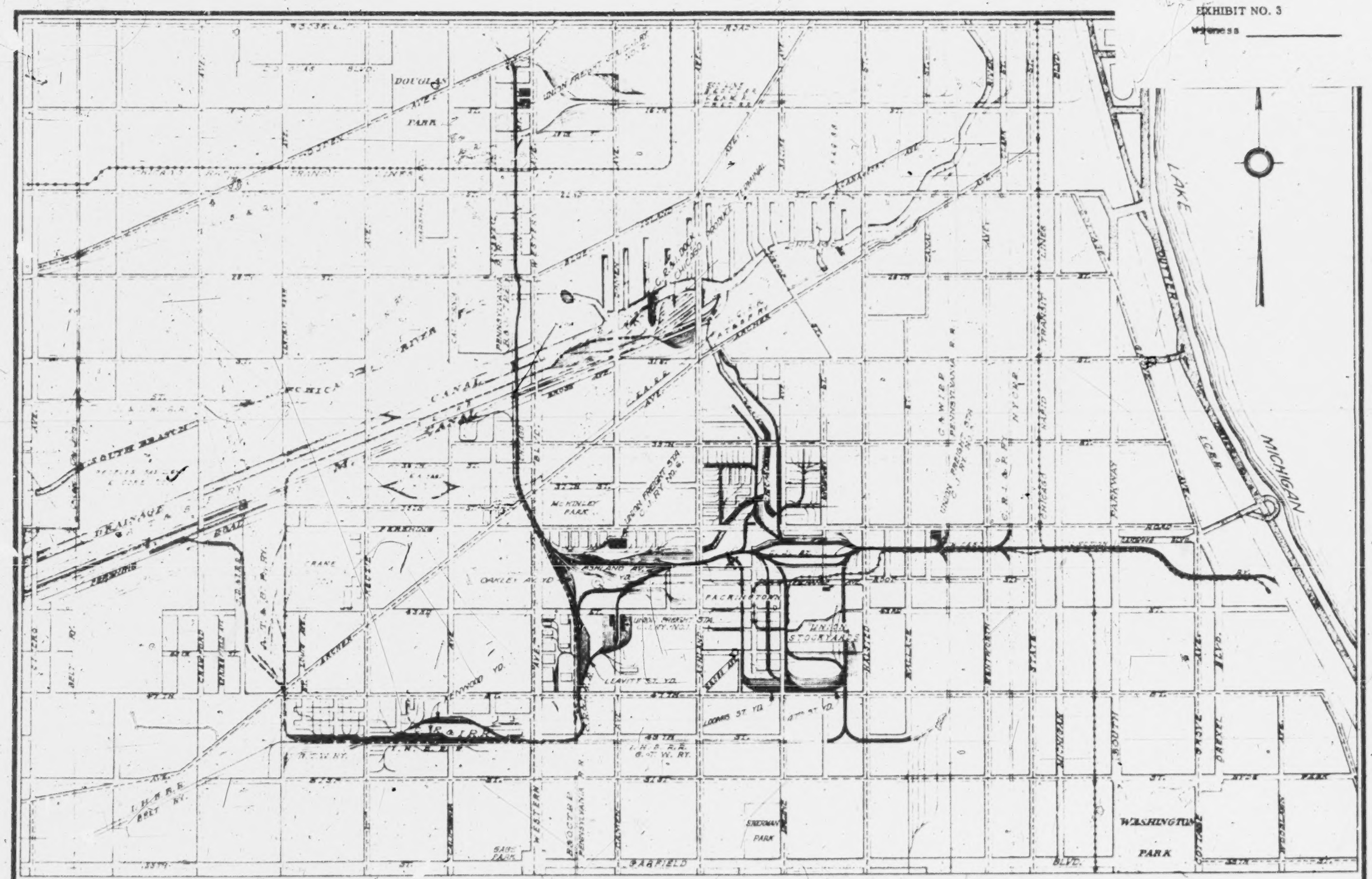
T208

1042

Int. Comm. Comm. Docket 25809

EXHIBIT NO. 3

Witness _____



CHICAGO JUNCTION RAILWAY
(THE C R & I R R CO LESSEE)

THE CHICAGO RIVER & INDIANA RAILROAD

0 1/4 1/2 3/4 1
SCALE IN MILES

JULY 1931

X-Swift & Company Reo Location

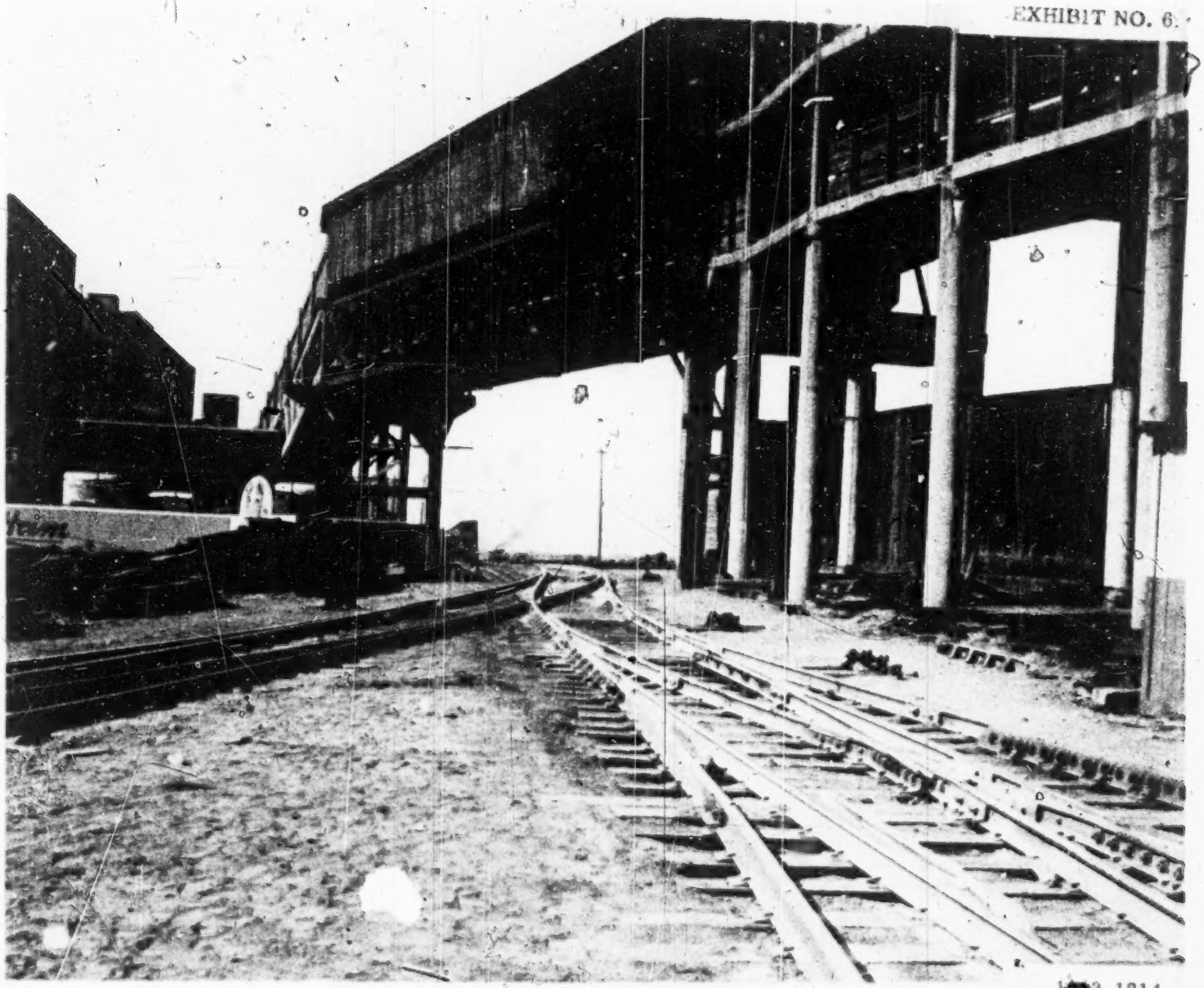
L-252

1210

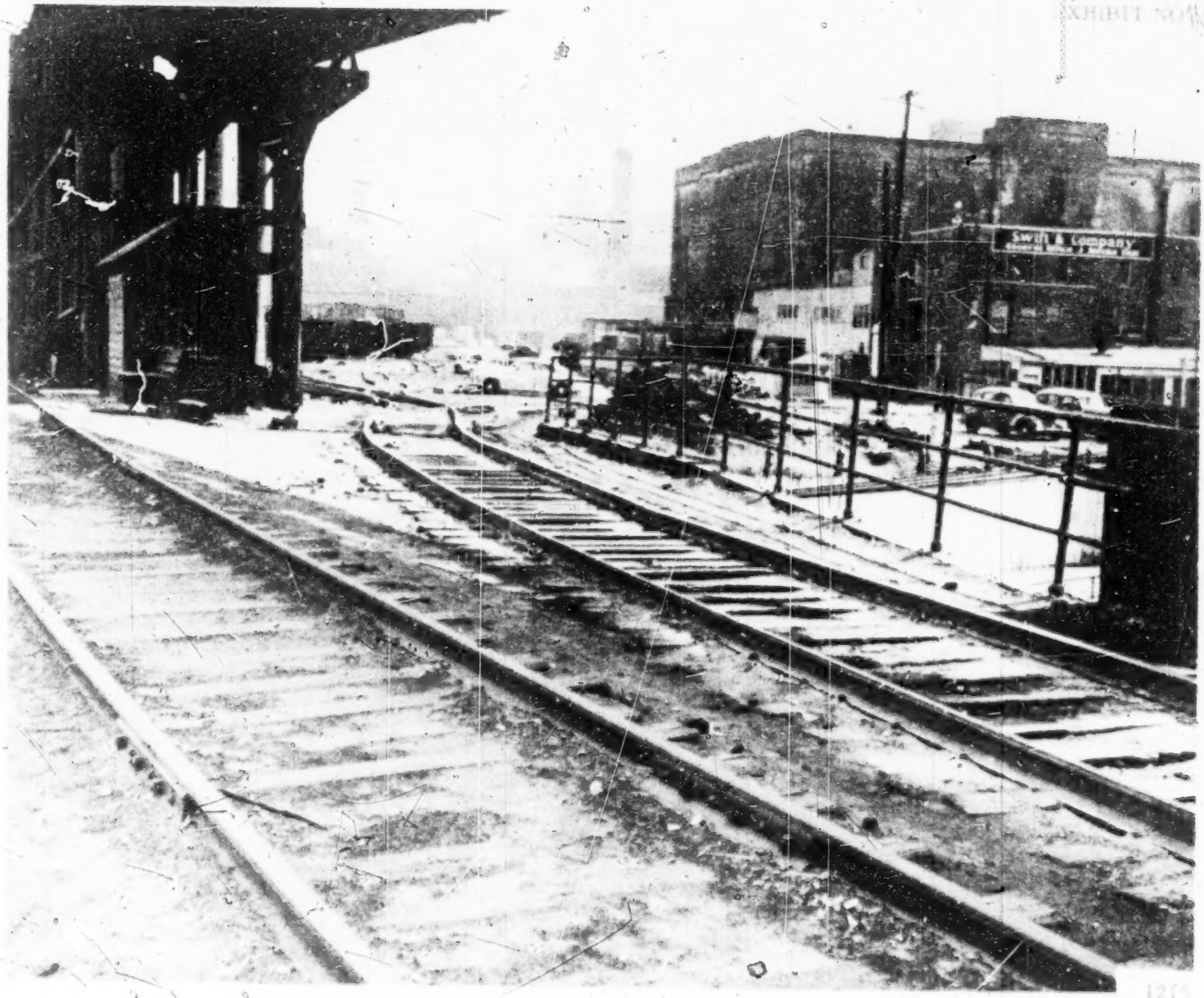
EXHIBIT NO. 4

1043

EXHIBIT NO. 6.



1214


Swift & Company

[fol. 1217] EXHIBIT No. 10

Interstate Commeree Commission Docket No. 29809

And Investigation and Suspension Docket No. 5543

Illinois Commerce Commission Docket No. 35809

[fol. 1218] INDEX

Page No.	Subject
2 to 8	Copies of Letters Written by Swift & Company to Western Railroads and Their Replies.
9 to 12	Statement of Livestock Shipments and Charges Paid Which Were Received at Omaha Packing Company Location of Swift & Company at Chicago, Ill., March 26, 1947 to May 2, 1947.
13 to 16	Statement of Commodities, Rates and Charges Applicable from Various Points to Chicago, Ill. on which Industrial Delivery Is Provided.
17 to 19	Statement Showing Various Points in Western Territory Where Delivery of Livestock Is Provided to Industrial Locations.
20 to 24	Statement Showing Points Throughout the United States Where Delivery of Livestock Is Provided to the Plant Location.
25 to —	Statement of Rates on Livestock Applicable on Joint Line Traffic which Provide Delivery to Plant Locations.
26 to —	Statement of Specific Joint Line Rates Published From Various Points in Iowa to Packing House Location in Iowa on which Direct Delivery Is Made as Compared with Interstate Commerce Commission Prescribed Scale.
27 to —	Statement Showing List of Terminal Switching Lines Who Publish Rates or Car Charges on Livestock To and From All Locations Served by Them.

[fol. 1219] Reproduction of letter dated July 8, 1947, written by W. A. Mayfield, General Traffic Manager of

Swift & Company, to the five Western railroads shown thereon concerning the meeting to consider providing delivery of Live Stock at the Swift & Company, Chicago, Illinois, plant at the flat Chicago, Ill., rate, and a reproduction of the reply received from each of the carriers addressed.

[fol. 1220] Swift & Company

July 8, 1947.

Messrs. L. R. Capron, VP, CB&Q RR, 547 W. Jackson Bl., Chicago; J. W. Hill, FTO, CRI&P RR, LaSalle St. Sta., Chicago; F. G. Fitz-Patrick, VP, C&NW RR, 400 W. Madison St., Chicago; R. G. Hawkinson, FTM, CGW RR, 409 W. Jackson Bl., Chicago; S. G. Grace, AFTM, CMStP&P RR, Union Sta., Chicago.

GENTLEMEN:

Referring to the meeting Mr. Tally and I had with you gentlemen in Mr. Capron's office several days ago at which time we placed before you a proposal that the line haul carriers accord us direct delivery of livestock at our Chicago plant at rates no higher than those assessed by the line haul carriers for delivery at the pens of the U. S. Y. & T. Company—

We shall appreciate advice from you as to whether our proposal has been or will be acted upon favorably or unfavorably. If the latter, will you kindly give us your reasons for declining the request.

Yours very truly, —— ——, General Traffic Manager.

WAM-t.

[fol. 1221] Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Traffic Department

Chicago 6, Illinois,
July 16, 1947,
File 117.

Mr. W. A. Mayfield, General Traffic Manager, Swift & Company, Union Stock Yards, Chicago, Illinois.

DEAR MR. MAYFIELD:

Referring to your proposal for the application of the same rates on livestock when for direct delivery at your Chicago plant as is applied by line haul carriers when delivery is made at pens of the U. S. Y. & T. Co.

We have given the subject our very careful attention and considering the low level of the rates on livestock and the additional expense it would be necessary to assume we have concluded that we would not be warranted in extending application of the Chicago rates to points other than now provided under published tariffs.

Yours very truly, (S.) E. B. Finegan, Vice President.

[fol. 1222] Burlington Lines

Traffic Department

July 15, 1947

Mr. W. A. Mayfield, General Traffic Manager, Swift & Company, Union Stock Yards, Chicago, Illinois.

DEAR MR. MAYFIELD:

Your letter July 8 requesting that you be accorded direct delivery of livestock at your Chicago plant at rates no higher ~~than~~ those assessed by line haul carriers for delivery at the pens of the U. S. Y. & T. Co.

After giving most careful consideration to your request it is our conclusion that due to the low level of the livestock rates we are not prepared to assume the additional expense involved in extending the application of the flat Chicago

rate to points of delivery beyond those now provided by existing tariffs.

Yours very truly, (S.) L. R. Capron.

cc.—Messrs. J. W. Hill, F. G. Fitz-Patrick, R. G. Hawkinson, E. B. Finegan.

[Vol. 1223] Chicago Great Western Railway Company

Traffic Department

July 15, 1947.
A-544423.

Mr. W. A. Mayfield, General Traffic Manager, Swift & Company, Union Stock Yards, Chicago, Illinois.

DEAR SIR:

This will acknowledge your letter of July 8 regarding your proposal that the line-haul carriers provide direct delivery of livestock consigned to your Chicago plant in the Middle District at rates no higher than those assessed by the line-haul carriers for delivery to the pens of the Union Stock Yards & Transit Company.

We have given careful study and consideration to your proposal and it is our view that the low measure of the line-haul rates on livestock to Chicago make it prohibitive for us to absorb terminal line's charges other than those already authorized in Chicago Switching Committee Tariff No. 20-X, I. C. C. No. 584. This does not, however, preclude public docketing of your proposal should you desire to progress the matter in that manner.

Yours truly, (S.) R. G. Hawkinson, Freight Traffic Manager.

RGH-JB.

Messrs. L. R. Capron, Vice President, CB&Q RR, Chicago, Ill.; J. W. Hill, Freight Traffic Officer, CRI&P Ry., Chicago, Ill.; F. G. Fitz-Patrick, Vice President, C&NW Ry., Chicago, Ill.; S. G. Grace, Asst. Freight Traffic Manager, CMStP&P RR., Chicago, Ill.

[fol. 1224] The Chicago, Rock Island and Pacific Railway Company

July 15, 1947.
File A-4221.

Rate Adjustment: Livestock, C. L., from Western Points for Deliveries on C. J. Ry. other than Union Stock Yards, Chicago

Mr. W. A. Mayfield, General Traffic Manager, Swift & Company, Union Stock Yards, Chicago, Illinois.

DEAR MR. MAYFIELD:

I have your joint letter of July 8th in which you inquire as to whether I have reached conclusions on your proposal that the rates on livestock via the CRI&P into Chicago for direct delivery to your plant at Chicago be no higher than assessed by the CRI&P on livestock for delivery at the pens of the U. S. Y. & T. Company in Chicago.

I have seriously considered your proposal and have concluded, having regard for the low measure of the rates, and the resulting revenues, on livestock from the western producing areas to Chicago in connection with the CRI&P Ry., that I cannot agree to an extension of such rates to include any additional deliveries in the Chicago District.

Yours very truly, (S.) J. W. Hill.

JWH.

cc: Messrs. L. R. Capron, F. G. Fitz-Patrick, R. G. Hawkinson, E. B. Finegan.

[fol. 1225] Chicago and North Western Railway System

July 11, 1947.

File 8555

Mr. W. A. Mayfield, General Traffic Manager, Swift & Company, Union Stock Yards, Chicago, Illinois.

DEAR MR. MAYFIELD:

This will acknowledge my copy of your joint letter of July 8th concerning your proposal that line haul carriers accord you direct delivery of live stock at your Chicago

plant at rates no higher than those assessed for delivery at pens of the U. S. Y. & T. Co.

I regret to advise you that our investigation has not been fully completed, but I expect that I will have complete information within the next day or so and will see that you are promptly advised.

Sincerely yours, (S.) F. G. Fitz-Patrick.

CC—Mr. L. R. Capron, Mr. J. W. Hill, Mr. R. G. Hawkinson, Mr. S. G. Grace.

STATEMENT SHOWING LIST OF LIVESTOCK SHIPMENTS
RECEIVED AT OMAHA PACKING COMPANY, CHICAGO, ILL.,
FOR THE PERIOD MARCH 26, 1947, TO MAY 2, 1947,
SHOWING LINE HAUL CARRIER INTO CHICAGO, ILL.,
DATE OF ARRIVAL, SPECIES OF LIVESTOCK, WEIGHT
OF SHIPMENT AND FREIGHT CHARGES PAID EACH
SHIPMENT.

1053

LINE HAUL CARRIER INTO CHICAGO, ILL.	ARRIVAL DATE	COMMODITY	WEIGHT	FREIGHT CHARGES
CB&Q	3/31/47	Sheep-DD	20000	$184.00
CB&Q	3/31/47	Sheep-DD	20000	184.00
CB&Q	3/31/47	Sheep-DD	20000	184.00
CB&Q	3/31/47	Sheep-DD	20000	184.60
CB&Q	3/31/47	Sheep-DD	20000	184.60
CB&Q	3/31/47	Sheep-DD	20000	184.60
NKP	3/31/47	Hogs-DD	27200	70.72
C&NW	3/28/47	Hogs-DD	24200	150.04
C&NW	3/28/47	Hogs-DD	29320	181.78
C&NW	3/28/47	Hogs-DD	26340	163.31
Mil	3/31/47	Hogs-SD	16700	66.80
Mil	3/31/47	Hogs-SD	16500	66.00
NKP	3/30/47	Hogs-DD	26390	68.61
NKP	3/30/47	Hogs-DD	26010	67.63
CB&Q	3/26/47	Hogs-SD	16500	39.60
CB&Q	4/1/47	Sheep-DD	20000	172.00
CB&Q	4/1/47	Sheep-DD	20590	162.07
CB&Q	4/1/47	Sheep-DD	20000	172.00
CB&Q	4/1/47	Sheep-DD	20000	172.00
CB&Q	4/1/47	Sheep-DD	20040	172.34
CB&Q	4/1/47	Sheep-2 SD	20180	173.55
CB&Q	4/1/47	Sheep-DD	20070	172.60
CB&Q	4/2/47	Cattle-SD	24000	206.40
CB&Q	4/1/47	Cattle-SD	24510	110.30
CB&Q	4/1/47	Cattle-SD	24670	111.02
CB&Q	4/1/47	Cattle-SD	25790	116.06
CB&Q	4/1/47	Cattle-SD	27260	122.67
CB&Q	4/1/47	Cattle-SD	26410	118.84
CB&Q	4/1/47	Cattle-SD	28170	126.77
CB&Q	4/1/47	Cattle-SD	25730	115.79
CB&Q	4/1/47	Cattle-SD	24400	109.80
CB&Q	4/1/47	Cattle-SD	26300	118.35
CB&Q	4/1/47	Cattle-SD	25390	114.26
C&NW	3/28/47	Hogs-SD	12000	91.20
C&NW	3/28/47	Hogs-DD	24000	146.40
Penn.	3/28/47	Calves-SD	16970	67.88
CB&Q	3/28/47	Hogs,Calves-DD	16940	55.90
CB&Q	4/1/47	Hogs, Calves, Sheep-DD	26840	80.85
AT&SF	3/27/47	Lambs-DD	22010	303.74
CB&Q	3/26/47	Sheep-DD	21410	184.13
CB&Q	3/26/47	Sheep-DD	21630	186.02
CB&Q	3/26/47	Sheep-DD	20980	180.43
CB&Q	3/27/47	Sheep-DD	18970	163.14
CB&Q	3/26/47	Sheep-Trailer	20000	172.00
C&NW	3/26/47	Hogs-DD	28540	176.95
CRIP	3/28/47	Sheep-2 SD	24900	321.21
CRIP	3/28/47	Sheep-2 SD	24800	319.92
CB&Q	3/26/47	Sheep-2 SD	20000	198.00
CB&Q	3/26/47	Hogs-DD	26600	93.10
CB&Q	3/26/47	Hogs-DD	13660	47.81
CB&Q	3/26/47	Sheep-2 SD	20000	198.00
CB&Q	3/26/47	Sheep-2 SD	20000	198.00
CB&Q	3/28/47	Hogs-DD	23000	50.60
CB&Q	3/28/47	Hogs-SD	11500	25.30
AT&SF	3/29/47	Hogs-SD	17270	43.18
AT&SF	3/29/47	Hogs-DD	18720	46.80
CB&Q	3/28/47	Hogs-DD	13880	33.31
CB&Q	3/28/47	Hogs-DD	26600	63.84
CB&Q	3/28/47	Hogs-DD	27550	$79.90
CB&Q	3/28/47	Hogs-DD	27400	78.59
CB&Q	3/28/47	Hogs-DD	17900	71.60
CB&Q	3/28/47	Hogs-DD	27230	95.31
CB&Q	3/28/47	Hogs-DD	18100	63.35
CB&Q	3/28/47	Hogs,Calves,DD	26430	78.15
CB&Q	3/26/47	Sheep-DD	20000	146.00
CB&Q	3/26/47	Sheep-DD	20000	146.00
CB&Q	3/26/47	Sheep-DD	20000	146.00
CB&Q	3/26/47	Sheep-DD	10000	62.00
CB&Q	3/26/47	Sheep-DD	20290	180.58
CB&Q	3/26/47	Sheep-DD	20410	165.65
CB&Q	3/27/47	Sheep-DD	20400	181.56
CB&Q	3/26/47	Sheep-DD	20340	181.03
CB&Q	3/26/47	Sheep-DD	20310	180.76
CB&Q	3/26/47	Sheep-DD	20000	182.00
CB&Q	4/4/47	Lambs-SD	20750	302.55
CRIP	4/3/47	Lambs-DD	21060	271.67
CRIP	4/3/47	Lambs-DD	21060	271.67
CRIP	4/3/47	Lambs-DD	21390	275.93
CRIP	4/3/47	Lambs-DD	20000	258.00
CRIP	4/3/47	Lambs-DD	20000	258.00
CRIP	4/3/47	Lambs-DD	20000	258.00
CRIP	4/3/47	Sheep-DD	20000	258.00
CRIP	4/3/47	Sheep-SD	15340	197.89
CRIP	4/3/47	Lambs,Ewes-2SD	21470	251.20
CRIP	4/3/47	Lambs,Ewes-2SD	21300	249.21
CRIP	4/3/47	Lambs,Ewes-2SD	20360	238.22
CRIP	4/3/47	Sheep-2 SD	20000	258.00
CRIP	4/3/47	Sheep-2 SD	20000	258.00
CB&Q	4/1/47	Sheep-DD	20000	178.00
CB&Q	4/1/47	Sheep-DD	20000	178.00
CRIP	4/3/47	Sheep-DD	20000	178.00
CB&Q	4/3/47	Sheep-DD	15220	129.37
CB&Q	4/3/47	Sheep-DD	20000	170.00
NYC	4/4/47	Calves-SD	17000	56.10
NYC	4/4/47	Calves-DD	25000	72.50
C&NW	4/4/47	Hogs-DD	24000	141.60
C&NW	4/4/47	Hogs-DD	24000	141.60
C&NW	4/4/47	Hogs-Trailer	16460	97.11
CB&Q	4/4/47	Hogs-DD	24000	69.60
CB&Q	4/4/47	Hogs-DD	24000	69.60
CB&Q	4/4/47	Hogs-DD	17110	47.91
NKP	4/1/47	Hogs-DD	23000	59.80
NKP	4/3/47	Hogs-DD	24795	64.47
NKP	4/3/47	Hogs-DD	17795	55.16
NKP	4/3/47	Hogs-DD	24795	64.47
NKP	4/3/47	Hogs-DD	23795	61.87
AT&SF	4/2/47	Hogs-DD	23000	52.90
CRIP	4/3/47	Hogs-DD	26600	82.46
CRIP	4/3/47	Hogs-DD	26600	82.46
CRIP	4/3/47	Hogs-DD	26600	82.46
CRIP	4/3/47	Hogs-DD	16720	51.83
C&NW	4/2/47	Hogs-DD	26600	74.48
C&NW	4/2/47	Hogs-DD	26600	74.48
C&NW	4/2/47	Hogs-DD	26600	74.48
M11	4/4/47	Hogs-DD	25690	66.80
M11	4/4/47	Hogs, Calves-SD	16500	66.00
CB&Q	4/4/47	Hogs, CAlves-DD	26560	78.33

1227

(Continued on next page)

LINE HAUL CARRIER INTO CHICAGO, ILL.	ARRIVAL DATE	COMMODITY	WEIGHT	FREIGHT CHARGES
CB&Q	4/4/47	Hogs, Calves, Sheep-DD	26530	$78.54
CB&Q	4/3/47	Lambs-2 SD	20000	232.00
CB&Q	4/3/47	Sheep-2 SD	20000	232.00
CB&Q	4/3/47	Lambs-2 SD	19310	224.00
CRIP	4/4/47	Lambs-2 SD	20060	258.00
CRIP	4/4/47	Lambs-2 SD	20000	258.00
NKP	4/7/47	Hogs-DD	24140	62.76
C&NW	4/5/47	Hogs-DD	16500	52.80
CRIP	4/4/47	Hogs-SD	16500	61.05
CRIP	4/3/47	Hogs-DD	26810	83.11
CB&Q	4/7/47	Hogs, Calves, Sheep-DD	25850	76.55
Mil	4/9/47	Hogs-SD	16500	42.90
NKP	4/7/47	Hogs-DD	26400	68.64
NKP	4/7/47	Hogs-DD	25210	65.55
Mil	4/8/47	Hogs-SD	16960	49.61
C&NW	4/9/47	Hogs-DD	12740	35.67
C&NW	4/9/47	Hogs-DD	26600	74.48
IC	4/7/47	Hogs-DD	26200	60.31
CB&Q	4/9/47	Hogs-DD	14310	62.96
C&NW	4/8/47	Hogs-DD	27960	114.64
CB&Q	4/8/47	Sheep-DD	20000	140.00
CB&Q	4/8/47	Sheep-DD	20000	140.00
CB&Q	4/8/47	Sheep-DD	20000	140.00
CB&Q	4/8/47	Sheep-DD	20000	140.00
CB&Q	4/8/47	Sheep-DD	20000	178.00
CB&Q	4/8/47	Sheep-DD	20000	178.00
CB&Q	4/8/47	Sheep-DD	20000	178.00
CB&Q	4/8/47	Sheep-DD	20000	178.00
CB&Q	4/8/47	Sheep-DD	20210	179.87
CB&Q	4/11/47	Lambs-2 DD	21100	301.73
CB&Q	4/11/47	Sheep-2 DD	21700	310.31
CB&Q	4/11/47	Lambs-2 DD	20000	286.00
CB&Q	4/11/47	Lambs-2 DD	13860	198.20
NKP	4/10/47	Hogs-DD	27390	71.19
NKP	4/10/47	Hogs-DD	27190	70.69
NKP	4/10/47	Hogs-DD	27140	70.56
NKP	4/10/47	Hogs-DD	31170	81.04
NKP	4/10/47	Hogs-DD	26450	68.77
CB&Q	4/10/47	Hogs-DD	16500	46.20
CB&Q	4/11/47	Hogs-DD	24840	86.94
CB&Q	4/10/47	Hogs-DD	24000	69.60
Mil	4/10/47	Hogs-DD	24000	72.00
CB&Q	4/12/47	Hogs-DD	25710	74.56
CB&Q	4/10/47	Hogs-DD	25570	74.15
C&NW	4/10/47	Hogs-DD	17070	54.62
Mil	4/12/47	Hogs-SD	12930	40.08
Mil	4/12/47	Hogs-DD	24000	74.40
CB&Q	4/10/47	Hogs, Calves-DD	27060	79.04
CB&Q	4/10/47	Hogs, Calves-DD	26770	77.99
Mil	4/14/47	Hogs-DD	24500	63.70
Mil	4/14/47	Hogs-SD	13890	36.11
IC	4/11/47	Hogs-DD	23000	52.90
Mil	4/14/47	Hogs-SD	12000	39.60
CB&Q	4/11/47	Hogs-DD	23000	50.60
NKP	4/7/47	Hogs-SD	17000	52.70
AT&SF	4/9/47	Hogs-DD	23000	52.90
Penn	4/5/47	Calves-SD	16000	64.00
CRIP	4/12/47	Sheep-DD	20530	264.84
CB&Q	4/14/47	Hogs-SD	16500	41.25
CB&Q	4/14/47	Hogs-DD	24000	84.00
NKP	4/14/47	Hogs-DD	23770	61.80
IC	4/11/47	Hogs-DD	22000	44.00
CB&Q	4/14/47	Hogs, Calves, Sheep-DD	24300	72.62
CB&Q	4/14/47	Lambs-2DD	20000	286.00
Mil	4/15/47	Hogs, Calves-SD	12000	52.80
CB&Q	4/15/47	Hogs-DD	24000	69.60
CB&Q	4/15/47	Sheep-DD	20060	180.00
CB&Q	4/15/47	Sheep-DD	20000	180.00
CB&Q	4/16/47	Sheep-DD	20000	180.00
CB&Q	4/15/47	Sheep-DD	20000	180.00
CB&Q	4/15/47	Sheep-SD	11420	102.78
C&NW	4/16/47	Hogs-DD	26010	158.66
C&NW	4/16/47	Hogs-DD	18300	124.44
C&NW	4/16/47	Hogs-DD	16500	52.80
NKP	4/16/47	Hogs-DD	26930	70.15
CB&Q	4/16/47	Hogs-DD	16500	54.45
CB&Q	4/16/47	Hogs-DD	27020	78.36
CB&Q	4/17/47	Hogs, Calves, Sheep-DD	26790	81.12
CB&Q	4/17/47	Lambs-DD	10000	143.00
CB&Q	4/17/47	Lambs-DD	20000	286.00
CB&Q	4/17/47	Lambs-DD	20000	286.00
CB&Q	4/17/47	Lambs-DD	20000	286.00
CB&Q	4/17/47	Lambs-DD	20000	286.00
CB&Q	4/14/47	Lambs-DD	20000	286.00
CB&Q	4/14/47	Lambs-DD	20000	286.00
CRIP	4/15/47	Hogs-DD	24000	74.40
CRIP	4/15/47	Hogs-DD	21390	66.31
CB&Q	4/16/47	Hogs-DD	23000	55.20
AT&SF	4/16/47	Hogs-DD	16500	42.90
IC	4/17/47	Hogs-SD	12000	34.80
IC	4/17/47	Hogs-SD	16500	37.95
NKP	4/17/47	Hogs-DD	24630	64.17
NKP	4/17/47	Hogs-DD	25590	66.53
C&NW	4/18/47	Hogs-DD	25460	71.29
CB&Q	4/17/47	Hogs-DD	25900	90.65
Mil	4/18/47	Hogs-SD	16500	42.90
AT&SF	4/16/47	Hogs-DD	23000	52.90
CB&Q	4/19/47	Lambs-SD	21280	248.98
CB&Q	4/19/47	Lambs-2SD	22670	265.24
CB&Q	4/19/47	Hogs-DD	16500	66.00
Alton	4/19/47	Hogs-DD	25600	56.32
Alton	4/17/47	Hogs-DD	24230	53.31
Mil	4/21/47	Hogs-DD	26600	69.16
Mil	4/21/47	Hogs-DD	26600	69.16
Mil	4/21/47	Hogs-SD	14980	38.95
CB&Q	4/19/47	Hogs, Calves-DD	25300	74.67
CRIP	4/21/47	Lambs-2SD	21310	247.20
CRIP	4/21/47	Lambs-2SD	21590	250.44
CRIP	4/21/47	Lambs-2SD	21560	250.10
CRIP	4/21/47	Lambs-2SD	21690	251.60
CRIP	4/21/47	Lambs-2SD	22110	256.48
CRIP	4/21/47	Lambs-2SD	22080	256.13
AT&SF	4/23/47	Hogs-DD	16500	42.90
NKP	4/20/47	Hogs-SD	17120	53.07
NKP	4/20/47	Hogs-DD	30580	79.51
Mil	4/23/47	Hogs, Calves-DD	16500	66.00

1228

(Continued on next page)

LINE HAUL CARRIER INTO CHICAGO, ILL.	ARRIVAL DATE	COMMODITY	WEIGHT	FREIGHT CHARGES
CB&Q	4/15/47	Lambs-2DD	21530	$251.90
CB&Q	4/14/47	Lambs-2DD	22340	261.38
CRIP	4/12/47	Sheep-DD	20550	265.10
NKP	4/22/47	Hogs-DD	28740	74.72
CB&Q	4/23/47	Hogs-SD	16500	41.25
CB&Q	4/23/47	Hogs-SD	15530	37.27
CB&Q	4/23/47	Hogs-DD	24000	57.60
CB&Q	4/23/47	Hogs-DD	26960	78.18
CB&Q	4/23/47	Hogs-DD	26600	77.14
CB&Q	4/23/47	Hogs-DD	26600	77.14
CB&Q	4/24/47	Hogs-DD	25050	87.68
CB&Q	4/23/47	Hogs, Calves, Sheep-DD	26610	78.54
CB&Q	4/23/47	Hogs, Calves, Sheep-DD	26040	77.30
CB&Q	4/23/47	Hogs-DD	23000	50.60
CB&Q	4/23/47	Hogs-SD	11500	25.30
CB&Q	4/23/47	Lambs-2SD	20000	292.00
CB&Q	4/23/47	Lambs-2SD	20000	292.00
CB&Q	4/23/47	Lambs-SD	10000	146.00
IC	4/24/47	Hogs-SD	17000	56.10
IC	4/24/47	Hogs-DD	23810	71.95
IC	4/24/47	Hogs-DD	23870	69.22
IC	4/24/47	Hogs-DD	23600	68.44
IC	4/24/47	Hogs-DD	24260	70.35
IC	4/24/47	Hogs-DD	24630	71.43
AT&SF	4/23/47	Lambs-DD	20000	240.00
AT&SF	4/24/47	Lambs-DD	20000	240.00
C&EI	4/23/47	Hogs-DD	28870	88.57
NKP	4/24/47	Hogs-DD	25990	67.52
NKP	4/24/47	Hogs-DD	26100	67.86
NKP	4/24/47	Hogs-SD	25270	65.70
NKP	4/24/47	Hogs-DD	26340	68.48
NKP	4/24/47	Hogs-SD	24150	62.79
NKP	4/24/47	Hogs-SD	24740	64.32
NKP	4/24/47	Hogs-SD	18360	56.92
IC	4/21/47	Hogs-DD	26310	60.51
AT&SF	4/26/47	Hogs-DD	17940	41.26
AT&SF	4/25/47	Hogs-DD	26310	60.51
AT&SF	4/28/47	Sheep-DD	22100	106.08
AT&SF	4/26/47	Sheep-DD	22100	106.08
Mil	4/26/47	Hogs-SD	16740	43.52
C&NW	4/26/47	Hogs-DD	26690	74.73
C&NW	4/26/47	Cattle-DD	23920	98.07
CRIP	4/25/47	Hogs-SD	17840	66.01
IC	4/24/47	Hogs -DD	24530	71.[illegible]
CB&Q	4/17/47	Hogs, Calves, Sheep-DD	27280	$79.87
AT&SF	4/23/47	Lambs-DD	20000	240.00
CRIP	4/24/47	Lambs-DD & Trailer	21050	244.18
NKP	4/25/47	Hogs-DD	26050	67.76
CB&Q	4/29/47	Lambs-2SD	20000	286.00
CB&Q	4/29/47	Lambs-SD & Trailer	10000	143.00
CB&Q	4/29/47	Lambs-2SD	20000	286.00
CB&Q	4/25/47	Ewes-2SD	20000	292.00
Mil	4/29/47	Hogs-SD	11500	29.90
Mil	4/29/47	Hogs-DD	24500	63.70
CRIP	4/28/47	Hogs-DD	25420	78.80
CRIP	4/23/47	Hogs-DD	27620	85.62
CRIP	4/28/47	Hogs-DD	28400	88.04
CB&Q	4/30/47	Hogs, Calves, Sheep-DD	16650	54.95
CB&Q	5/1/47	Sheep-Trailer	11570	165.40
CB&Q	5/1/47	Sheep-2SD	20000	286.00
IC	4/26/47	Hogs-DD	23525	68.22
IC	4/26/47	Hogs-SD	17525	57.83
IC	4/30/47	Hogs-DD	25400	58.42
CB&Q	4/30/47	Sheep-2SD	20000	286.00
CB&Q	4/30/47	Sheep-2SD	20000	286.00
Alton	4/30/47	Hogs-SD	17600	44.00
CB&Q	5/2/47	Hogs, Calves, Sheep-DD	26750	80.03
CB&Q	5/2/47	Hogs, Calves-DD	16500	54.45
CB&Q	5/2/47	Lambs-DD	20000	172.00
CB&Q	5/2/47	Lambs-DD	20000	172.00
CB&Q	5/2/47	Lambs-Trailer	13850	119.11
CB&Q	5/2/47	Lambs-DD	20000	172.00
CB&Q	5/2/47	Lambs-DD	20000	172.00
Mil	5/1/47	Hogs,Claves-SD	18480	73.92
NKP	5/1/47	Hogs-DD	27260	70.88
NKP	5/2/47	Hogs-DD	27560	71.66
CB&Q	3/26/47	Sheep-2SD	20000	198.00
CB&Q	3/26/47	Sheep-2SD	20000	198.00
C&NW	3/27/47	Hogs-DD	29390	182.32
C&NW	3/28/47	Hogs-DD	30790	187.82
C&NW	3/28/47	Hogs-DD	24000	141.60
C&NW	3/28/47	Hogs-DD	20040	118.24
NKP	3/28/47	Hogs-DD	17420	54.02
NKP	3/28/47	Hogs-DD	24670	64.14
CB&Q	3/28/47	Hogs-DD	24390	70.73
CB&Q	3/28/47	Hogs-DD	26600	77.14
CB&Q	4/11/47	Lambs-2 Cars	20000	286.00

1057

STATEMENT SHOWING LIST OF COMMODITIES, ORIGINS, MINIMUM WEIGHTS, AND RATES IN EFFECT TO CHICAGO, ILL., AND MINIMUM CAR REVENUES WHICH ARE GIVEN DELIVERY AT ALL INDUSTRIAL LOCATIONS IN THE CHICAGO SWITCHING DISTRICT AS DESCRIBED IN AGENT R. G. RAASCH, I.C.C. 584 AT THE FLAT CHICAGO, ILL., RATE.

COMMODITY	ORIGIN	MINIMUM WEIGHT	RATE IN CENTS PER 100 LBS. EXCEPT AS OTHERWISE PROVIDED	CAR REVENUE *
Materials, building and roofing	Joliet, Illinois	40000	13	$ 52.00
Spelter dross, etc.	Joliet, Illinois	60000	9½	57.00
Tin plate scrap	Joliet, Illinois	56000	127 GT	31.75
Sulphuric Acid, in carboys	Joliet, Illinois	30000	10	30.00
Denatured Alcohol	Joliet, Illinois	30000	16	48.00
Potash	Joliet, Illinois	40000	13	52.00
Sulphate of Alumina	Joliet, Illinois	60000	08	48.00
Iron, steel or tin cans	Joliet, Illinois	30000	13	39.00
Live Poultry	Freeport, Illinois	18000	35	63.00
Paper boxes, flat	Morris, Illinois	40000	11	44.00
Dairy Products	Wyanet, Illinois	20000	34	68.00
Wooden cores	Moline, Illinois	30000	16	48.00
Mill cinder	Moline, Illinois	44800	233 GT	46.60
Fluorspar	Equality, Illinois	40000	21	84.00
Glazed brick	Belleville, Illinois	40000	310 NT	62.00
Eggs	McLeansboro, Illinois	20000	46	92.00
Grain, Grain products	Ashley, Illinois	40000	17½	70.00
Rails, steel, second hand	Belleville, Illinois	44800	350 GT	70.00
Scrap lead	Eldorado, Illinois	40000	19	76.00
Lumber	Shawneetown, Illinois	30000	20	60.00
Wallboard	Waukegan, Illinois	40000	14	56.00
Hair, other than hog hair	Waukegan, Illinois	30000	15	45.00
Napthalene Residue, crude	Waukegan, Illinois	80000	10	80.00
Roofing Mill Refuse	Waukegan, Illinois	60000	08	48.00
Furnaces	Fulton, Illinois	24000	30	72.00
Scrap lead	Fulton, Illinois	40000	14	56.00
Powdered Milk	Morrison, Illinois	30000	17	51.00
Fresh Fruits	Fulton, Illinois	20000	20	40.00
Fresh Meats	Fulton, Illinois	21000	29	60.90
Pitch or tar, other than asphaltic	Fulton, Illinois	40000	15	60.00
Corrugated Pulpboard	Aurora, Illinois	24000	12	28.80
Sulphuric Acid	Arlington Heights, Ill.	30000	15	45.00
Batteries, dry cell	Freeport, Illinois	20000	25	50.00
Fruits and Vegetables	Aurora, Illinois	20000	20	40.00
Steel Lockers, K.D.	Aurora, Illinois	36000	15	54.00
Acetone	Peoria, Illincis	30000	20	60.00
Pulpboard	Morris, Illinois	40000	11	44.00
Canned Goods	Kane, Illinois	30000	28	84.00
Crude Napthalene	E. St. Louis, Illinois	40000	24	96.00
Boxes, wooden, set up, not nested	Cairo, Illinois	20000	46	92.00
Tallow, edible	Cairo, Illinois	24000	37	88.80
Freight, all kinds	Moline, Illinois	30000	29	87.00
Freight, all kinds	Pekin, Illinois	12000	69	82.80
Fertilizer compound	Aurora, Illinois	30000	09	27.00
Common Lime	E. St. Louis, Illinois	30000	22	66.00
Lumber	Wilcoxson, Illinois	30000	17	51.00
Fibre Boxes	Rockford, Illinois	24000	18	43.20
Asphalt	Lockport, Illinois	40000	07½	30.00
Steel Rails	Dixon, Illinois	56000	350 GT	97.50
Coke	Granite City, Illinois	35000	275 NT	48.13
Common Brick	Peoria, Illinois	60000	195 NT	58.50
Crushed Stone	Quincy, Illinois	40000	195 NT	39.00
Sand	Wyanet, Illinois	40000	149 NT	29.80
Stock Spray, petroleum based	Alton, Illinois	26000	24	62.40
Slack barrel shook	Sandwich, Illinois	30000	14	42.00
Soya Bean Oil	Monmouth, Illinois	30000	20	60.00
Corrugated Fibreboard	Rockford, Illinois	24000	13	31.20
Zinc Oxide	DePue, Illinois	36000	11	39.60
Milk Food, liquid	DeKalb, Illinois	30000	13	39.00
Glue Stock	Fulton, Illinois	36000	21	75.60

1231

* - Trailer car authority, See Page 32 Tariff

COMMODITY	ORIGIN	MINIMUM	RATE IN CENTS PER 100 LBS. EXCEPT AS OTHERWISE PROVIDED		CAR REVENUE
Vegetables, fresh or green	Savannah, Illinois	20000	20		$ 40.00
Waste Paper	Moline, Illinois	40000	18		72.00
Rubber Scrap, noibn	Rock Island, Illinois	30000	19		57.00
Electric Cable reels, steel, new	Moline, Illinois	10000	38		38.00
Canned Goods	Lanark, Illinois	30000	22		66.00
Dressed Poultry	Fulton, Illinois	20000	34		68.00
Coke	Indianapolis, Ind.	35000	275	NT	48.13
Tomato Pulp, canned	Terre Haute, Ind.	36000	24		86.40
Anti-Freeze Alcohol	Terre Haute, Ind.	30000	28		84.00
Enamelled Ware	Terre Haute, Ind.	20000	29		58.00
Pyrites, Coal or Sulphur Rock	Terre Haute, Ind.	33600	225	GT	33.75
Iron and Steel Scrap	Vicksburg, Ind.	44800	339	GT	67.80
New Iron Rails	Terre Haute, Ind.	30000	17		51.00
Building Material	Lowell, Ind.	40000	14		56.00
Catsup	Paoli, Ind.	30000	29		87.00
Tomato Juice	Kirklin, Ind.	36000	23		82.80
Cans, noibn	Indianapolis, Ind.	14000	36		50.40
Brick Granules	Crawfordsville, Ind.	60000	198	NT	59.40
Lead	Michigan City, Ind.	36000	11		39.60
Pulpboard	LaFayette, Ind.	40000	19		76.00
Coal Pyrites	Clay City, Ind.	33600	225	GT	33.75
Tomatoes, fresh	Frankfort, Ind.	28000	29		81.20
Sheet Zinc	Greencastle, Ind.	36000	21		75.60
Ground Limestone	Greencastle, Ind.	60000	208	NT	62.40
Wood Sawdust	Cedar Lake, Ind.	40000	11		44.00
Neatsfood Oil	LaFayette, Ind.	30000	26		78.00
Tomato Juice	South Whitley, Ind.	36000	22		79.20
Cordwood	Rochester, Ind.	60000	12		72.00
Meat Refuse	Fort Wayne, Ind.	30000	18		54.00
Waste Paper	Marion, Ind.	30000	19		57.00
Fresh Vegetables	Edgerton, Ind.	20000	24		48.00
Fuel, Wood	Fort Wayne, Ind.	40000	13		52.00
Freight, all kinds	Davenport, Iowa	30000	29		87.00
Fibre Boxes	Keokuk, Iowa	24000	28		67.20
Steel Rails	Clinton, Iowa	56000	350	GT	87.50
Box Shooks	Lansing, Iowa	30000	28		84.00
Limestone Flux	Dubuque, Iowa	40000	172	NT	34.40
Molding Sand	Keokuk, Iowa	40000	218	NT	43.60
Walnut Lumber	Des Moines, Iowa	30000	26		78.00
Walnut Lumber	Keokuk, Iowa	34000	19		64.60
Pulpboard, noibn	Ft. Madison, Iowa	50000	18		90.00
Glue Stock	Davenport, Iowa	36000	21		75.60
Fresh Vegetables	Clinton, Iowa	20000	21		42.00
Fresh Meats	Davenport, Iowa	21000	25		52.50
Waste Paper	Dubuque, Iowa	30000	23		69.00
Scrap Rubber, noibn	Clinton, Iowa	30000	19		57.00
Tomato Juice	Muscatine, Iowa	30000	26		78.00
Pulpboard or Fibreboard, noibn	Dubuque, Iowa	40000	20		80.00
Wooden Winding Cores	Clinton, Iowa	30000	16		48.00
Dressed Poultry	Clinton, Iowa	20000	34		68.00
Inedible Meat Refuse	Dubuque, Iowa	40000	19		76.00
Tallow, greases, noibn	Dubuque, Iowa	36000	20		72.00
Paper cores	Clinton, Iowa	30000	16		48.00
Ice	Clinton, Iowa	60000	11		66.00
Felt, roofing, unsaturated	Clinton, Iowa	30000	21		63.00
Scrap lead	Clinton, Iowa	40000	14		56.00
Steel Slabs	Clinton, Iowa	38080	316	GT	53.72
Fresh Meats	Clinton, Iowa	21000	29		60.90
Pitch or tar other than asphaltic	Clinton, Iowa	40000	15		60.00
Newsprint paper	Manistique, Mich.	40000	26		104.00
Iron or steel articles	Menominee, Mich.	40000	31		124.00
Box shooks	Clytie, Mich.	30000	25		75.00

COMMODITY	ORIGIN	MINIMUM	RATE IN CENTS PER 100 LBS. EXCEPT AS OTHERWISE PROVIDED		CAR REVENUE
Blocks, brush, plain	Marquette, Mich.	30000	29		$ 87.00
Roofing Granules	Pinehill, Mich.	60000	275	MT	82.50
Broken Stone	Pinehill, Mich.	40000	13-3/4		55.00
Sheep Manure	Winona, Minn.	50000	15		75.00
Wood chips	Duluth, Minn.	40000	22		88.00
Box shooks	Lake Elmo, Minn.	30000	32		96.00
Coke	Minneapolis, Minn.	35000	361	MT	63.18
Canned vegetable juices	Winona, Minn.	20000	38		76.00
Wool, in the grease	Worthington, Minn.	10000	95		95.00
Tar, other than petroleum	New Ulm, Minn.	40000	28		112.00
Junk, as described	Blue Earth, Minn.	30000	31		93.00
Stone, macadam	Pipestone, Minn.	40000	16-1/2		66.00
Pulpboard or Fibreboard, noibn	St. Louis, Mo.	40000	23		92.00
Red Lead	St. Louis, Mo.	40000	20		80.00
Common Lime	Hannibal, Mo.	30000	22		66.00
Fibre Boxes	St. Louis, Mo.	24000	29		69.60
Coke	St. Louis, Mo.	35000	310	MT	61.25
Brick	Utica, Mo.	60000	15-1/2		93.00
Coal	Huntsville, Mo.	60000	307	MT	92.10
Lumber	Dodson, Mo.	34000	32		108.80
Common Brick	St. Louis, Mo.	60000	250	MT	75.00
Crushed Stone	St. Louis, Mo.	40000	248	MT	49.60
Stock Spray, Petroleum based	St. Louis, Mo.	26000	24		62.40
Walnut logs, rough	Chillicothe, Mo.	30000	22		66.00
Coal Briquettes	Kansas City, Mo.	40000	392	MT	78.40
Canned Tomatoes	Canton, Mo.	36000	28		100.80
Fresh Parsley	Bon Homme, Mo.	17500	21		36.75
Spodumene Ore	Raytown, Mo.	30000	26		78.00
Drain Tile	Raytown, Mo.	30000	24		72.00
Fibreboard Boxes	Milwaukee, Wis.	24000	18		43.20
Coke	Milwaukee, Wis.	35000	200	ton	35.00
Eggs	LaCrosse, Wis.	20000	34		68.00
Tissue Paper	Menasha, Wis.	40000	24		96.00
Iron or steel articles	Barthel, Wis.	40000	22		88.00
Wood Sawdust	Superior, Wis.	40000	20		80.00
Box shooks	Ripon, Wis.	30000	26		78.00
Potatoes	Darien, Wis.	30000	14		42.00
Corrugated Paperboard	Beloit, Wis.	24000	13		31.20
Packing House Products	Madison, Wis.	30000	19		57.00
Bats, brick, broken	Beaver Dam, Wis.	80000	222	MT	88.80
Frozen Cream	Eau Claire, Wis.	20000	55		110.00
Waste, Wiping or Packing	Menasha, Wis.	30000	24		72.00
Linseed Oil	Milwaukee, Wis.	30000	11		33.00
Petroleum Crude Oil	Milwaukee, Wis.	40000	11		44.00
Canned Vegetable Juices	Frankeville, Wis.	20000	17		34.00
Cheese	Fond du Lac, Wis.	24000	23		55.20
Butter	Darlington, Wis.	20000	32		64.00
Washing Machine Tubs	Milwaukee, Wis.	16000	38		60.80
Tankage	Milwaukee, Wis.	60000	14		84.00
Canned Fruit	Milwaukee, Wis.	30000	20		60.00
Creosote Oil	Racine, Wis.	40000	15		60.00
Zinc	Kenosha, Wis.	60000	11		66.00
Radio Cabinets	Milwaukee, Wis.	17000	31		62.70
Bats, brick, broken	Milwaukee, Wis.	80000	178	MT	71.20
Broken Glass	Milwaukee, Wis.	40000	16		64.00
Condensed Milk	Milwaukee, Wis.	30000	13		39.00
Ground Iron Ore	Milwaukee, Wis.	36000	19		68.40
Sauerkraut, in cans	Racine, Wis.	36000	17		61.20
Green Salted Hides	Plymouth, Wis.	36000	21		75.60
Building Board, fibreboard, etc.	Neenah, Wis.	40000	18		72.00
Fibreboard	Waukesha, Wis.	40000	18		72.00
Beverages	Waukesha, Wis.	30000	15		45.00
Asphalt	St. Louis, Mo.	40000	16		64.00

1233

STATEMENT SHOWING VARIOUS POINTS IN WESTERN TRUNK LINE TERRITORY WHERE TARIFFS PROVIDE DELIVERY OF LIVESTOCK TO THE PACKING COMPANIES INDICATED AT THE FLAT RATE APPLICABLE TO EACH POINT WITHOUT THE ADDITION OF A SWITCHING CHARGE OR ANY OTHER CHARGE.

STATION	INDUSTRY	RAILROAD SERVING INDUSTRY	RAILROADS MAKING DELIVERY TO INDUSTRY AT LINE HAUL RATES OR BY ABSORPTION OF SWITCHING CHARGES	
So. Omaha, Nebr.	Wilson & Company	Union Pacific	CB&Q	IC
	Swift & Company	Union Pacific	CMStP&P	UP
			C&NW	Wabash
			CRI&P	MoPac
			CGW	
Kansas City, Kan-Mo.	Armour and Company	Frisco	CB&Q	Wabash
	Cudahy Packing Co.	CRI&P	CMStP&P	UP
	Swift & Company	Union Pacific	CRI&P	KCS
	Wilson & Company	KCS	CGW	Frisco
			AT&SF	MK&T
			GM&O	MoPac
St. Louis, Mo.	St. Louis Independent Packing Co. (Swift & Company subsidiary)	Wabash	CB&Q	CRI&P
		MoPac	GM&O	Wabash
			IC	and all other lines entering St. Louis-E. St. Louis district
E. St. Louis, Ill.	Hunter Packing Co.	Penna.	CB&Q	CRI&P
			GM&O	and all other lines
			IC	entering St. Louis-
			Wabash	E. St. Louis district
Cudahy, Wis.	Cudahy Bros. Co.	C&NW	CMStP&P	C&NW
			MStP&SSM	
Newport, Minn.	Cudahy Packing Co.	CMStP&P	MStP&SSM	CGW
			CStPM&O	GN
			CMStP&P	NP
			CRI&P	
Cedar Rapids, Iowa	Wilson & Company	C&NW	CMStP&P	CRI&P
			IC	C&NW
Davenport, Iowa	Kohrs Packing Co.	CMStP&P	CB&Q	CRI&P
		CRI&P	CMStP&P	
Des Moines, Iowa	Iowa Packing Co. (Swift & Company Subsidiary)	CRI&P	C&NW	CMStP&P
			CB&Q	M&StL
			CGW	Wabash
	Bookery Packing Co.	Des Moines Union		
Dubuque, Iowa	Dubuque Packing Co.	CMStP&P	CB&Q	CMStP&P
			CGW	IC
Mason City, Iowa	Armour and Company (J. E. Decker & Sons)	M&StL	C&NW	CRI&P
			CGW	M&StL
			CMStP&P	
Ottumwa, Iowa	J. H. Morrell & Co.	CMStP&P	CB&Q	CRI&P
			CMStP&P	Wabash
Waterloo, Iowa	Rath Packing Co.	IC	CGW	IC
			CRI&P	
Storm Lake, Iowa	Kingan & Co.	IC	CMStP&P	IC

(Continued on next page)

STATION	INDUSTRY	RAILROAD SERVING INDUSTRY	RAILROADS MAKING DELIVERY TO INDUSTRY AT LINE HAUL RATES OR BY ABSORPTION OF SWITCHING CHARGES	
Ft. Dodge, Iowa	Tobin Packing Co.	IC	CGW IC	M&StL
Madison, Wis.	Oscar Mayer & Co.	C&NW CMStP&P	CMStP&P C&NW	IC
Green Bay, Wis.	Armour and Company	C&NW	C&NW CMStP&P	Green Bay & Western
Austin, Minn.	Geo. A. Hormel & Co.	CGW	CGW	CMStP&P
Winona, Minn.	Swift & Company	CGW	C&NW CB&Q CGW	CMStP&P GB&W

Tariff Authority:

Wabash RR ICC 7463-7428
CRI&P RR ICC 13215
CB&Q RR ICC 20079-15625
GM&O RR ICC 261
IC RR ICC A-8213

C&NW RR ICC 11033
CGW RR ICC 5558
CMStP&P ICC B-7451 - B-7417
M&StL RR ICC B-1019
GB&W RR ICC 1608

STATEMENT SHOWING VARIOUS POINTS THROUGHOUT THE UNITED STATES WHERE DELIVERY OF LIVESTOCK TO THE PLANT FACILITIES OF THE PACKING COMPANY INDICATED IS PROVIDED FOR BY TARIFF TOGETHER WITH INFORMATION AS TO RAILROAD SERVING THE PACKING COMPANY AND OTHER CARRIERS SERVING SUCH LOCATIONS WHO ALSO PROVIDE FOR DELIVERY TO THE PLANT AT THE LINE HAUL RATES

Location	Industry	Carrier Serving Industry	Other Carriers Serving Location	Tariff Authority
Albany, Ga. (1)	The Cudahy Packing Co.	ACL	A&N	A&N Ry. ICC 67
			CofGa (2)	CofGa Ry ICC 2475
			GaNor	Ga Nor. ICC 207
			SAL	SAL RR ICC A7852
Albany, N.Y.	Lewis Newhof & Son	D&H	NYC	NYC RR ICC 16688
Arkansas City, Kans.	The Maurer Neuer Co.	AT&SF	MV	MV RR ICC 649
			MP	MP RR ICC A9789
			SLSF	SLSF Ry ICC 11478
Atlanta, Ga. (1)	Swift & Company	NC&StL	ACL	ACL (AB&C Series) ICC 205
	White Provision Co.	Sou	CofGa	CofGa Ry ICC 2475
			Ga RR	Ga RR ICC A218
			L&N	L&N RR ICC A-16200
			NC&StL (2)	NC&StL Ry ICC 2896-A
			SAL	SAL RR ICC A7852
			Sou	Sou Ry Sys. ICC A11100
Augusta, Ga.	J. Shapiro & Sons	Ga RR	ACL	ACL ICC B3068
			CofGa	CofGa Ry ICC 2475
			C&WC	C&WC ICC A1058
			G&F	G&F RR ICC 653
			Sou	Sou Ry. Sys. ICC A11100
Birmingham, Ala.	Armour and Company as Birmingham Packing Co.	B'ham Belt RR	ACL	ACL (AB&C Series) ICC 205
			CofGa	CofGa Ry ICC 2475
			GM&O	GM&O RR ICC 121
			IC	IC RR ICC 6700
			L&N	L&N RR ICC A16200
			SLSF	SLSF Ry ICC 11478
			SAL	SAL RR ICC A7852
			Sou	Sou Ry. Sys. ICC A11100
Boston, Mass. (1)	John P. Squire Co.	B&M NYC	B&M	Agent I. N. Doe ICC 558
E. Cambridge, Mass.	North Packing & Provision Co.	B&M NYC (2)	NYC (2)	
Somerville, Mass.	Somerville Packing Co.	B&M	NYNH&H	
	New England Dressed Meat & Wool Co.	B&M		
Buffalo, N.Y. (1)	Hygrade Food Products Co.	Erie	B&O	B&O RR ICC 23553
	The Danahy Packing Co.	NYC (2)	DI&W	DI&W ICC 24030
			LV	LV RR ICC C9111
			NYC&StL	NYC&StL RR ICC 6031
			PRR	PRR ICC 2729
			PM	PM Ry ICC 5157
			Wab	Wab Ry ICC 7295

(1) - Public Stock Yard
(2) - Serves Public Stock Yard

Location	Industry	Carrier Serving Industry	Other Carriers Serving Location	Tariff Authority
Butte, Mont.	Hansen Packing	CMStP&P	BA&P	BA&P Ry. ICC 56
		NP	UP	UP RR ICC 4671
Chattanooga, Tenn. (1)	J. H. Allison & Co.	NC&StL	CofGa	CofGa Ry ICC 2475
		Sou (2)	CNO&TP	Sou Ry. (CNO&TP) ICC 4681
			TA&G	TA&G Ry. ICC 33
			Sou (2)	Sou Ry. ICC A11100
Cincinnati, Ohio (1)	The E. Kahns Sons Co.	B&O (2)	C&O	Agent B. T. Jones ICC 3760
			CNO&TP	Agent B. T. Jones ICC 3760
			Erie	Agent B. T. Jones ICC 3760
			I&N	I&N RR ICC A16200
			NYC	Agent B. T. Jones ICC 3760
			N&W	Agent B. T. Jones ICC 3760
			PRR	Agent B. T. Jones ICC 3760
Columbus, Ga.	Wilson & Co. and/or The Provision Co.	SAL	Cof Ga	CofGa ICC 2475
			Sou	Sou Ry. Sys. ICC A11100
Columbus, Ohio (1)	Armour and Company	PRR	B&O (2)	Agent B. T. Jones ICC 3839
	The Columbus Packing Co.		C&O	Agent B. T. Jones ICC 3839
	The Kroger Grocery & Baking Co. (now owned and operated by Swift & Company)	NYC	NYC	Agent B. T. Jones ICC 3839
			N&W	Agent B. T. Jones ICC 3839
			PRR	Agent B. T. Jones ICC 3839
Dallas, Texas	Swift & Company	GC&SF - MKTofT	CRI&P	CRI&P Ry ICC C13215
	Geo. A. Hormel & Co.	StLSW of T	FW&DC	FW&DC Ry ICC 590
			AT&SF	AT&SF Ry ICC 14477
			KCS	KCS Ry ICC 5190
			MKTofT	MKTofT RR ICC C417
			SLSF&T	SLSF&T Ry ICC 384
			StLSW of T	StLSW of T ICC 624
			SP	SP Lines ICC TEX 392
			T&P	T&P Ry ICC 4087
Dayton, Ohio (1)	The William Fockele Sons	B&O (2)	Erie	Erie RR ICC A7589
	The Charles Sucher Packing Co.	B&O	NYC	NYC RR ICC 499
			PRR	PRR ICC 2750
Detroit, Mich. (1)	Hammond Standish & Co.	NYC (2)	D&TSL	D&TSL Ry ICC 1166
	Hygrade Food Products Corp.	NYC	DT&I	DT&I RR ICC 674
			GT	GTLW ICC A2819
			PM (C&O Ry)	C&O Ry ICC (PM) 5263
			Wab	Wab RR ICC 7428
Dothan, Ala.	Faulkner Packing Co. (Division of Kingan & Co.)	ACL	CofGa	CofGa ICC 2475
El Paso, Texas	Peyton Packing Co.	T&NO (SP Lines)	F&SF	AT&SF Ry ICC 14477
		T&P	SP	SP Lines ICC 4960
			T&NO (SP Lines)	SP Lines ICC Tex-392
			T&P	T&P Ry ICC 4087
Erie, Pa.	Schaffner Bros. Co.	NYC	B&LE	B&LE RR ICC 1200
			NYC&StL	NYC&StL RR ICC 6091
			PRR	PRR ICC 2696
Evansville, Ind. (1)	Swift & Company	C&EI (2)	IC	IC RR ICC A8213
	Weil Packing Co.		I&N	I&N RR ICC A16200
			NYC	NYC RR ICC 499
			Sou	Sou Ry. Sys. ICC C2214

(1) - Public Stock Yard
(2) - Serves Public Stock Yard

Location	Industry	Carrier Serving Industry	Other Carriers Serving Location	Tariff Authority
Fort Worth, Tex. (1)	Armour and Co. Swift & Company City Packing Co.	Ft.W. B. Ry. (2) FtW B Ry CRI&P	CRI&P FW&DC GC&SF MoPac MKTofT SISF&T SISWofT SP T&P	CRI&P ICC C13215 FW&DC ICC 590 AT&SF ICC 14477 MoPac ICC 1330 MKTofT ICC C417 SISF&T ICC 384 SISWofT ICC 624 SP Lines ICC Tex-392 T&P ICC 4087
Fostoria, Ohio	Hygrade Food Products Corp.	NYC&StL	B&O C&O NYC	B&O RR ICC 23667 C&O Ry ICC 12664 NYC RR ICC 499
Frankfort, Ind.	Milner Provision Company	NYC&StL	CI&L PRR	CI&L Ry ICC 4753 PRR ICC 2750
Grand Forks, N. Dak.	Armour and Company	GN NP	NP	NP RR ICC 9484
Houston, Tex. (1)	Houston Packing Co.	SP - MP	BRI AT&SF MoPac MKTofT SP	BRI RR ICC 83 AT&SF Ry ICC 14477 MoPac ICC 1330 MKTofT ICC C417 SP Lines ICC Tex-392
Indianapolis, Ind.	Armour and Company Kingan & Co.	PRR IU-B&O-NYC-PRR	B&O CI&L Erie IC NYC NYC&StL	Agent B. T. Jones ICC 4053 Agent B. T. Jones ICC 4053 Agent B. T. Jones ICC 4053 IC RR ICC A8213 Agent B. T. Jones ICC 4053 Agent B. T. Jones ICC 4053
Jacksonville, Fla.	Jones-Chambliss Co.	ACL	FEC SAL Sou	FEC Ry ICC 1066 * SAL RR ICC A7852 Sou Ry. ICC A11100 * - From origin pts. specified in tariff.
Kingston, N.Y.	Forst Packing Co., Inc.	NYC	NYC&W	NYC&W ICC 11019
Knoxville, Tenn. (1)	East Tennesse Packing Co. T. L. Lay Packing Co.	Sou (2) Sou	I&N	I&N RR ICC A16200
Lake Charles, La.	Swift & Company	MoPac - T&NO	KCS MP T&NO	KCS Ry ICC 5200 MP ICC A9789 SP Lines ICC La-311
Lexington, Ky. (1)	Armour and Company (Ky. Indpt. Packing Co.)	Sou (2) I&N	C&O I&N Sou (2)	C&O ICC 12664 I&N RR ICC A 16200 Sou Ry. (CNO&TP) ICC 4681
Los Angeles, Calif. (1)	The Cudahy Packing Co. Wilson & Co. Inc. Swift & Company	AT&SF SP LAJct (2) - UP (2)	AT&SF (2) PE SP (2) UP (2)	AT&SF Ry. ICC 14456 PE Ry. ICC 77 SP ICC 4960 Up (L&SL RR) 565
Memphis, Tenn. (1)	Abraham Bros. Packing Co. Inc. Armour & Co. Memphis Butchers Assn. Inc.	IC - I&N IC SISF	CRI&P GM&O IC (2) I&N (2)	CRI&P Ry ICC C-13215 GM&O RR ICC 121 IC RR ICC 6700 I&N RR ICC A16200

(1) - Public Stock Yards
(2) - Serves Public Stock Yard

(Continued on next page)

Location	Industry	Carrier Serving Industry	Other Carriers Serving Location	Tariff Authority
Memphis, Tenn. (1) (Continued)			MP	Union Ry. ICC 63 (1)
			NC&StL	NC&StL ICC 2896-A
			SISF	SISF Ry ICC 11478
			StISW	StISW Ry ICC 5514
			Sou	Sou Ry. ICC A11100
Montgomery, Ala. (1)	Swift & Company	CofGa	ACL	ACL ICC B3068
		GaRR	CofGa (2)	CofGa ICC 2475
		I&N	GM&O	GM&O RR ICC 121
			I&N (2)	I&N RR ICC A16200
			SAL	SAL RR ICC A7852
			GaRR (2)	GaRR ICC A218
Moultrie. Ga.	Swift & Company	GaNor	ACL	ACL (AB&C Series) ICC 205
			G&F	G&F ICC 653
Nashville, Tenn. (1)	Neuhoff Packing Co.	Nashville Terminals (2)	TC	TC Ry ICC B250
			I&N	I&N RR ICC A16200
			NC&StL	NC&StL Ry. ICC 2896-A
Ocala, Fla.	Swift & Company	SAL	ACL	ACL ICC B3068
Ogden, Utah (1)	The American Pkg. & Provision Co.	OURD	D&RGW (2)	D&RGW RR ICC 784
			SP (2)	SP (Pacific Lines) ICC 4960
			UP (2)	UP RR ICC 4671
			UIC	UIC RR ICC F-3
Oklahoma City, Okla. (1)	Armour and Co. Wilson and Co.	CRI&P - AT&SF	AT&SF (2)	AT&SF Ry ICC 14448
			CRI&P (2)	CRI&P Ry ICC 13215
			MKT	MKT RR ICC 1453
			SISF	SISF Ry ICC 1147
Pittston, Pa.	Montrose Beef Co.	LV	Erie	Erie RR ICC 20400
North Portland, Ore. (1)	Swift & Company	Peninsula Term. (2)	GN	GN Ry ICC A7927
			NP	NP ICC 9484
			SP&S	SP&S Ry ICC 684
			UP	UP RR ICC 5069
Pueblo, Colo.	The Nuckolls Packing Co.	D&RGW	AT&SF	AT&SF Ry ICC 14449
		MP	C&S	C&S Ry ICC 1743
		AT&SF	D&RGW	D&RGW RR ICC 784
			MP	MP RR ICC A9789
Reno, Nev.	Nevada Packing Co.	SP - WP	SP	SP (Pacific Lines) ICC 4960
			WP	WP RR ICC 248
Richmond, Va. (1)	Kingan & Co.	RF&P	ACL	ACL ICC B3068
		SAL	C&O	C&O ICC 12664
		Sou	RF&P (2)	RF&P RR ICC 1725
			SAL (2)	SAL RR ICC A7852
			Sou	Sou Ry. ICC A11100
Salem, Va.	Neuhoff Inc.	N&W	Vgn. Ry.	Vgn. Ry ICC 2106
Salem, Oreg.	Valley Packing Co.	SP	OE (SP&S)	OE Ry. ICC F158
San Antonio, Tex. (1)	Roegelein Packing Co. Mission Provision Co.	SP	MKTofT (2)	MKTofT RR ICC C417
		MoPac	MoPac (2)	MoPac ICC 1330
			SP	SP Lines ICC Tex 392
San Diego, Calif.	The Cudahy Packing Co.	AT&SF	SD&AE	SD&AE Ry. ICC 25

(1) - Public Stock Yard
(2) - Serves Public Stock Yard

Location	Industry	Carrier Serving Industry	Other Carriers Serving Location	Tariff Authority
San Francisco, Calif. (1) (South San Francisco)	Armour and Co. Swift & Company	SP (2) SP	WP	WP RR ICC 249
Seattle, Wash. (1)	Frye and Company	GN (2) UP	CMStP&P NP UP	CMStP&P RR ICC B7150 NP Ry. ICC 9484 UP RR ICC 5069
Spokane, Wash. (1)	Armour and Co. Carstens Packing Co.	NP (2) NP	CMStP&P GN SP&S UP SI	CMStP&P RR ICC B7150 GN Ry. ICC A7927 SP&S Ry ICC 684 UP RR ICC 5069 SI Ry ICC 355
Tacoma, Wash.	Carstens Packing Co.	NP UP	CMStP&P GN NP UP	CMStP&P RR ICC B7150 GN Ry. ICC A7927 NP Ry ICC 9484 UP RR ICC 5069
Terre Haute, Ind.	Home Packing Co.	NYC	C&EI CMStP&P PRR	C&EI RR ICC 54 CMStP&P RR ICC B7451 PRR ICC 2750
Tifton, Ga.	Armour and Co.	ACL	Sou Ry.	Sou Ry. ICC A11100
Topeka, Kans.	Hill Packing Co. John Morrell & Co.	AT&SF-MP-CRI&P AT&SF-MP-CRI&P	AT&SF CRI&P MP UP	AT&SF Ry. ICC 14448 CRI&P Ry. ICC C13215 MP RR ICC A9789 UP RR ICC 4817
Vernon, Texas	Hygrade Food Products Corp. (Vernon Pkg. Co. Division)	SLSF&T	FtW&DC	FtW&DC Ry. ICC 590
Walla Walla, Wash.	Walla Walla Meat & Cold Storage Co.	UP	NP	NP Ry. ICC 9484
Wichita, Kans. (1)	Cudahy Packing Co. Fred Dold & Sons Pkg. Co. Excel Packing Co.	Wichita Terminal (2) Wichita Terminal MP	AT&SF CRI&P MV MP SLSF	AT&SF Ry. ICC 14448 CRI&P Ry. ICC C13215 MV RR ICC 649 MP RR ICC A9789 SLSF ICC 11478
Wilmington, Del.	Wilmington Provision Co.	Rdg. - B&O	B&O PRR Reading	B&O RR ICC 23633 PRR ICC 2825 Rdg. ICC 2259

(1) - Public Stock Yard
(2) - Serves Public Stock Yard

STATEMENT SHOWING ROUTES AND JOINT RATES ON LIVESTOCK, VIZ.: CATTLE, S.D., CALVES, HOGS AND SHEEP, D.D., TO AND FROM VARIOUS POINTS

Origin	Destination	Route	Rates Per Cwt.	Tariff Authority
Low Moor, Iowa	Kansas City, Mo.	C&NW Marshalltown, Iowa, CGW C&NW Des Moines, Iowa, CB&Q or CGW or [redacted] I&P or Wabash C&NW Council Bluffs, Iowa, CB&Q C&NW Omaha or So. Omaha, Nebr. MoPac C&NW Omaha, Nebr. or Council Bluffs, Iowa., Wabash Conception, Mo., CGW C&NW Council Bluffs, Iowa or Omaha, Nebr., UP	36	C&NW Ry. I.C.C. 11104
		C&NW Benld, Ill., L&M or Ill. Term. C&NW Peoria or So. Pekin, Ill., IC C&NW Peoria or Barr, Ill., C&IM, Springfield, Ill., Ill. Term.		
Onawa, Iowa	E. St. Louis, Ill. St. Louis, Mo.	C&NW Peoria, Ill., GM&O C&NW Peoria, Ill., CB&Q C&NW Benld (Staunton), Ill., Wabash C&NW Benld (Gillespie) Ill., NYC(C) C&NW Des Moines, Iowa, CB&Q or Wabash C&NW Council Bluffs, Iowa, or Omaha, Nebr. CB&Q C&NW Omaha or So. Omaha, Nebr. MoPac	42	C&NW Ry. I.C.C. 11104
Morris, Kans.	National Stock Yards, Ill. St. Louis, Mo.	AT&SF Kansas City, Mo. GM&O AT&SF Kansas City, Mo. CRI&P AT&SF Kansas City, Mo. MK&T AT&SF Kansas City, Mo. MoPac AT&SF Kansas City, Mo. SISF AT&SF Kansas City, Mo. Wabash	34	AT&SFRy. I.C.C. 14262
Morris, Kans.	Austin, Minn. on CGW	AT&SF Kansas City, Mo. CGW	38	AT&SF Ry. I.C.C. 14262
Cedar Falls, Iowa	Albert Lea, Minn., on CMStP&P, CRI&P	WCF&N Waterloo, Iowa, CRI&P	21	CRI&P Ry. I.C.C. C-13212
Cedar Falls, Iowa	Faribault, Minn., on CGW	WCF&N Waterloo, Iowa, CRI&P	24	CRI&P Ry. I.C.C. C-13212
Kansas City, Kans Kansas City, Mo. St. Joseph, Mo.	Austin, Minn., on CGW	CRI&P Mason City, Iowa, CGW	37	CRI&P Ry. I.C.C. C-13212
Minneapolis, Minn. Minnesota Transfer, Minn. St. Paul, Minn.	Leavenworth, Kans.	CRI&P St. Joseph, Mo. MoPac CRI&P Omaha, Nebr., MoPac	35	CRI&P Ry. I.C.C. C-13212
Pipestone, Minn.	Huron, S. Dak.	CMStP&P Vilas, S.Dak. C&NW	22	CMStP&P RR I.C.C. B-6612
Waterloo, Iowa	E. St. Louis, Ill., on PRR	CGW Des Moines, Iowa, Wabash	36	CGW RR I.C.C. 5515
Kansas City, Mo. St. Joseph, Mo.	Austin, Minn. on CGW	CGW Waterloo IC Lyle, Minn. CMStP&P	37	CGW RR I.C.C. 5515
Topeka, Kans.	Ottumwa, Iowa	CRI&P Kansas City, Mo. CMStP&P	33	CRI&P Ry. I.C.C. C-13074

* - Subject to Ex Parte 162 and 166

STATEMENT OF LOCAL AND JOINT RATES ON CATTLE AND HOGS FROM AND TO VARIOUS POINTS IN IOWA WHICH INCLUDE INDUSTRIAL PLANT DELIVERY AT NO ADDITIONAL CHARGE ON THE FREIGHT CHARGE ASSESSED ON THE BASIS OF THE FREIGHT RATES SHOWN. -ALSO SHOWN ARE THE DISTANCES FOR THE VARIOUS OPEN ROUTES AND THE INTERSTATE SCALE PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION IN DOCKET 17000 PART 9 FOR THE SHORTEST OPEN ROUTES.

FROM	TO	COMMODITY	Rates in Cents Per 100 lbs.	Applicable Routes	Distances via each Route	Rates Prescribed by I.C.C. in Dkt. 17000 Part 9 throughout Western Terry. for shortest applicable route	
						Cattle Hogs D.D.	Hogs S.D.
Sioux City, Iowa	Ottumwa, Iowa	Cattle	27	CMStP&P Ry.	380		
		Hogs	33	C&NW RR Des Moines, Iowa CB&Q RR	314		
				C&NW RR Des Moines, Iowa CRI&P RR	309	35	40
Sioux City, Iowa	Cedar Rapids, Iowa	Cattle	24	Illinois Central RR	322		
		Hogs	30	Ill. Cent. Waterloo WCF&N	297	34	39
				C&NW Ry.	92		
				CRI&P Ry.	67		
				FtDD&S Ry.	71		
				M&StL Ry.	67	18	20
Gowrie, Iowa	Des Moines, Iowa	Hogs D.D.	13				
		Hogs S.D.	15				
				Ill. Cent. RR	261		
Dennison, Iowa	Cedar Rapids, Iowa	Hogs D.D. & S.D.	24	Ill. Cent. Waterloo WCF&N	236		
				C&NW RR	201	28	33
				CMStP&P Ry.	300		
Albert City, Iowa	Dubuque, Iowa	Hogs D.D. &S.D.	29.2	CMStP&P Fonda, Iowa, IC RR	242	32	36
				C&NW Clinton, Iowa CMStP&P	326		
				C&NW Marshalltown CGW	273		
Auburn, Iowa	Dubuque, Iowa	Hogs D.D. & S.D.	30.4	C&NW Webster City IC RR	253		
				C&NW Gladbrook CGW	247	32	36
				C&NW Cedar Rapids WCF&N	292		
				C&NW Marshalltown, CGW	206		
Galva, Iowa	Waterloo, Iowa	Hogs D.D. & S.D.	27.2	C&NW Webster City IC	206		
				C&NW Gladbrook CGW	192	28	33
				IC Ackley M&STL	219		
				IC Ft. Dodge M&StL	231		
Sheldon, Iowa	Mason City, Iowa	Hogs D.D. & S.D.	20	CMStP&P	137	24	28

Tariff Authority for Rates -
Agent L. E. Kipp I.C.C. A-3567

* - Subject to Ex Parte 162 and 166.

Tariff Authority for Distances -
CMStP&P RR ICC B-7482
C&NW Ry. ICC11093
CGW Ry ICC 5576
CRI&P Ry. ICC C11924
CB&Q RR ICC 19967
FtDDM&S RR ICC C-41
Ill. Cent. RR ICC A10441
M&StL RR ICC B820
WCF&N ICC A99

1072

STATEMENT SHOWING LIST OF SWITCHING LINES SERVING PACKING PLANTS AND ALSO STOCK YARDS WHICH PUBLISH RATES OR CHARGES ON LIVESTOCK BETWEEN ALL INDUSTRIES SERVED BY SUCH LINES ALSO FROM CONNECTING LINES TO ALL SUCH INDUSTRIES EXCEPT AS PROVIDED BY REFERENCE MARK (1)

Location	Switching Line	Tariff Authority
So. St. Joseph, Missouri	St. Joseph Belt Railway	L. E. Kipp, Agent, I.C.C. A-3623
Sioux City, Iowa	Sioux City Terminal Ry. Co.	Sioux City Terminal Ry. Co. ICC No. 33
E. St. Louis, Illinois	E. St. Louis Junction R. R. Co.	E. St. Louis Junction R. R. Co. ICC No. 16
So. St. Paul, Minn.	St. Paul Bridge & Terminal Chicago Great Western R.R.	Chicago Great Western R.R. ICC No. 5558
No. Fort Worth, Texas	Fort Worth Belt Ry.	Fort Worth Belt Ry. Co. ICC No. 53
Des Moines, Iowa	Des Moines Union Ry.	Des Moines Union Ry. Co. ICC No. 36
No. Portland, Oregon	Peninsula Terminal	Peninsula Terminal Co. ICC No. 9
Indianapolis, Indiana	Indianapolis Union Ry.	B. T. Jones, Agent, ICC No. 4053
(1) Nashville, Tenn.	Nashville Terminal of The L&N and NC&StL Ry.	F. H. Berry, Agent, ICC No. 16

(1) - Switching rates published to Nashville Stock Yards and also to industry siding of Neuhoff Packing Co., Nashville, Tenn., on Livestock on order of the Interstate Commerce Commission in Docket 29467, 3/24/1947

Chicago and North Western Railway System

July 15, 1947.

File 8555

Mr. W. A. Mayfield, General Traffic Manager, Swift & Company, Union Stock Yards, Chicago, Illinois.

DEAR MR. MAYFIELD:

Supplementing my letter of July 11th acknowledging my copy of your joint letter of July 8th requesting that the line haul carriers accord your company direct delivery of live stock at your Chicago plant at rates no higher than those assessed for delivery at the pens of the U. S. Y. & T. Co.

Our investigation has now been completed and it is our conclusion that we cannot afford to absorb the additional expense which would be necessary to comply with your request.

As to our reasons, the foregoing paragraph indicates that because of the low freight rates it is impossible for us to absorb any additional expense in the handling of this traffic.

Sincerely yours, (S.) F. G. Fitz-Patrick.

CC—Mr. L. R. Capron, Mr. J. W. Hill, Mr. R. G. Hawkinson, Mr. E. B. Finegan.

[fol. 1246–1247]

EXHIBIT 11

Financial Highlights

(000's Omitted)

	Fiscal Year				
	1943	1944	1945	1946	1947
Sales and Other Income	$1,491,696	$1,575,996	$1,309,787	$1,310,975	$2,251,826
Paid for Raw Materials, Livestock, etc.	1,157,705	1,182,983	980,223	981,661	1,782,473
Wages and Salaries to Employes	152,732	173,184	161,360	164,013	217,072
All Other Costs (Including Taxes)	163,828	204,166	155,901	148,906	229,946
Net Earnings	$17,431	$15,663	$12,303	$16,395	*$22,335
Per Share	2.94	2.64	2.08	2.77	3.77
Per Dollar of Sales	1-2/10c	1c	9/10 of 1c	1-3/10c	1c
Percent of Shareholders' Investment	6.24	5.48	4.29	5.61	7.12
Dividends Paid	$8,883	$11,252	$11,252	$11,252	$12,436
Per Share	1.50	1.90	1.90	1.90	2.10
Earnings Retained in the Business	$8,548	$4,411	$1,051	$5,143	$9,899
Current Assets	$246,172	$261,938	$235,698	$237,405	$281,708
Current Liabilities	63,273	77,565	47,696	56,546	75,243
Net Working Capital	$182,899	$184,373	$188,002	$180,859	$206,465
Ratio of Current Assets to Current Liabilities	3.89 to 1	3.38 to 1	4.94 to 1	4.20 to 1	3.74 to 1
Shareholders' Investment (Including Reserves)	$279,339	$285,749	$286,801	$292,091	$313,403
Shareholders' Investment Per Share	47.17	48.25	48.43	49.32	52.92

*After provision of $12,000,000 for high cost additions to fixed assets.

(Summarized from financial statements on Pages 20 to 23 and previous financial reports.)

[fols. 1248-1255] Distribution of Swift's Average 1947 Sales Dollar

Our 1947 sales dollar was distributed as follows:

Paid to Producers of Livestock, Dairy and Poultry Products, Oilseeds, and Other Raw Materials	79.3 cents
Paid to Manufacturers of Supplies	3.8 cents
Paid to Railroad and Trucking Companies	1.8 cents
Paid to Holders of Interest-bearing Obligations, and for Depreciation, Advertising, Rent, Telegraph, Telephone, and Miscellaneous	3.1 cents
Taxes, Federal, State, and Municipal, Including Unemployment Insurance and Old-age Benefit Taxes	1.3 cents
Paid to Employes (Operating, Sales and Office)	9.7 cents
Balance Remaining with Swift & Company as Earnings	1.0 cents
Total	100.0 cents

Further analysis of the company's sales income shows 79.3% went for raw materials, livestock, etc., as follows:

Total Sales	$2,248,766,634
Paid for Raw Materials, Livestock, etc.	1,782,472,718
which leaves a gross income before operating and other expenses of	$466,293,916

This gross income from the company's operations (20.7% of sales) was used for:

	Amount	%
* Total Employment Costs	$234,603,601	50.3
Selling Expenses, etc.	35,722,748	7.6
Supplies	86,005,885	18.4
Transportation	41,053,244	8.8
Taxes	25,915,888	5.6
Depreciation	8,657,573	1.9
Dividends to Shareholders	12,436,612	2.7
Set Aside for Contingencies, High Cost Additions to Fixed Assets, and Future Development	21,898,365	4.7
Total	$466,293,916	100.0%

* Includes salary and wage costs, social security taxes, pension contributions, etc.

[fol. 1256] Competition Forces Price Changes

Competition forces price changes to be reflected quickly all the way back to the livestock on the hoof. Each dealer and each meat packer knows that if he does not pay a little higher for the products he wants, somebody else will—and get the business.

A retail meat dealer who did not pay the market price would be left again with even less meat to sell than he had the week before. The meat packer who did not bid the market price for livestock would find that his competitors were getting increased volume while he would be unable to keep his plants operating and his customers supplied.

Anybody in the meat business who stays below the market quickly finds himself out of business. Certainly this was proved during the final days of price control, when legitimate meat packers could not legally pay the market prices which prevailed for many types of livestock, and consequently suffered serious loss of volume.

Meat and livestock, therefore, are just naturally going to be sold to those who bid market prices.

Competitive market prices of livestock and meat are among the most flexible in our entire economy. They must change quickly and with delicate precision to make possible the fair and efficient marketing of a perishable product whose supply varies weekly and daily.

Incomes at Record Levels

Prices of almost everything have risen because, taking everybody together, people have more money than they ever had before.

Not only have average incomes increased substantially, but more people are at work. About 60 million people, including those who have their own farms or businesses, are now employed, compared with 47 million in 1940. With expanding population, several million people who never worked before have been added to the nation's work force, and very few people are unemployed. Total personal incomes, after taxes, are estimated at about $175 billion this year compared with $76 billion in 1940. Thus, purchasing power for meat and other goods has more than doubled since 1940.

Meat Supply Large

The supply of meat has gone up one-fifth. Farmers are doing a good job. The nation does not have a shortage of meat compared with the supply before the war.

But the number of dollars on one side of the meat dealer's counter has increased much faster than the number of pounds of meat for sale on the other side of the counter.

Increased consumer purchasing power is usually reflected in Swift & Company's dollar sales. The accompanying chart shows how sales have generally moved up when people's incomes rose and moved down when incomes declined. Substantial deviations occurred in 1939, 1940, and 1941, as well as during the war years. In 1947, sales slightly exceeded the amount that would be expected on the basis of average experience in the past.

[fol. 1257] *The New York Times* on September 10, 1947, reported "porterhouse steaks quoted at $1 a pound in some stores here."

Cattle prices on the Chicago market at that time ranged from 11 to 35 cents a pound.

Many people have remarked about the apparently large spread between the price of a pound of steak and the price per pound of live cattle. It is a natural question to raise, because people do not often remember that only about half of a steer can be sold as retail beef cuts, and only a small part is steak.

These relationships can best be clarified by following a steer through the meat packing plant and the retail store.

As shown in the previous article, the price of livestock is a reflection of the prices of meat and byproducts, rather than the other way around. Nevertheless, to the individual meat packer, the price of livestock is his cost, and he must sell his products for enough to cover his costs, on the average, if he is going to stay in business. For this reason, as well as to follow the actual sequence of operations, the example starts with the livestock.

Only a Few Cattle Are Choice

The steaks that sold for $1 a pound in New York City on September 10 came from cattle dressed ten days to two weeks earlier. Although this meat could have come from many markets, let's assume that it came from Chicago. The cattle that produce that kind of steaks are choice steers (or heifers), which represent only a small proportion of all cattle sold for beef.

The farmer who produced the choice steer sent it to the Chicago market consigned to an experienced commission agent. The steer was displayed in a pen and the commission man sold it for the highest price he could get from any of a large number of buyers representing meat packing companies in Chicago and elsewhere. Choice cattle were quoted by the U. S. Department of Agriculture at from 31 cents to 34 cents a pound on August 27, 1947. The same prices prevailed on August 28 and 29.

Farmer Gets $325

Assuming the steer sold at the middle of this range—32.5 cents—and weighed 1,000 pounds, the farmer received $325. Out of this the farmer paid his marketing expenses, such as

trucking, yardage and commissions, and his production costs—corn, hay, wages, interest, taxes, etc.

The meat packer buyer ordered the steer driven to a plant in Chicago's Packingtown, where it was dressed the following day. After dressing and chilling, the sides of beef weighed 625 pounds.

What happened to the other 375 pounds? The meat packer saved everything of value—the hide, fats, liver and other fancy meats, blood, glands, and a good deal of low value tissues and bones used for livestock and poultry feeds. What was left was moisture and other material which had no value and had to be disposed of. The total value of [fol. 1258] by-products (at market less the expense of getting them ready for market) was $28.42.*

Expenses of buying, dressing, chilling, and loading the beef in cars totaled $11.31.*

Not All the Steer Is Beef

How much did the beef cost the meat packer? The way to figure it is:

Cost of 1,000 lb. steer	$325.00
Add plant expenses	11.31
Total cost at plant	336.31
Less value of by-products	28.42
Cost of 625 lbs. of beef	$307.89

The meat packer's cost per pound at Chicago was $307.89 divided by 625 pounds, or 49¼ cents. Every pound of the live steer cost 32½ cents, including the worthless materials that had to be disposed of. *The reduction of weight raises the cost per pound of the beef.*

The meat packer incurred additional cost in getting the beef to New York and in selling it to the retail dealer. The cost of freight, initial icing, icing in transit, unloading the

---

* By-product values change frequently. Both the figure for by-product values and the figure for plant expenses apply to the Swift & Company Chicago plant for the last week in August, 1947.

cars, branch house refrigeration, and selling expense totaled $14.64, bringing the total cost of the beef sold in New York to $322.53. While in transit, the beef suffered a shrinkage in weight of about 4 pounds, so that the amount finally sold was only 621 pounds.

Meat Packer Sells Beef for $323

The meat packer's cost per pound at the point of sale was:

$$621 \text{ lb.} \overline{)\ \$322.53}\quad 51.9¢$$

The wholesale price of choice beef in New York was quoted by the U. S. Department of Agriculture at from 51.5 cents to 52.5 cents per pound each day during the week beginning September 8. If the beef were sold at the middle of this range—52 cents—the meat packer's cost of 51.9 cents left him a profit in this particular case of only one-tenth of a cent a pound. Such market conditions are not unusual in the meat business. Sometimes the meat packer makes more than this; sometimes there is a loss. As shown on Page 4, Swift & Company's average profit per pound of meat sold this year was less than ¼ of a cent per pound.†

The total sales value of the beef was 621 pounds at 52 cents, or $322.92, *actually less than the $325 paid for the steer in Chicago.* However, the beef and by-products together were worth $351.34.

This brings us through the stockyards, the meat packing plant, and the branch house.

If You Were a Meat Retailer . . .

Now let's suppose you were the retail meat dealer handling these sides of beef.

The first step is to cut the beef into retail cuts. When this is completed the dealer finds that he has about 528 pounds of beef cuts to sell over the counter. The other 93 pounds are bones, sinews, fat, and shrinkage due to loss of moisture. The value of these materials would total about $4.00. This

† Swift & Company's profit on all products sold this year, including by-products, was 1.0% of the selling price.

is in effect a credit against the cost of the beef, and reduces the retailer's cost to $318.92. Dividing this figure by the 528 pounds of retail cuts brings the cost of these cuts to 60½ cents a pound.

Retail Dealer Sells Cuts for $385

The expenses of selling meat at retail, including rent, heat, light, taxes, insurance, wages, refrigeration, owner's profit, and in some cases delivery service and charge accounts, averages 10 to 15 cents a pound, depending on the [fol. 1259] service given to customers. Only a small part of this gross margin is profit.* Taking a middle expense figure of 12½ cents a pound, and adding it to the cost of 60½ cents for the beef cuts, you find the average selling price must be 73 cents a pound. The sales value of the beef cuts totals:

528 lb.
×73¢

$385.44

What would happen if you as a dealer offered all kinds of beef cuts in the case at the average price of 73 cents a pound? This is what a dealer would like to do. It would make the business relatively simple. But, in a very short time all the steaks and rib roasts would be sold out, but most of the short ribs, briskets, and stew meat would be left in the case. The chuck roasts, which usually sell at near the average price, would be moving out gradually.

Not All Cuts Sell at Same Price

Meat is perishable and must be sold promptly. No cut of beef can be held very long. Even a very small amount of waste or spoilage would wipe out the profit and result in a loss. So the price must be slashed on the cuts of meat that will not sell at the average price. Some may be marked as

* A recent study by the United States Chamber of Commerce showed that meat and seafood stores earned a net profit of 2 per cent on sales.

low as 40 cents—*lower than the net cost of beef cuts, and lower even than the wholesale carcass price.*

How can you as a dealer cover your costs and make a profit on that basis? The answer is that you must charge more for the steaks and roasts that are in most demand. And by doing so, you transfer some of the consumer demand to the low-priced cuts, so that you do not run out of steaks and have only the less choice cuts left. All the cuts are then sold in the proportion in which nature produced them.

Based on the usual relationships between wholesale and retail prices, it is clear that all steaks from 52-cent sides must sell at considerably more than 73 cents in order for the retail dealer to cover his costs and make a reasonable profit. Steaks from the loin, such as porterhouse, T-bone, and sirloin—which make up only a small portion of the side—bring the highest prices.

A similar explanation applies to other types of meat—pork, veal, and lamb.

Figures in this article apply to choice beef dressed in Chicago and sold in New York City early in September, 1947. During that month, Swift & Company sold beef carcasses at widely varying prices, depending on the quality, weight, location of sale, and market conditions of the moment. The methods of retail cutting and trimming vary in different localities, and for different grades and weights of animals. Retail prices vary with location and with the quality and character of services rendered to customers in the form of delivery, charge accounts, etc.

EXHIBIT NO. 12

INFORMATION CONCERNING DELIVERIES OF LIVESTOCK BY RAIL AT POINTS SPECIFIED IN PARAGRAPH VII IN COMPLAINT IN SWIFT & CO. v. A. T. & S. F. R. CO., et al

ICC DOCKET NO. 29809

(All references to deliveries or receipts are to rail deliveries or rail receipts unless otherwise specified. Amounts shown in column 8 include Ex Parte 166 10 per cent interim increase of January 5, 1948)

	1	2	3	4	5	6	7	8	9
STATION	Is there public stockyards at this station?	Does a terminal railroad serve the public stockyards?	Names of packers at this station	Track location of packing plant	Where livestock received by packer	If livestock delivered to packing plant, how old is practice?	Payment by packer, if any, for delivery at plant in addition to line-haul rate	Switching charge absorbed by line-haul carrier	Number of line-haul carriers which serve station*
Anderson, Indiana	No	No terminal railroad	Duffey's, Inc.	Central Indiana	At plant	Since 1910	None	$5.94	2 defendants 1 other line 3 total
Austin, Minnesota	No	No terminal railroad	Hormel Packing Co.	C. G. W. C. M. St. P. & P.	At plant	Since at least 1907	None	$3.72	2 defendants 2
Cedar Rapids, Iowa	No	No terminal railroad	Wilson & Co. (Swift has only a branch warehouse)	C. & N. W. C.R.I.& P.	At plant	Since at least 1925	None	$3.72 except C. & N. W. which is $6.00	4 defendants 2 others 6
Chippewa Falls, Wisconsin	No	No terminal railroad	Peter Fox & Sons	C. M. St. P. & P. Soo	No livestock either inbound or outbound by rail. All by truck.		No deliveries at plant	- -	3 defendants 3
Cudahy, Wisconsin	No	No terminal railroad	Cudahy	C. & N. W.	At plant	Since at least 1910	None	$5.50	1 defendant 1
Davenport, Iowa	No	No terminal railroad	Kohrs Packing Co.	C. R. I. & P.	At plant	Since 1927	None	$4.45 —	3 defendants 1 other 4
Des Moines, Iowa	No. Talbott & Dutcher is a private sales yard for feeder stock. Packers take no stock from T & O.	No public yards. Des Moines Union R. Co. (owned jointly by Wabash and C.M. St. P. & P.) serves packers	Iowa Packing Co. (Swift) Bookmy Pkg. Co.	(D. M. U. R. Co. (C. B. & Q. D. M. U. R. Co.	At plant " "	Since 1870 Since 1930	None	$9.76 and $5.94 respectively depending upon line-haul carrier	6 defendants 4 others 10
Dubuque, Iowa	No	No terminal railroad	Dubuque Packing Co.	C. M. St. P. & P.	At plant	Since 1931	None	$4.45	4 defendants 4
East St. Louis	Yes St. Louis National Stockyards	Yes East St. Louis Junction R. Co.	Swift Armour (both located at National Stockyards, Ill.)	E. St. L. J. R. Co.	All deliveries at public yards	- -	No deliveries at plants	- -	10 defendants 10 others 20
			Hunter Packing Co.	P. R. R.	At plant	Since at least 1918	None	$8.17 and $8.17 intermediate charge if necessary	10 defendants 8 others 18
			Circle Packing Co. Madison Pkg. Co.	Off. track locations	At public yards or at plant by truck	- -	No deliveries at plant	- -	

* Names of carriers shown on Appendix "A" attached hereto.

STATION	1 Is there public stockyards at this station	2 Does a terminal railroad serve the public stockyards?	3 Names of packers at this station	4 Track location of packing plant	5 Where livestock received by packer	6 If livestock delivered to packing plant, how old is practice?	7 Payment by packer, if any, for delivery at plant in addition to line-haul rate	8 Switching charge absorbed by line-haul carrier	9 Number of line-haul carriers which serve station
Eau Claire, Wisconsin	No	No terminal railroad	Drummond Pkg. Co.	C. & N. W. C. M. St. P. & P. C. M. & S. S. M.	At plant	Since at least 1925	None	$3.72 Soo pays $5.98	3 defendants 2 5
Elburn, Illinois	No	No terminal railroad	Elburn Pkg. Co.	C. & N. W.	At C. & N. W. pens. No rail deliveries at plant	--	No deliveries at plant	--	1 defendant 1
Estherville, Iowa	No	No terminal railroad	Davis Pkg. Co. (only horses) Tobin Pkg. Co.	C. R. I. & P.	At plant	Since 1930 Since 1937	(None over C.R.I.&P; $10.68 over M. & St. L.	$3.72 by M. & St. L.	1 defendant 1 other 2
Evansville, Indiana	Yes Evansville Union Stockyards	No terminal railroad	Weil Pkg. Co. Swift & Co.	C. & E. I.	Both take at plants and at yards	Both since at least 1924	None	$10.39	3 defendants 2 others 5
Fort Atkinson, Wisconsin	No	No terminal railroad	Jones Dairy Farms (only hogs)	C. & N. W.	At C. & N. W. freight house	--	No deliveries at plant	--	1 defendant 1
Fort Dodge, Iowa	No	No terminal railroad	Tobin Packing Co.	I. C.	At plant	Since 1934	None	$5.98 C.G.W. also pays intermediate charge of $5.98	2 defendants 2 others 4
Frankfort, Indiana	No. Frankfort Provision Co. operates private yards	No terminal carrier	Milner Packing Co.	N. Y. C. & St. L.	At Frankfort Prov. Co. yards	--	None	$7.43	2 defendants 1 other 3
Green Bay, Wisconsin	No	No terminal railroad	Armour Liebmann Pkg. Co.	C. & N. W. G. B. & W.	At plant " "	Since 1933 Since 1940	None " "	$6.00	2 defendants 1 other 3
Indianapolis, Indiana	Yes	Yes. Indianapolis Union R. Co.	Armour Kingan Co.	P. R. R. N. Y. C.	Both take at plants and at public yards	Since at least 1938 Since at least 1920	None	$4.45 "	6 defendants 1 other 7
Joplin, Missouri	Yes Joplin Stock Yards Corporation	No. Mo.-Pac. serves the yards	Crocker Pkg. Co. (also 2 small packers which take by truck only)	St. L. S. F.	At plant	Since 1928	None	$10.39	1 defendant 5 others 6

STATION	1 Is there public stockyards at this station?	2 Does a terminal railroad serve the public stockyards?	3 Names of packers at this station	4 Track location of packing plant	5 Where livestock received by packer	6 If livestock delivered to packing plant, how old is practice?	7 Payment by packer, if any, for delivery at plant in addition to line-haul rate.	8 Switching charge absorbed by line-haul carrier	9 Number of line-haul carriers which serve station
Kansas City, Kan. (Kansas City, Mo.)	Yes Kansas City Union Stockyards	Kansas City Connecting R. Co.	Cudahy Wilson Armour Swift Fowler Packing Co.	C. R. I. & P. K. C. S. St. L. S. F. U. P. Mo. Pac.	All take both at plants and at yards	Armour since 1922; others since at least 1918	None by any packer	Santa Fe absorbs:* Cudahy $10.56 Wilson $14.03 Armour $14.03 Swift $10.56 Fowler $10.56	7 defendants 6 others 13
Madison, Wisconsin	No	No terminal railroad	Oscar Mayer	C. & N. W. and C. M. St. P. & P.	At plant	Since at least 1917	None	$10.39	2 defendants 1 other 3
Marshalltown, Iowa	No	No terminal railroad	Swift Marshall Packing Co. Armour (No packing. Pens for assembly of outbound hogs.)	C. & N. W. and C. G. W. (joint spur)	At plant	Since 1904 Since 1903 (Neither plant received any rail deliveries during 1947)	None	$6.00	2 defendants 1 other 3
Mason City, Iowa	No	No terminal railroad	J. E. Decker & Sons	M. & St. L.	At plant	Since 1899	None	$3.72 except C. & N. W. for which charge is $6.00	4 defendants 2 others 6
Milwaukee, Wisconsin	Yes Milwaukee Union Stock Yards	No terminal railroad	Armour Plankington Pkg. Co. Zition Bros. Oscar Mayer Wisconsin Pkg. Co. Ideal Packing Co. (Swift has retail warehouse only)	All but Ideal on C. M. St. P. & P., Ideal off tracks. Oscar Mayer takes only by truck.	All take at plant except Ideal, which takes at yards.	All plants have been receiving deliveries since before 1925	None by any packer	$9.07	5 defendants 2 others 7
Mishawaka, Indiana	No	No terminal railroad	Major Bros. Pkg. Co.	N. Y. C.	At plant	Since 1932	None	No switching charge between N.Y.C. and G.T.	1 defendant 1 other 2
Newport, Minnesota	No	No terminal railroad	Cudahy (located on Cudahy spur near Newport)	C. M. St. P. & P.	At plant	Since at least 1926	Charge is $7.69 C. B. & Q., C. R. I. & P., C. G. W. and M. St. L. absorb entire amount. Others absorb only $4.53**		3 defendants 3

* Charge to Cudahy, Armour and Swift is same for all line-haul carriers. The charge to Wilson is only $12.37 for some carriers. Charge to Fowler is $12.39 for K. C. S. and St. L. S. F.

** Although only 3 lines enter Newport other lines entering St. Paul absorb charge of C. M. St. P. & P. for deliveries to Cudahy at Newport.

SWIFT & CO. v. A. T. & S. F. R. CO., et al

ICC DOCKET 29809

STATION	1 Is there public stockyards at this station?	2 Does a terminal railroad serve the public stockyards?	3 Names of packers at this station	4 Track location of packing plant	5 Where livestock received by packer	6 If livestock delivered to packing plant, how old is practice?	7 Payment by packer, if any, for delivery at plant in addition to line-haul rate	8 Switching charge absorbed by line-haul carrier	9 Number of line-haul carriers which serve station
Omaha-South Omaha, Nebraska	Yes Union Stock Yards	Yes So. Omaha Terminal R. Co.	Swift Armour Cudahy Nebraska Beef Co	S. O. T. R. Co.	All livestock taken at public yards	--	No deliveries at plants	--	8 defendants 2 others 10
			Roth & Sons Kingan & Co. M. Rothschild	C. B. & Q.	All deliveries to public yards	--	No deliveries at plants	--	
			Wilson Swift (feed lot on Ryans Spur)	U. P.	At plant	Since at least 1920 Since at least 1916	None None	$7.43 $7.43	
Ottumwa, Iowa	No	No terminal railroad	John Morrell & Co.	C. B. & Q., C. R. I. & P. and C. M. St. P. & P.	At plant	Since at least 1927	None	No switching	4 defendants 4
Peoria, Illinois	Yes Peoria Union Stock Yards	Yes Peoria & Pekin Union R. Co.	Armour Stahl-Meyer	P. & P. U. P. & P. U.	All packers in Peoria take at yards.	--	No deliveries at plants	--	8 defendants 4 others 12
			Shehan & Co.	C. B. & Q.					
			Calihan & Co. McElwee Pkg. Co.	Off-track location					
St. Joseph, Mo.	Yes	Yes St. Joseph Terminal Railway Co.	Swift Armour	St. J. T. Ry. Co.	Armour takes at public yard. Since 9/47 Swift takes hogs at plant between 10 P.M. & 6 A.M.	Swift hogs since 9-23-47	None	$3.72	4 defendants 2 others 6
			Dugdale Pkg. Co.	C. R. I. & P.	At public yards		--	--	
			Seitz Pkg. Co.	A. T. & S. F.	At public yards and plant	10/25/46	None	$10.39	
			Glasers Provision Co.	C. B. & Q.	Only processing. No livestock purchased		--	--	
Sioux City, Iowa	Yes	Yes Sioux City Terminal Ry. Co.	Armour Cudahy Swift	S. C. T. Ry. Co.	All take at public yard except Cudahy which takes some sheep at its plant	Cudahy since at least 1932	None	$7.80	4 defendants 1 other 5

1263

STATION	1 Is there public stockyards at this station?	2 Does a terminal railroad serve the public stockyards?	3 Names of packers at this station	4 Track location of packing plant	5 Where livestock received by packer	6 If livestock delivered to packing plant, how old is practice?	7 Payment by packer, if any, for delivery at plant in addition to line-haul rate	8 Switching charge absorbed by line-haul carrier	9 Number of line-haul carriers which serve station
Storm Lake, Iowa	No	No terminal railroad	Kingan & Co.	I. C.	At plant	Since at least 1935	None	$3.72	2/2 defendants
South St. Paul, Minnesota	Yes St. Paul Union Stockyards	No CGW only railroad serving public yards	Armour Swift Morris Rifkin & Sons	All packers off-track location	All take delivery at yards	--	No deliveries at plants	--	6 defendants 3 others 9
Terre Haute, Ind.	No	No terminal railroad	Home Packing Co.	N. Y. C.	All deliveries by truck	--	--	--	4/4 defendants
Waterloo, Iowa	No	No terminal railroad	Rath Packing Co.	I. C.	At plant or at pens	Since at least 1895	None	$3.72 (C.R.I.& P. also pays $3.72 intermediate charge.)	3 defendants 1 other 4
Winona, Minnesota	No	No terminal railroad	Swift	C. G. W.	At plant	Since at least 1928	None	$3.72	4 defendants 1 other 5
St. Louis, Mo.	Yes Mississippi Valley Stock Yards	Yes Terminal Railroad Association	Independent Pkg. Co. (& other small packers all off-track)	Mo. Pac. and ~~Wabash~~ Frisco	At plant (others take at Yards or by truck	Since at least 1914	None	$12.39 Varies some according to line-haul carrier	10 defendants 7 others 17

ICC Dkt. No. 29809
Exhibit _____

APPENDIX A TO EXHIBIT 12

(Names of Carriers serving points named in Paragraph VII of Swift & Co., Complaint)

Station	Defendant Carriers	Other Linehaul Carriers		Total
Anderson, Indiana	New York Central Pennsylvania	Central Indiana		3
Austin, Minnesota	Chicago Great Western CMSTP&P	---		2
Cedar Rapids, Iowa	C&NW CMSTP&P	Cedar Rapids & Iowa City		3
Chippewa Falls, Wisc.	CMSTP&P C&NW	Soo Line		3
Cudahy, Wisconsin	C&NW			1
Davenport, Iowa	CB&Q CMSTP&P	CRI&P	Davenport, R. I. & NW	4
Des Moines, Iowa	CB&Q C&NW CGW	CMSTP&P CRI&P WABASH	Mpls. & Ste Louis Ft. D.DesM. & So. Des Moines Western DesM. & Cent. Iowa	10
Dubuque, Iowa	CB&Q CGW	CMST.P&P	---	4
East St. Louis, Ill.	B&O CB&Q C&EI CRI&P CM&O	IC NYC NYCH&ST.L PRR WABASH	Alton & So. Frisco Litchfield & Madison L&N, MKT, Mo-Pac St.L. Southwest Southern	18

Station	Defendant Carriers		Other Linehaul Carriers	Total
Eau Claire, Wisconsin	CMSTP&P C&NW	Soo Line	---	3
Elburn, Illinois	C&NW		---	1
Estherville, Iowa	CRI&P		Mpls. & St.L.	2
Evansville, Indiana	C&EI IC	NYC	L&N Southern	5
Fort Atkinson, Wisc.	C&NW		---	1
Fort Dodge, Iowa	CGW	IC	Ft. D. Des M. & So. Mpls. & St. L.	4
Frankfort, Indiana	Pennsylvania NYCH&ST.LOUIS		Chi. Ind. & L.	3
Green Bay, Wisconsin	C&NW	CMSTP&P	Green Bay Western	3
Indianapolis, Indiana	B&O Erie IC	NYC NYCH&ST.L. PENNSYLVANIA	Ch. Ind. & L.	7
Joplin, Missouri	AT&SF		Frisco, KCSo. Mo&Ark., MKT MO-Pac	6
Kansas City, Kansas	AT&SF CGW CB&Q CRI&P	CMST.P&P GM&O Wabash	Frisco, Kan.City Kaw.Val. KCSo., MKT., MO-Pac, UP	13
Madison, Wisconsin	C&NW C.M.ST.P&P	IC	---	3
Marshalltown, Iowa	C&NW	CGW	Mpls. & St. Louis	3
Mason City, Iowa	C&NW CGW	CMSTP&P CRI&P	Mas.City & C.LR Mpls. & St. Louis	6
				1266

Station	Defendant Carriers		Other Linehaul Carriers	Total
Milwaukee, Wisconsin	C&O C&NW CMSTP&P	Pennsylvania Soo Line	Grand Trunk CN.SH.&MIL	7
Mishawaka, Indiana	NYC		Grand Trunk	2
Newport, Minnesota	CB&Q CRI&P	CMSTP&P	---	3
South Omaha, Nebraska	CB&Q C&NW CGW CMSTP&P	CRI&P IC WABASH	Mo-Pac UP	10
Ottumwa, Iowa	CB&Q CMSTP&P	CRI&P WABASH	---	4
Peoria, Illinois	CB&Q C&NW CRI&P GM&O	IC NYC NYCH&ST.LOUIS PENNSYLVANIA	Mpls. & St. Louis TP&W, Ch.&Ill.Mid. Peoria & Pekin Union	12
St. Joseph, Missouri	AT&SF CB&Q	CGW CRI&P	Mo-Pac UP	6
Sioux City, Iowa	CB&Q O&NW	CMSTP&P IC	Great Northern	5
Storm Lake, Iowa	CMSTP&P	IC	---	2
South St. Paul, Minn.	CB&Q CGW CMSTP&P	CRI&P O&NW SOO LINE	Great Northern Mpls. & St. Louis Northern Pacific	9
Terre Haute, Indiana	O&EI CMSTP&P	NYC Pennsylvania	---	4
Waterloo, Iowa	CGW CRI&P	IC	Waterloo, Ced. F. & N.	4
Winona, Minnesota	CB&Q C&NW	CGW CMSTP&P	Green Bay & Western	5

1267

1090

NOTE

For Pages 1091, 1092, and 1094
see Next Card. (Page 1093 is blank)

EXHIBIT NO. 16

SWIFT & COMPANY v. A. T. & S. F. Ry. Co. et al.

Memorandum of the consist of certain trains moving from yards of line-haul carriers named below to Damen Avenue Yards of Chicago Junction Railway showing engine number, date and arrival time at Dameh Avenue Yards, number of cars of dead freight, livestock and empties, furnished upon the written requests of Swift & Company.

Gulf, Mobile and Ohio Railroad Company

Engine No.	Date	Arrived Damen Av. Yd.	Consist Stock	Dead	Empty
50	April 17, 1947	6:00 A.M.	1	5	0
51	18	6:45 A.M.	3	7	0
50	19	3:15 A.M.	1	7	1
50	23	7:20 A.M.	2	1	0
1103	25	8:35 A.M.	1	5	0
11	30	7:30 A.M.	1	6	0
1002	May 2, 1947	7:45 A.M.	2	8	0
10	10	5:00 A.M.	1	10	0

Chicago Great Western

605	April 17, 1947	7:45 A.M.	4	8	0
605	18	7:00 A.M.	2	3	0
610	19	7:30 A.M.	1	10	1

(Chicago Great Western, cont'd).

Engine No.	Date	Arrived Damen Ave. Yd.	Consist Stock	Dead	Empty
605	April 21, 1947	4:20 A.M.	3	2	0
605	22	6:00 A.M.	3	5	0
605	23	8:20 A.M.	1	6	0
484	24	2:50 A.M.	3	7	0
467	25	2:45 A.M.	4	8	0
605	25	8:35 A.M.	2	3	1
610	29	6:40 A.M.	8	9	0
605	30	6:40 A.M.	6	2	2
605	May 1, 1947	7:15 A.M.	4	7	0
482	2	1:40 A.M.*	7	8	0
605	5	7:15 A.M.*	2	7	0
605	6	5:45 A.M.	5	7	1
605	8	8:00 A.M.	3	7	1

* - Swift indicates these two trains were delivered at 1:40 P.M. and 7:15 P.M. respectively: CGW records show 1:40 A.M. and 7:15 A.M. as being the correct time of delivery.

Chicago, Burlington & Quincy Railroad

9370	April 16, 1947	6:10 A.M.	13	24	1
9367	17	8:05 A.M.	3	9	0
9375	18	6:00 A.M.	6	22	2
9367	18	8:20 A.M.	1	8	0
4962	21	2:45 A.M.	9	12	0
4962	22	4:35 A.M.	10	13	1
4962	23	4:30 A.M.	12	9	0

1272

(Chicago, Burlington & Quincy Railroad, cont'd.)

Engine No.	Date	Arrived Damen Ave. Yd.	Consist Stock	Dead	Empty
4980	April 24, 1947	4:30 A.M.	4	12	1
4962	25	6:35 A.M.	2	15	0
9358	26	5:00 A.M.	1	18	4
4980	29	4:55 A.M.	11	8	3
4943	30	6:30 A.M.	8	16	0
4943	May 1, 1947	6:50 A.M.	10	14	0
4962	2	5:40 A.M.	4	20	2
4962	5	5:00 A.M.	4	13	2
9371	6	2:45 A.M.	4	7	0
4962	7	6:45 A.M.	2	9	0
4980	8	5:35 A.M.	7	10	1
9358	8	5:55 A.M.	2	2	0
4964	9	6:15 A.M.	2	2	0
9358	9	5:40 A.M.	1	24	4
4980	10	6:30 A.M.	3	16	1

Illinois Central Railroad

3692	April 16, 1947		1	6	0
3692	21		7	2	0
3773	22		8	15	0
3692	23		5	8	0
3692	29		4	3	0
3691	30		1	0	0
3773	May 6, 1947		11	5	0
3692	7		5	7	0
3691	8		4	7	0

The Atchison, Topeka and Santa Fe Railway

Engine No.	Date	Arrived Damen Ave. Yd.*	Consist Stock	Dead	Empty
2407	April 19, 1947	5:35 A.M.	2	6	1
2410	21	2:00 A.M.	2	2	0
2410	21	5:20 A.M.	0	8	0
2412	25	3:05 A.M.	10	4	0
2409	25	7:20 A.M.	4	4	0
2411	26	6:30 A.M.	1	4	1
2411	30	6:15 A.M.	4	6	0
572	May 1, 1947	6:40 A.M.	3	7	0
2412	5	5:40 A.M.	1	10	0
572	8	7:15 A.M.	3	8	0
583	9	6:55 A.M.	2	6	0
572	10	5:15 A.M.	9	4	3

* - A.T. & S.F. states that their engines pull into Ashland Avenue. They do not make any deliveries to Damen Avenue.

Chicago and North Western Railway

Date	Engine No.	Arrival Damen Ave.	Consist Livestock	Perishable	Dead Frt.	Empty
4-16-47	1581	8:00 AM	18	1	0	0
4-17-47	2633	4:10 AM	5	0	0	0
4-17-47	1581	7:55 AM	1	0	0	0
4-18-47	1581	4:40 AM	8	4	0	0
4-19-47	2608	7:20 AM	3	0	0	0
4-22-47	1581	3:05 AM	10	0	0	0
4-23-47	1581	6:35 AM	24	5	0	0
4-24-47	1581	5:40 AM	6	0	0	0
4-25-47	1629	10:30 AM	2	8	0	0

(Chicago and North Western Railway, cont'd.)

Date	Engine No.	Arrival Damen Ave.	Consist Livestock	Perishable	Dead Frt.	Empty
4-26-47	1629	4:35 AM	2	3	0	0
4-30-47	1641	7:10 AM	5	3	0	0
5-2-47	2157	6:10 AM	2	0	0	0
5-3-47	1633	8:30 AM	2	0	0	0
5-6-47	1627	2:15 AM	5	0	0	0
5-7-47	1568	7:00 AM	32	6	0	0
5-8-47	1568	6:05 AM	15	3	0	0
5-10-47	1568	6:45 AM	5	0	0	0

Chicago, Milwaukee, St. Paul & Pacific Railroad

Engine No.	Date	Arrived Damen Ave. Yd.	Consist Livestock	Dead Frt.	Empty
620	April 16, 1947	6:30 A.M.	14	5	0
619	17	6:20 A.M.	13	2	0
615	18	6:20 A.M.	6	2	0
619	19	6:25 A.M.	5	7	0
556	21	6:35 A.M.	20	2	0
543	22	7:10 A.M.	3	5	0
524	23	6:30 A.M.	34	5	0
534	24	6:35 A.M.	8	2	0
520	25	7:00 A.M.	3	5	0
544	26	6:40 A.M.	4	2	0
556	29	6:30 A.M.	11	6	0
524	30	6:35 A.M.	37	6	0
552	May 1, 1947	7:45 A.M.	12	3	0
554	2	7:25 A.M.	6	4	0

(Chicago, Milwaukee & St. Paul & Pacific Railroad, Cont'd.)

Engine No.	Date	Arrived Damen Ave. Yd.	Consist Livestock	Dead Frt.	Empty
600	May 3, 1947	7:30 A.M.	3	3	0
631	6	6:15 A.M.	10	3	0
652	7	6:30 A.M.	2	2	0
652	8	6:15 A.M.	14	2	0
620	9	6:25 A.M.	18	3	0

EXHIBIT NO. 17

SWIFT & COMPANY v. A. T. & S. F. Ry. Co. et al

ICC No. 29809.

The following figures show carload deliveries of livestock by roads named below, at their respective team tracks in Chicago.

Wabash Railroad

	1942	1943	1944	1945	1946	1947 (8 mos.)
25th & Canal	--	--	36	126	233	20
43rd & Canal	331	568	612	238	276	538
Total	331	568	648	364	509	558

Yearly average - 515.

Chicago, Rock Island and Pacific Railroad

Deliveries at Root and 43rd Street Team Tracks

1943	1944	1945	1946	1947 (8 mos.)
2	48	93	316	49

Annual average - 102.

Illinois Central Railroad

Team Track at Archer and Halsted

1943 (last 6 mos.)	1944	1945	1946	1947
153	227	339	209	87

Annual average approximately 225.

RECORD
P. 1102-
1103
& Reference
Shots

EXHIBIT NO. 13

MAP OF THE
CHICAGO JUNCTION RY. CO.
AND THE
CHICAGO RIVER & INDIANA R.R. CO.
DEC. 1947
SCALE
Office of Valuation Engr.
Chicago, Ill.

ZONE ONE
ZONE TWO
ZONE THREE
ZONE FOUR
ZONE FIVE
ZONE SIX
ZONE SEVEN
ZONE EIGHT
ZONE NINE
ZONE NINE

DOUGLAS PARK
SOUTH
CHICAGO RIVER
CHICAGO BRANCH
SOUTH BRANCH
CANAL
DRAINAGE CANAL
ILLINOIS
MICHIGAN
MCKINLEY PARK
CRANE CO.
GRAND AVE.
ARCHER AVE.
WESTERN AVE.
ASHLAND AVE.
HALSTED ST.
ROOSEVELT RD.
TAYLOR ST.
HARRISON ST.
VAN BUREN ST.
CONGRESS ST.
JACKSON BLVD.
ADAMS ST.
MONROE ST.
WASHINGTON BLVD.
RANDOLPH ST.
LAKE ST.
MADISON ST.
FULTON ST.
KINZIE ST.
ERIE ST.
OHIO ST.
GRAND AVE.
ONTARIO ST.
SUPERIOR ST.
CHICAGO AVE.
DIVISION ST.
NORTH AVE.
NORTH WESTERN
CHICAGO & NORTH WESTERN R.R.
CHICAGO & ALTON R.R.
CHICAGO & EASTERN ILLINOIS R.R.
BALTIMORE & OHIO CHICAGO TERMINAL R.R.
INTERNATIONAL HARVESTER CO.
CHICAGO & WESTERN INDIANA R.R.
CHICAGO, ROCK ISLAND & PACIFIC R.R.
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R.R.
CHICAGO & GREAT WESTERN R.R.
CHICAGO, BURLINGTON & QUINCY R.R.
CHICAGO, INDIANAPOLIS & LOUISVILLE R.R.
CHICAGO, SOUTH SHORE & SOUTH BEND R.R.
CHICAGO & ILLINOIS MIDLAND R.R.
CHICAGO, ROCK ISLAND & PEORIA R.R.
CHICAGO & ILLINOIS WESTERN R.R.
CHICAGO, MILWAUKEE & ST. PAUL R.R.
CHICAGO & NORTH WESTERN R.R.
CHICAGO, ROCK ISLAND & PACIFIC

36
31
30 TH
ST.
32
OAKLEY AVE.
IRVING AVE.
LEAVITT ST.
HAMILTON AVE.
HOYNE AVE.
SEELEY AVE.
WINCHESTER AVE.
LINCOLN ST.
HONORE ST.
WOOD ST.
39 TH PL.
CENTRAL MANUFACTURING DISTRICT
U.S. GOVERNMENT COLD STORAGE BLDG.
CHICAGO JCT. TERMINAL & LOFT BLDG.
U.S. GOVT BLDG.
CHICAGO STEEL SERVICE CO WAREHOUSE
BOULEVARD
41 ST ST.
SWIFT & CO.
ROUND HOUSE
W I L S O N
42 ND ST.
42 ND PL.
43 RD ST
MAGNUS METAL CO.
WESTERN AVE.
CORRUGATED CO.
WHITNEY & FORD
CALUMET BUTTONS CO.
SINCLAIR REFINING CO.
EAGLE PICHER LEAD CO.
GARY SCREW & BOLT CO.
INTERNATIONAL CAR CO.
A N D
C O M P A N Y
MARSHFIELD AVE.
ASHLAND AVE.
44 TH ST.
HERMITAGE AVE.
PAULINA ST.
WEST OF ASHLAND AVE
NORTH HALF
1269

P. 1094

1094

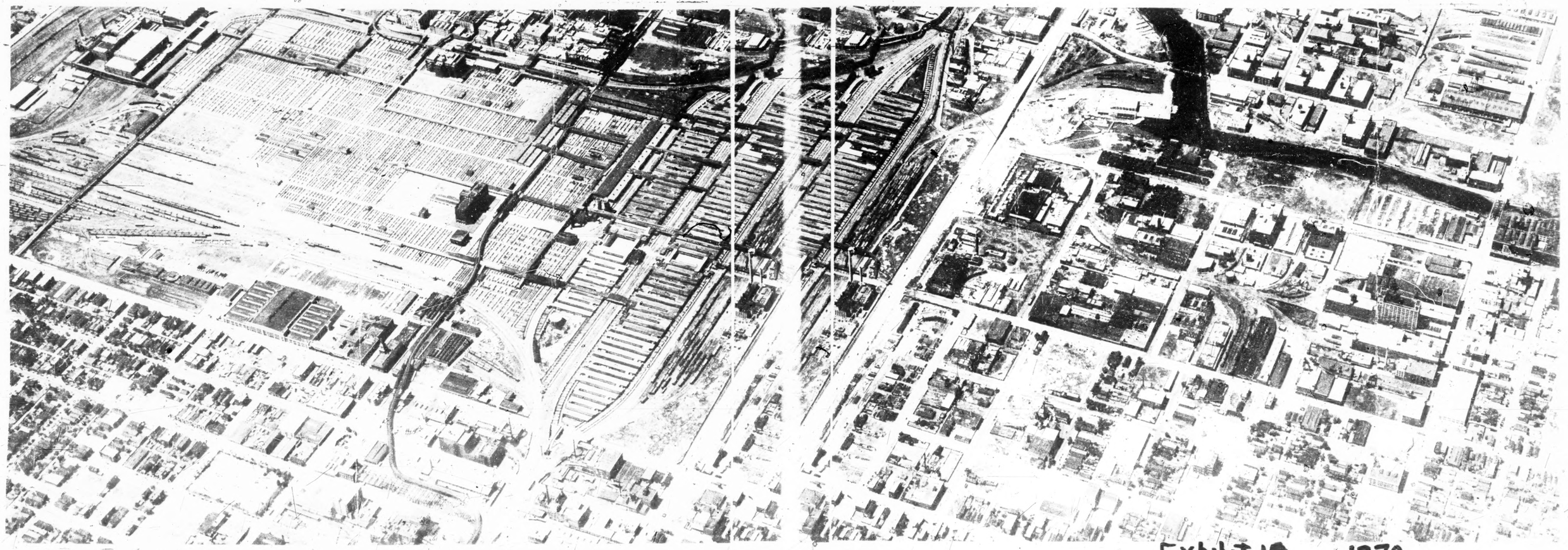


Exhibit 15 1270

Chicago and North Western Railway

Team Track at Fifteenth and Morgan Streets.

1945	1946	1947 (9 mos.)
261	479	138

Annual average - 308.

Chicago, Burlington & Quincy Railroad

16th Street Team Track

1942	1943	1944	1945	1946	Total
544	594	363	437	1144	3082

Annual average - 616.

EXHIBIT NO. 18

Swift & Company v. A. T. & S. F. Ry. Co. et al.

Memorandum of the consist of certain trains moving from yards of New York, Chicago and St. Louis Railroad Company to Damen Avenue Yards of Chicago Junction Railway showing engine number, date of arrival at Damen Avenue Yards, numbers of cars of live stock, other loads and empties, furnished upon the written request of Swift & Company.

		Total		C.J. Including CR&I											
				Loads		Empties					Loads		Empties		
Engine Number	1947 Date	Loads	Mtys	Live Stk.	Other Loads	Refgrs	Box	Hops	Flats	Cons	Live Stk.	Other Loads	Refgrs	Box	Hops.
515	4/17	4	16	1	1	5	6	4	0	0	1	1	0	1	0
518	4/18	12	12	3	6	6	3	1	0	0	1	2	0	2	0
515	4/19	11	26	0	3	10	7	1	5	0	6	2	0	3	0
515	4/23	8	26	0	2	18	0	6	0	1	3	3	0	1	0
507	4/29	13	20	0	6	17	0	2	1	0	2	5	0	0	0
524	4/30	7	10	5	2	8	0	0	2	0	0	0	0	0	0
506	5/7	5	24	0	0	20	3	0	0	0	2	3	0	1	0

1103

EXHIBIT NO. 19

1278

EXHIBIT NO. 20

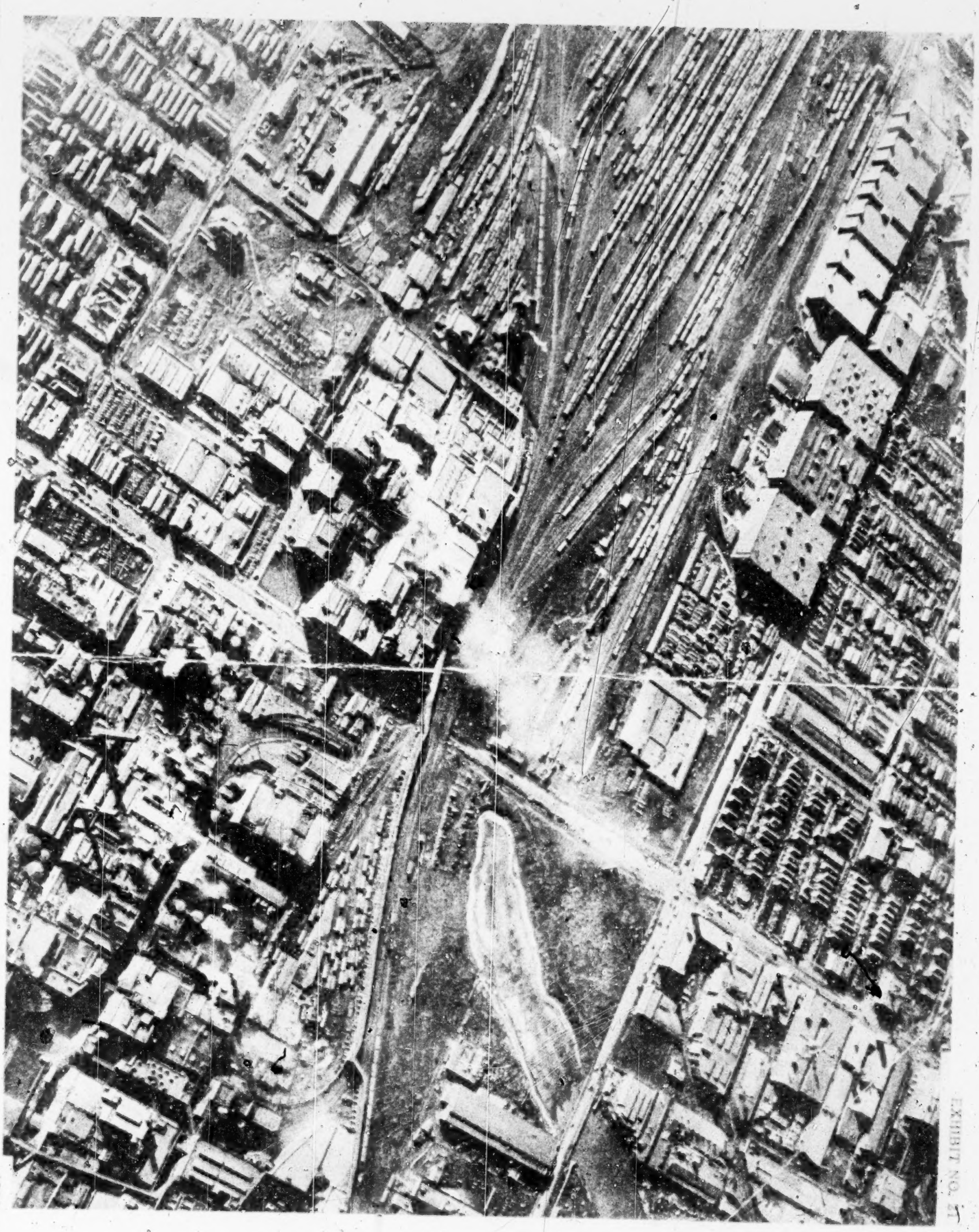


EXHIBIT NO. 5

1280

EXHIBIT NO. 22

Before the

Interstate Commerce Commission

Docket No. 29809

SWIFT & COMPANY

vs

The Atchison, Topeka & Santa Fe Ry. Co., et al

and

I. & S. No. 5543

Submitted by:
United States Department of Agriculture

Chicago
Feb. 24, 1948

LIVESTOCK RECEIVED AT UNION STOCK YARDS, CHICAGO

Year	Cattle	Calves	Hogs	Sheep
DIRECTS				
1937	57,573	29,067	1,330,225	819,025
1938	49,502	24,030	1,496,582	708,320
1939	42,817	62,054	1,489,790	705,394
1940	37,568	55,108	1,849,168	748,095
1941	52,551	51,964	1,610,434	954,517
Yearly prewar average	48,002	44,445	1,555,240	787,070
1947	95,539	74,798	1,360,946	295,504
TOTAL RECEIPTS				
1937	1,980,992	386,066	3,968,398	2,500,965
1938	1,864,553	325,143	4,188,055	2,563,867
1939	1,818,494	312,052	4,263,810	2,498,869
1940	1,925,792	271,117	5,385,492	2,102,521
1941	2,035,409	243,724	4,633,712	2,178,518
Yearly prewar average	1,929,048	307,621	4,487,893	2,368,936
1947	2,089,433	239,035	3,179,019	1,306,851
RATIO DIRECTS TO TOTAL RECEIPTS				
Yearly prewar average	2.48%	14.44%	34.65%	33.22%
1947 Receipts	4.57%	31.20%	43.06%	22.61%

1408

1282

COMPARISON OF YARDAGE REVENUES OBTAINABLE
FROM SALABLE AND DIRECT RECEIPTS

Union Stock Yard & Transit Company
Chicago, Illinois

1947

Species	*Rate	Volume of Salable Receipts	Revenue from Salable Receipts	Volume Direct Receipts	Revenue from Directs	Revenue from Directs and Salables
Truck Cattle	.70	1,252,165	$ 876,515.50	1,242	869.40	$ 877,384.90
Rail Cattle	.65	741,729	482,123.85	94,297	61,293.05	543,416.90
Truck Calves	.43	105,112	45,198.16	1,496	643.28	45,841.44
Rail Calves	.40	59,125	23,650.00	73,302	29,320.80	52,970.80
Truck Hogs	.25	1,478,830	369,707.50	68,447	17,111.75	386,819.25
Rail Hogs	.21	331,243	69,561.03	1,300,499	273,104.79	342,665.82
Truck Sheep	.18	374,198	67,355.64	295	53.10	67,408.74
Rail Sheep	.15	637,149	95,572.35	295,209	44,281.35	139,853.70
Total			$2,029,684.03		$426,677.52	$2,456,361.55

*U. S. Y. & T. Company Tariff No. 14
Effective Date: August 11, 1947

Livestock Received, Exclusive of Through Shipments, at Seven Major Terminal Markets

1937 - 1941, inclusive

Average Annual Volume

	Cattle	Calves	Hogs	Sheep
		OMAHA		
Total Receipts	1,230,400	129,800	1,542,800	1,802,400
Direct Receipts	2,500	1,600	477,800	203,800
% Directs of Total	0.20	0.12	30.96	12.71
		NATIONAL STOCK YARDS		
Total Receipts	870,600	511,400	2,692,800	894,600
Direct Receipts	6,900	27,300	359,600	26,500
% Directs of Total	0.70	5.38	13.35	2.90
		DENVER		
Total Receipts	520,000	100,000	401,800	2,840,600
Direct Receipts	1,600	100	111,200	
% Directs of Total	0.30	0.10	27.67	
		SOUTH ST. PAUL		
Total Receipts	941,400	499,800	2,266,400	1,267,600
Direct Receipts	13,600	17,900	293,800	71,200
% Directs of Total	1.44	3.58	12.96	5.61
		FORT WORTH		
Total Receipts	681,600	422,400	390,400	1,117,800
Direct Receipts	18,200	11,200	59,400	10,200
% Directs of Total	2.67	2.65	15.21	0.91
		SOUTH ST. JOSEPH		
Total Receipts	343,800	63,800	816,600	1,014,800
Direct Receipts	1,900	100	82,400	80,000
% Directs of Total	0.55	0.15	10.09	7.88
		SIOUX CITY		
Total Receipts	714,200	59,800	1,195,800	689,800
Direct Receipts	2,400	200	174,000	28,700
% Directs of Total	0.33	0.33	14.55	4.16

Livestock Received, Exclusive of Through Shipments, at Seven Major Terminal Markets

For Latest Available Period

	Cattle	Calves	Hogs	Sheep	Remarks
			OMAHA		
Total Receipts	1,706,000	104,300	2,078,100	1,669,800	Year End. 12/31/46
Rail Directs	3,100	3,300	597,900	334,700	
Other Directs	4,000	-	396,900	400	
% Rail Directs	0.18	3.16	28.77	20.04	
			NATIONAL STOCK YARDS		
Total Receipts	742,000	419,200	1,801,600	650,400	Year End. 12/31/46
Rail Directs	4,300	32,800	480,300	118,000	
Other Directs	-	-	-	-	
% Rail Directs	0.57	7.82	26.65	18.14	
			DENVER		
Total Receipts	683,500	85,100	555,000	1,343,300	Year End. 12/31/46
Rail Directs	1,200	500	252,400	14,100	
Other Directs	4,700	100	176,300	1,700	
% Rail Directs	0.18	0.58	45.47	1.04	
			SOUTH ST. PAUL		
Total Receipts	975,400	502,200	2,141,500	1,142,500	Year End. 10/31/46
Rail Directs	7,100	4,900	184,100	23,100	
Other Directs	7,200	12,400	68,200	14,500	
% Rail Directs	0.72	0.97	8.59	2.02	
			FORT WORTH		
Total Receipts	801,800	458,100	536,600	2,178,500	Year End. 10/31/46
Rail Directs	26,500	19,900	275,900	99,000	
Other Directs	75,000	45,900	127,300	4,600	
% Rail Directs	3.30	4.34	51.41	4.54	
			SOUTH ST. JOSEPH		
Total Receipts	423,600	95,800	1,188,500	912,600	Year End. 10/31/46
Rail Directs	9,000	2,500	290,800	182,100	
Other Directs	2,100	1,300	374,300	78,200	
% Rail Directs	2.12	2.60	24.46	19.95	
			SIOUX CITY		
Total Receipts	1,415,000	70,400	1,613,700	670,300	Year End. 10/31/47
Rail Directs	3,600	400	120,400	61,000	
Other Directs	6,300	200	83,200	24,000	
% Rail Directs	0.25	0.56	7.46	9.10	

1285

EXHIBIT NO. 23

U. S. Y. & T. Company No. 14

(Cancels and supersedes all previous Schedules, Amendments and Supplements)

The Union Stock Yard and Transit Company

OF CHICAGO

SCHEDULE OF CHARGES

ISSUED AUGUST 1, 1947 **EFFECTIVE AUGUST 11, 1947**

Issued by
WM. J. O'CONNOR, General Manager
The Union Stock Yard and Transit Company of Chicago
Chicago, Illinois

SECTION 1—YARDAGE CHARGES:

The following yardage charges will be made on all live stock received at these yards:

Cattle	65c per head
Calves (450 lbs. or under)	*40c per head
*(With a maximum of $28.00 for a single-deck car or truck or $56.00 for a double-deck car or truck.)	
Hogs	21c per head
Sheep or Goats	15c per head
Horses or Mules	67c per head

The following charges will be made, in addition to the regular yardage charges, on live stock delivered at these yards in other than railroad cars:

Cattle	5c per head
Calves (450 lbs. or under)	*3c per head
*(With a maximum of $2.10 for a single-deck truck or $4.20 for a double-deck truck.)	
Hogs	4c per head
Sheep or Goats	3c per head
Horses or Mules	15c per head

A service and weighing charge, equal to one-half of the total of the above two charges for each species, will be assessed on all live stock weighed over our scales the second and successive times.

SECTION 1-A—DRIVING LIVE STOCK TO RAILROAD CHUTES:

Driving live stock to railroad chutes for outbound shipment, the following charges will apply:

Cattle	10c per head
Calves	5c per head
Hogs	3c per head
Sheep	2c per head
Horses and Mules	10c per head

The above charges will not apply to live stock driven to the railroad chutes by the shipper or his agent.

SECTION 2—FEED AND FEEDING CHARGES:

The charge for feed at this market will be the cost delivered at this stock yards plus the following amounts:

Corn	50c per bushel measure
Tame Hay	70c per cwt.
Prairie Hay	70c per cwt.
Oats	40c per bushel measure
Alfalfa	70c per cwt.

All feed charges shall be divisible by 5 and such charges will be amended when the margin between the cost and sale price of feed varies 5c from the margins specified above.

Horses and Mules:—Horses and Mules arriving after 6:00 p. m., 50 cents for that day, and $1.00 per day for each day thereafter.
—Horses and Mules arriving before 6:00 p. m., $1.25 for the first day, and $1.00 per day for each day thereafter.
—Horses and Mules stopping enroute for feed, water and rest in barns, $1.00 per head, per day or fraction thereof.
—Horses and Mules stopping en route for feed, water and rest in pens, 65c per head per day or fraction thereof.

SECTION 3—BEDDING:

The charge for straw bedding in pens at this market will be the cost delivered at this stock yards plus the following amount:

Straw bedding in pens.....70c per cwt.

All charges for straw bedding in pens shall be divisible by 5 and such charges will be amended when the margin between the cost and sale price of straw varies 5c from the margin specified above.

Sand bedding, not exceeding ¼ inch in depth	$2.00 per deck
Straw bedding in cars	1.60 per cwt.

SECTION 4—DIPPING AND SPRAYING:

All dipping and spraying is subject to the supervision and regulation of the Bureau of Animal Industry, U. S. Department of Agriculture.

SUPPLEMENT No. 5 TO THE
U. S. Y. & T. COMPANY No. 14

The Union Stock Yard and Transit Company

OF CHICAGO

SCHEDULE OF CHARGES

Cancels and supersedes Sections 5 and 17 of
U. S. Y. & T. Co. No. 14,

SECTION 5— IMMUNIZING HOGS:

The Stock Yards Company furnishes facilities, the veterinary service, and the necessary labor required in immunizing hogs, all of which is subject to the supervision and regulation of the Bureau of Animal Industry, U. S. Department of Agriculture.

Only serum and virus manufactured under Government supervision is used. The Stock Yards Company is not responsible for loss of or damage to hogs occasioned by or resulting from vaccination, and does not guarantee immunity to the hogs vaccinated.

Charges are as follows:

Serum	**(A)**	**2½c per cubic centimeter for the serum used**
Virus	**(A)**	**2½c per cubic centimeter for the virus used**

The above charges include the use of the facilities, veterinary service, and the necessary labor of taking temperatures and vaccinating the hogs.

SECTION 17— COVERED PENS:

(W) Covered pens in No. 2, No. 3 and No. 4 houses will be furnished for cattle and calves at a charge of $2.00 per pen for each 24 hours, or fraction thereof, ending at 11:00 A. M. All such stock must be removed from these pens by 11:00 A. M. except over weekends and holidays, when arrangements may be made to keep the stock in pens until 11:00 A. M. on the first market day thereafter.

All such stock must be taken to and from these pens by the owner, or his agent. No stock is to be sold in these pens.

All stock in these pens will be fed by this Company after receipt of an order from the owner, or his agent, and at the owner's expense.

This Company's obligation to furnish covered pens is limited to the number of pens in these houses designated for this purpose.

ISSUED NOV. 4, 1947 **EFFECTIVE NOV. 15, 1947**

Issued by
WM. J. O'CONNOR, General Manager
The Union Stock Yard and Transit Company of Chicago
Chicago, Illinois

(A) Advance
(W) Wording changed

The Stock Yards Company is not responsible for loss of or damage to live stock occasioned by or resulting from dipping or spraying.

The necessary dipping and spraying material and use of the facilities at the dip and spray and the labor are included in the charges for dipping and spraying, which are as follows:

Dipping Sheep and/or Goats	10c per head, minimum, $5.00*
Spraying Hogs	10c per head.

*The minimum charge for dipping will not apply when one or more owners dip 50 head or more from one charging

Spraying Motor Trucks	$1.00 each
Spraying Wagons	75c each

SECTION 5——IMMUNIZING HOGS:

The Stock Yards Company furnishes facilities, the veterinary service, and the necessary labor required in immunizing hogs, all of which is subject to the supervision and regulation of the Bureau of Animal Industry, U. S. Department of Agriculture.

Only serum and virus manufactured under Government supervision is used. The Stock Yards Company is not responsible for loss of or damage to hogs occasioned by or resulting from vaccination, and does not guarantee immunity to the hogs vaccinated.

Charges are as follows:

Serum	1½c per cubic centimeter for the serum used
Virus	1½c per cubic centimeter for the virus used

The above charges include the use of the facilities, veterinary service, and the necessary labor of taking temperatures and vaccinating the hogs.

SECTION 6——CATTLE TESTING:

Cattle are tested for tuberculosis and other diseases by the U. S. Bureau of Animal Industry or by veterinarians under the direction of the State Veterinarian of the State of Illinois.

This Company is not responsible for loss of or damage to stock moving to and from the testing facilities, or in process of testing, or as a result of the test, or for the efficacy of the test.

For the use of equipment, when services and tags are provided by the regulatory body making the test, no charge.

When tags are furnished, and affixed, by employees of this Company, the charge is 10 cents per head.

If special equipment in barns is desired, the use of such facilities and all services in connection therewith will be charged for under special agreement.

SECTION 7——CLEANING AND DISINFECTING:

When it is necessary to clean and disinfect any portion of these yards by reason of movement in, or through, the yards of live stock exposed to or infected with a contagious disease, the owner of such exposed or infected live stock will be required to pay for such disinfecting as follows:

Chutes	$2.50 each
Pens (single)	2.50 each
Pens (double)	4.00 each
Alleys	.40 per hundred square feet

For disinfecting cleaned cars, trucks, trailers or other vehicles, actual cost of labor and material used plus twenty (20) per cent for supervision.

For use of facilities and water for washing trucks, the following charges will apply:—

Trucks under 2-ton capacity	25c
Trucks 2-ton capacity or over	50c

SECTION 8——BRANDING:

Various state laws require that all animals shipped into the state for feeding purposes must be branded.

This company is not responsible for loss of or damage to stock moving to or from the branding station, or in process of branding, or as a result of branding.

For the use of facilities and labor a charge of 25c per head per iron will be made.

SECTION 9—SPECIAL SALES:

This Company maintains special stables and pavilions for sales of pure bred live stock. The use of such facilities and all services in connection therewith will be charged for under special agreement made in advance of their use.

SECTION 10—SPECIAL SERVICES:

Special services not ordinarily or usually required in the handling of live stock will be charged for under special agreement made in advance.

SECTION 11—

Any firm, corporation, or individual by themselves or their employees, detected using unfair, dishonest or fraudulent practices will be denied the privileges of these Stock Yards, treated as a trespasser and dealt with accordingly.

SECTION 12—LOADING ACCESSORIAL SERVICES:

The service of loading carloads of live stock when performed by this Company does not include the cost of partitioning cars, or the tying of bulls. Where these accessorial services are required, arrangements must be made by the owner or his agent sufficiently in advance of the loading time so that arrangements may be made therefor at charges to be agreed upon.

SECTION 13—REMOVING PARTITIONS OR TEMPORARY DECKS:

When it is necessary to remove partitions or temporary decks in unloading cars containing live stock, the following charges will be assessed:

REMOVING PARTITIONS, 50 cents each, subject to a minimum of $1.00 per car.

REMOVING TEMPORARY DECKS, $2.50 per car.

SECTION 14—CERTIFICATES OF LOADING OR UNLOADING:

Upon request of the owner, his agent, or the carrier handling the shipment this Company will furnish loading or unloading certificates. A charge of twenty-five (25) cents per each certificate will be made. When it is necessary to have a notarial seal affixed, the notarial fee will be collected in addition to the 25 cent charge.

SECTION 15—SPRINKLING OR DRENCHING STOCK CARS:

A charge of twenty-five (25) cents per deck will be made for sprinkling or drenching stock cars, the charge to apply each time the service is performed before, during or after loading. This company will not be liable for injury to or death of animals drenched or sprinkled.

SECTION 16—SPRINKLING HOGS IN THE SHIPPING DIVISION:

A charge of twenty-five (25) cents per pen will be made for sprinkling animals held in the shipping division awaiting loading. This company will not be liable for injury to or death of hogs as the result of sprinkling.

SECTION 17—COVERED PENS:

Covered pens in No. 2 house will be furnished for cattle and calves at a charge of $2.00 per pen for each 24 hours, or fraction thereof, ending at 11:00 A. M. All stock must be removed from these pens by 11:00 A. M. except over weekends and holidays, when arrangements may be made to keep the stock in pens until 11:00 A. M. on the first market day thereafter.

All stock must be taken to and from these pens by the owner, or his agent. No stock is to be sold in these pens.

All stock in these pens will be fed by this Company after receipt of an order from the owner, or his agent, and at the owner's expense.

This Company's obligation to furnish covered pens is limited to the capacity of this house.

EXHIBIT NO. 28
Witness: Parkhurst

PERCENTAGE OF TOTAL RAIL CARS RECEIVED AT THE CHICAGO UNION STOCK YARD WHICH WERE BILLED DIRECT TO PACKERS DURING TEN YEARS - 1938 to 1947, INCLUSIVE

	CATTLE		CALVES		HOGS		SHEEP		HORSES		ALL SPECIES		PERCENT DIRECTS OF TOTAL	OMAHA PKG. CO.
YEAR	DIRECTS	TOTAL	DIRECTS	TOTAL	DIRECTS	TOTAL	DIRECTS	TOTAL	DIRECTS	TOTAL	DIRECTS	TOTAL		
1938	1,904	44,920	254	2,739	16,040	29,518	3,232	10,975	-	174	21,430	88,386	24.2	-
1939	1,651	39,394	765	2,766	16,184	28,305	3,022	10,612	-	116	21,642	81,193	26.7	-
1940	1,374	37,401	710	2,207	19,492	32,124	3,286	8,915	-	119	24,862	80,766	30.7	-
1941	2,033	37,627	548	1,474	17,637	26,892	4,381	9,227	-	55	24,599	75,275	32.7	-
1942	3,068	38,831	345	1,376	21,322	29,231	5,045	10,451	2	15	29,782	79,964	37.2	-
1943	2,816	39,412	210	1,077	26,537	36,376	5,313	9,875	-	31	34,876	86,771	40.2	8,722
1944	5,500	46,345	786	1,783	26,068	38,851	4,711	8,648	-	47	37,065	95,674	38.7	8,109
1945	5,715	46,941	279	1,270	22,196	27,291	4,046	7,899	1	56	32,237	83,457	38.6	5,021
1946	3,632	32,027	507	1,174	21,029	25,742	2,565	6,131	3	65	27,736	65,139	42.6	4,204
1947	3,632	27,247	922	1,508	16,707	20,925	1,698	3,860	6	31	22,965	53,561	42.9	6,393

Percent of directs to total, 1943-47, incl.....40.3%
(excluding Omaha Pkg. Co. receipts)
Same including Omaha Pkg. Co. receipts.....~~48.7%~~ 44.9

Annual Average receipts (1943-47):
Direct 30,996
All 76,920
Omaha Pkg. Co. 6,489

EXHIBIT NO. 29
Witness: Parkhurst
Page 1.

TOTAL CATTLE RECEIVED DIRECT BY PACKERS THROUGH THE CHICAGO UNION STOCK YARD
(By Head - Includes Trucks)

Line No.	A PACKER	B 1936	C 1937	D 1938	E 1939	F 1940	G 1941	H 1942	I 1943	J 1944	K 1945	L 1946	M 1947
1	Armour & Co.	49,976	46,800	39,781	40,003	35,656	48,520	73,334	57,169	88,541	58,356	29,995	52,110
2	Wilson & Co.	13,481	7,111	3,133	2,495	1,593	3,806	9,142	14,082	43,242	49,523	24,835	23,508
3	Hygrade F.P. Corp.	-	-	-	-	-	-	-	5,241	24,931	39,469	26,920	18,422
4	Bronx Meat	-	-	-	-	-	-	-	-	-	495	8,117	234
5	Siegel-Weller	-	-	661	168	-	82	710	302	6,421	5,400	3,589	131
6	Lincoln Meat Co.	-	-	-	-	-	-	89	92	-	53	1,206	-
7	H. C. Bohack	-	-	-	-	-	-	-	-	-	-	649	-
8	H. Graver	-	-	-	-	-	41	28	-	-	-	395	95
9	Illinois Pkg. Co.	22	593	137	-	-	-	-	-	-	-	248	-
10	Merchants Pkg. Co.	-	-	-	-	-	-	-	-	-	-	235	-
11	Wimp Pkg. Co.	-	-	-	-	-	-	-	-	109	436	201	27
12	E. Manaster & Bro.	-	-	863	-	-	-	-	-	-	-	-	-
13	D. Levi	1,387	2,461	4,413	-	314	-	-	-	-	-	-	-
14	Swift & Co.	395	295	129	25	5	-	35	-	27	30	51	23
15	C. A. Burnette Co.	2,188	57	179	126	-	-	202	-	-	105	-	-
16	Empire Pkg. Co.	-	-	-	-	-	-	26	27	34	371	-	913
17	Supreme Pkg. Co.	291	-	-	-	-	-	-	-	-	-	-	-
18	Russell Pkg. Co.	-	-	-	-	-	-	-	-	-	213	200	7
19	Superb Pkg. Co.	-	-	-	-	-	-	208	2,098	-	-	-	-
20	Others	-	251	206	-	-	-	-	-	4	431	280	63
21	TOTAL	67,740	57,568	49,502	43,817	37,568	52,449	83,774	79,011	163,409	154,952	96,921	95,533

1292

I.C.C. Docket 29809
Exhibit 29
Witness: Parkhurst
Page 2

TOTAL CALVES RECEIVED DIRECT BY PACKERS THROUGH THE CHICAGO UNION STOCK YARD

Line No.	A PACKER	B 1936	C 1937	D 1938	E 1939	F 1940	G 1941	H 1942	I 1943	J 1944	K 1945	L 1946	M 1947
1	Armour & Co.	28,328	18,445	17,388	54,407	43,521	29,735	14,733	11,837	49,358	14,931	26,455	74,402
2	Wilson & Co.	9,371	10,526	6,627	7,540	11,581	22,192	22,909	5,982	4,623	278	165	179
3	Bronx Meat Co.	-	-	-	-	-	-	-	-	-	631	1,231	-
4	H. Graver	-	-	-	-	-	-	-	50	-	50	766	-
5	Russell Pkg. Co.	-	-	-	-	-	-	-	-	57	131	369	25
6	Hygrade F.P. Corp.	-	-	-	-	-	-	-	-	9	12	101	1
7	Lincoln Meat Co.	-	-	-	-	-	-	1	-	-	-	99	-
8	Empire Pkg. Co.	-	-	-	82	-	-	-	-	1,860	720	-	334
9	Swift & Co.	43	-	-	15	-	168	-	80	94	23	-	-
10	Wimp Pkg. Co.	-	-	-	-	-	-	-	-	52	1	-	-
11	Siegel-Weller Co.	-	-	-	10	-	-	-	-	3	-	-	-
12	Others	19	101	15	-	6	5	-	-	140	1,243	357	224
13	TOTAL	37,761	29,072	24,030	62,054	55,108	52,100	37,643	17,949	56,196	18,020	29,543	75,165

1293

1119

TOTAL HOGS RECEIVED DIRECT BY PACKERS
THROUGH THE CHICAGO UNION STOCK YARD

I.C.C. Docket 29809 Page 3
Exhibit 29
Witness: Parkhurst

Line No.	A PACKER	B 1936	C 1937	D 1938	E 1939	F 1940	G 1941	H 1942	I 1943	J 1944	K 1945	L 1946	M 1947
1	Armour & Co.	1,299,547	1,154,353	1,343,460	1,330,628	1,685,155	1,464,359	1,827,847	1,800,221	1,719,418	1,039,245	991,745	1,030,715
2	Wilson & Co.	190,929	145,993	126,801	155,550	158,398	144,919	267,631	449,001	335,006	311,243	221,022	261,278
3	Agar P.& P.Corp.	9,132	10,114	4,136	1,094	620	538	31,644	113,018	140,728	111,779	113,812	36,249
4	Miller & Hart	8,862	7,473	2,646	667	-	107	18,290	76,700	117,180	146,860	153,488	17,393
5	Illinois Meat Co.	8,474	-	-	-	-	-	-	71	10	55,102	82,539	477
6	P. Brennan	739	82	649	-	197	-	852	17,870	47,601	59,381	72,872	18,952
7	H. C. Bohack	-	-	-	-	-	-	-	-	-	3,913	37,293	2,595
8	Russell Pkg.Co.	-	-	-	-	-	-	-	534	224	31,508	15,771	590
9	Wm. Davies	-	-	-	-	-	-	-	1,592	-	13,928	11,205	-
10	Poerless Pkg.Co.	-	-	-	-	-	-	-	-	-	3,553	6,110	-
11	Swift & Co.	7,114	857	1,284	1,019	-	100	64	53	-	6,057	4,382	993
12	Bronx Meat Co.	-	-	-	-	-	-	-	-	-	419	4,167	-
13	C.A.Burnette Co.	6,979	548	220	-	4,456	411	686	1,404	38,038	18,129	2,630	-
14	Roberts & Oake	9,817	837	19,178	832	217	-	-	-	-	-	-	-
15	Richter Food Co.	-	-	-	-	-	-	-	150	-	-	605	-
16	Reliable Pkg. Co.	-	-	-	-	125	-	-	140	1,636	55	144	-
17	Fuhrman & Forster	-	-	-	-	-	-	-	-	-	743	216	-
18	Perry Food Co.	-	-	-	-	-	-	-	1,452	-	-	-	-
19	Oscar Mayor	-	-	-	-	-	-	-	7,696	-	-	-	-
20	Empire Pkg. Co.	455	-	-	-	-	-	-	-	-	84	-	-
21	Drovers Pkg. Co.	304	-	171	-	-	-	-	-	-	-	-	-
22	Others	-	-	37	-	-	-	-	-	-	-	76	-
	TOTAL	1,542,352	1,330,257	1,496,582	1,489,790	1,849,168	1,610,434	2,137,014	2,469,904	2,399,843	1,801,999	1,718,077	1,369,242

1294

I.C.C. Docket 29809
Exhibit 29
Witness: Parkhurst
Page 4

TOTAL SHEEP RECEIVED DIRECT BY PACKERS
THROUGH THE CHICAGO UNION STOCK YARD

Line No.	A PACKER	B 1936	C 1937	D 1938	E 1939	F 1940	G 1941	H 1942	I 1943	J 1944	K 1945	L 1946	M 1947
1	Armour & Co.	506,554	552,701	535,177	548,183	559,565	673,124	854,068	931,351	723,252	657,662	365,104	294,586
2	Wilson & Co.	157,864	193,350	148,506	139,250	177,408	258,153	293,384	165,037	220,371	173,585	76,238	-
3	Swift & Co.	100,316	66,236	24,493	17,780	11,122	22,287	17,360	12,044	15,913	10,651	21,525	1,070
4	Bronx Meat Co.	-	-	-	-	-	-	-	-	-	-	3,591	-
5	Miller & Hart	-	-	-	-	-	-	-	-	369	1,292	761	-
6	Russell Mfg. Co.	-	-	-	-	-	-	-	-	-	269	71	-
7	Empire Pkg. Co.	-	1,738	-	-	-	-	-	33	-	-	-	128
8	Illinois Pkg. Co.	279	-	-	-	-	-	156	-	-	-	-	-
9	Ogden Pkg. Co.	-	-	-	181	-	-	-	-	-	-	-	-
10	Roberts & Oake	-	-	144	-	-	-	-	-	-	-	-	-
11	Others	-	-	-	-	-	-	-	187	-	-	-	-
12	TOTAL	765,013	819,025	708,320	705,394	748,095	953,874	1,164,968	1,108,652	959,905	843,479	467,529	295,786

2-27-48

1295

EXHIBIT NO. 30
Witness: Parkhurst

1122

PACKER DIRECTS RECEIVED BY RAIL AND BY TRUCK THROUGH THE CHICAGO UNION STOCK YARD DURING 10 YEARS - 1938 to 1947, INCLUSIVE

YEAR	CATTLE		CALVES		HOGS		SHEEP	
	RAIL	TRUCK	RAIL	TRUCK	RAIL	TRUCK	RAIL	TRUCK
1938	49,502	-	24,030	-	1,498,480	102	708,196	124
1939	42,782	35	61,844	210	1,489,714	76	705,108	286
1940	36,517	1,051	51,423	3,685	1,848,865	303	747,844	251
1941	~~50,500~~ 51,226	1,230	50,077	1,887	1,610,331	103	953,094	1,423
1942	81,890	1,884	36,083	1,560	2,137,014	-	1,163,574	1,414
1943	78,984	27	17,794	155	2,469,819	85	1,108,464	188
1944	163,374	35	56,196	-	2,399,674	169	959,884	21
1945	154,942	10	18,018	2	1,763,698	38,301	843,448	31
1946	95,710	1,211	29,047	496	1,648,667	69,410	467,025	504
1947	94,883	650	73,369	1,796	1,324,202	45,040	293,341	2,445

1296

[fol. 1297–1298]

EXHIBIT 31

Packer Directs Received by Trucks
Chicago Union Stock Yard

Cattle

Packer	1944	1945	1946	1947
Armour	35	1	900	646
Wilson	0	1	3	2
C. A. Burnette	0	8	0	0
H. C. Bohack	0	0	63	0
Hygrade	0	0	72	0
Swift	0	0	28	1
Bronx Meat	0	0	42	0
Siegel-Weller	0	0	54	1
Lincoln Meat	0	0	34	0
Illinois Pkg.	0	0	15	0
	35	10	1,211	650

Calves

Armour	0	2	342	1,647
Bronx Meat	0	0	152	0
Russell	0	0	2	0
Empire	0	0	0	149
	0	2	496	1,796

Hogs

Armour	30	0	31,739	42,339
Miller & Hart	80	52	935	154
Wilson	0	137	0	34
Illinois Meat	10	190	3,194	81
P. Brennan	0	1,718	5,483	73
Agar	0	12	3,078	2,346
Wm. Davies	0	13,621	11,205	0
C. A. Burnette	45	129	0	0
Peerless	0	3,491	5,006	0
Russell	0	18,113	7,091	13
Swift	0	40	113	0
Fuhrman & Forster	0	743	216	0
Reliable	4	55	18	0
H. C. Bohack	0	0	425	0
Bronx Meat	0	0	226	0
Liberty	0	0	76	0
Richter Food	0	0	605	0
	169	38,301	69,410	45,040

Sheep

Armour	15	0	202	2,243
Swift	6	31	302	74
Empire	0	0	0	128
	21	31	504	2,445

[fols. 1299-1300] EXHIBIT 32

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 29467

In the Matter of NEUHOFF PACKING COMPANY

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

Hearing Room "C",
Interstate Commerce Commission,
Washington, D. C.
Tuesday, July 30, 1946.

Met, pursuant to notice, at 9:30 a.m.

Before: J. E. Snider, Examiner

Appearances:

R. D. Rynder, 4115 Packers Avenue, Chicago, Illinois, appearing for Neuhoff Packing Company, Complainant.

J. Carter Fort, Jr., 1110 Shoreham Building, Washington, D. C., appearing for N. C. and St. L. Railroad.

Edward D. Mohr, 908 West Broadway, Louisville, Kentucky, appearing for Louisville and Nashville Railroad.

[fol. 1301] PROCEEDINGS

Exam. Snider: Are you ready to proceed?

The Interstate Commerce Commission has set for hearing at this time and place Docket 29467, Neuhoff Packing Company, against the L. and N. Railroad Company, et al.

Who appears for complainant?

Mr. Rynder: R. D. Rynder.

Exam. Snider: And for defendants?

Mr. Fort: J. Carter Fort, Jr., for N. C. and St. L.

Mr. Mohr: Edward D. Mohr and E. R. Roby, appearing for the defendant, L. and N. Railroad Company.

Exam. Snider: Is Mr. Roby appearing as counsel or witness?

Mr. Mohr: As a witness.

Exam. Snider: He will not be shown as an appearance.

Any further appearances?

It is alleged that the defendant's rules, regulations and practices which result in their refusal to deliver upon complainant's industrial side track adjacent to its meat packing plant at Nashville, Tennessee, interstate shipments of livestock in carloads from points of origin other than to Nashville, Tennessee, are and for the future will be unreasonable and unduly prejudicial to complainant, and the community of Nashville, and unduly preferential of complainant's competitors located at Atlanta, Georgia, Chattanooga, Knoxville, and Memphis, Tennessee, Evansville, Indiana, Birmingham, Alabama, and Lexington, Kentucky, [fol. 1302] in violation of Section I and III of the Interstate Commerce Act.

The Commission is asked to prescribe just and reasonable rules and practices for the future.

Is that a substantially correct statement of the issues?

Mr. Rynder: I think so.

Exam. Snider: Whenever you are ready, Mr. Rynder, you may proceed.

E. C. Tompkins was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name and address.

A. E. C. Tompkins.

Q. And your residence?

A. Nashville, Tenn.

Q. And what is your position or business occupation?

A. President, Neuhoff Packing Company.

Q. Where is the Neuhoff Packing Company, Inc.

A. In Tennessee.

Q. What does it do?

A. It produces meat and meat products.

Q. And does it have a packing plant at Nashville, Tennessee for that purpose?

A. Yes.

Q. Could you give us some idea of the size or capacity [fol. 1303] or otherwise of the operations as a whole?

A. I think it is the largest packing house in the southeast.

Q. Does it process all types of livestock?

A. All species.

Q. And does it receive livestock in carload quantities from many points outside the State of Tennessee?

A. Yes.

Q. And does it ship its products to all available markets whether state or interstate?

A. Yes, it does.

Q. What rail connections has the Neuhoff packing plant?

A. The N. C. and St. L. Railroad, and the L. and N. Railroad.

Q. Are there side track connections from those two railroads to the plant?

A. Yes.

Q. As to inbound shipments of livestock purchased by you at other points, do the railroads refuse to deliver the livestock on your private siding at the Neuhoff plant?

A. They do.

Q. And where do they deliver livestock consigned to you at Nashville?

A. At the Nashville Union Stockyards.

Q. Now, Mr. Tompkins, in the operation of your Neuhoff plant, are you in competition with other packing companies throughout the southeast?

A. Yes.

[fol. 1304] Q. And can you give some general description of that competition and the location of competitors and things of that kind?

A. It is of course difficult to know where livestock is bought by competing packers, but we do know of instances where receipts in the national market, as well as other points in surrounding territory, have been for the account of a number of other packers, such as the Allison Packing Company at Chattanooga, cattle from Bowling Green, Kentucky, hogs from Decker, Tennessee, also cattle from Nashville, Armour and Company at Atlanta, Georgia, various species from Nashville, Tennessee, Clarksville, Tennessee, Hopkinsville, Kentucky, also cattle and hogs from various points south of Nashville, and Armour and Com-

pany, Birmingham, calves and hogs from Athens, Alabama, from Huntsville, Alabama, calves and cattle and hogs from Hopkinsville, Kentucky, and Clarksville, Tennessee; also cattle and hogs from Nashville, East Tennessee Packing Company at Knoxville, Tennessee, hogs from Campbellville, Kentucky, Carthage, Tennessee, McMinnville, and Lebanon, Tennessee.

Q. Mr. Tompkins, could you say in a general way that your plant is in competition with all of the other major packing plants in the southeast, in the effort to obtain livestock in that territory?

A. Yes.

[fol. 1305] Q. Will you please state some of the concerns with which you are in competition in the selling of your products, that is, concerns in the south or southeast?

A. We compete with the Allison Packing Company in Chattanooga, Tennessee, with Armour and Company, Atlanta, Armour and Company, Birmingham, Alabama, East Tennessee Packing Company at Knoxville, Tennessee, and in Dayton, Harriman, Knoxville, Lenore City, Rockwood, Sweetwater, Tennessee, and other east Tennessee points.

We compete with the Hunter Packing Company of St. Louis, Missouri. In Dixon, Tennessee, Waverly, Tennessee, Nashville, Tennessee, Brewston, Camden and McEwan, Tennessee.

Exam. Snider: They are the points at which you compete or points at which there are packing companies?

The Witness: At which we compete.

Krey Packing Company at St. Louis.

Exam. Snider: Mr. Rynder, are those considered packing houses in the southeast, at St. Louis? I want to get the record straight. You compete in the southeast, but these packing houses are in St. Louis, as I understand it?

Mr. Rynder: I believe he was stating generally the competition with which he had to compete, and while the packing house at St. Louis is of course not in the southeast, it apparently does a good bit of business in the southeast.

By Mr. Rynder:

Q. Is that it?

[fol. 1306] A. There is a great deal of product shipped out of St. Louis and East St. Louis, into the southeastern territory.

Exam. Snider: I wanted to get the record clear.

The Witness: The Krey Packing Company, St. Louis, Missouri, Waverly, Tennessee, Dixon, Tennessee, Birmingham, Alabama, Brewston, Tennessee, Camden, Tennessee, Huntington, Tennessee, McEwan, Tennessee.

Kahn and Sons, Cincinnati, in Birmingham, Alabama, Knoxville, Tennesssee; E. Kahn and Sons of Cincinnati have a private siding on the B. and O. Railroad.

Hunter Packing Company has pens and receives their shipments from the Pennsylvania Railroad. Krey Packing Company of St. Louis receives shipments at its plant by the Terminal Railroad.

The two defendants participate in joint rates with the railroads serving these packing companies. All of the competitors mentioned above have inspection by the Meat Inspection Division, and do interstate shipping.

By Mr. Rynder:

Q. The Neuhoff Packing Company, of course, is a federally inspected plant, is it?

A. Yes.

Q. Now, Mr. Tompkins, will you please explain very briefly the present method of delivery of interstate shipments of livestock, consigned by railroad to your plant at Nashville?

A. At present inbound carload shipments of livestock consigned to Neuhoff are delivered by defendants to the Nashville Union Stockyards, and unloaded at that point [fol. 1307] into the points of the Nashville Union Stockyards.

They are held in those pens awaiting drayage by our draymen to the private yards adjoining the Neuhoff plant. The distance between these two points by highway is approximately .69 miles. The cost of drayage incurred by Neuhoff is at present 4 cents a head on hogs, lambs and calves, and 9 cents a head on cattle.

Although these raised rates have been in effect for some time, the prospects are that the draymen are about to ask for a substantial increase.

Q. Mr. Tompkins, are shipments of the kind that you are describing, that is, livestock, bought by you or your agents at distant points and shipped to your plant at Nashville, known as direct shipments?

A. Yes.

Q. And does that have a well understood meaning in the packing and livestock industry?

A. I think so.

Q. Will you please proceed in your own way to explain what you do mean by direct shipments, such as are here involved?

A. The shipments here involved are so-called direct shipments, that is to say, they are purchased at points outside of Nashville by or on behalf of Neuhoff Packing Company, are the property of that company during transportation, and the only purpose of transportation is to get them to [fol. 1308] the packing house for slaughter.

By direct shipments are meant shipments as to which the Neuhoff Packing Company at Nashville, Tennessee, is shown as the consignee in the bill of lading, shipping receipt, waybill or other transportation documents issued by the railroads at the various points of origin. For example, Neuhoff or its agents might purchase a carload of cattle, hogs, or sheep, on some other public market, such as Louisville, Omaha, St. Louis, and so forth, or make a similar purchase at a country point. The term direct shipment from shipments by livestock producers and others consigned to commission men at public stockyards, where they are placed on sale by the commission men, and purchased generally by a local packer, or by an order buyer for purchases at other points.

This class of shipment is now well recognized on the market. In connection with this class of shipment, Neuhoff does not desire any stockyard services. It does not desire any services or facilities furnished at a public stockyards in connection with the receiving, buying or selling on a commission basis, or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing or handling.

Neuhoff does not desire at any time to have them taken to the commission men's pens for sale. The direct shipments of livestock are not marketed in any form as live-[fol. 1309] stock at Nashville, but are marketed in the form of meat after processing at the plant. Shipments to the commission men on the contrary are placed in pens assigned to commission men and there offered for sale. Direct shipments are not in this category.

No feeding of direct shipments of livestock at the public stockyards is desired or required by Neuhoff, nor any watering. Those services would be performed by the consignee, Neuhoff, at its own plant. No weighing or handling by the stockyards is desired or necessary in connection with such shipments. Neuhoff has set up scale facilities at its own plants and its weights are inspected by and accepted as satisfactory by the railroads.

Q. In what you have just said as to the lack of need for any service at the public stockyards, may I ask if you are receiving a substantial number of shipments by truck.

A. Yes, we are.

Q. And in connection with them, are they brought directly to your own stock pens at your plant?

A. Yes.

Q. And do you there perform all of these services that you have mentioned, such as watering, weighing, etc.?

A. We do.

Q. As you are probably aware, Mr. Tompkins, there was a prior case involving somewhat similar issues, Nashville [fol. 1310] Abattoir Hide Melting Association, against the L. and L. 40 ICC 134, and I wanted to ask you a few questions for the purpose of determining whether there had been or whether your present complaint differs somewhat from the case that was presented at that time.

In reading the transcript of the hearing in that case, I noticed that a good bit of point was made of the necessity for federal inspection of livestock at this stockyards.

Do you know whether any such inspection is necessary in connection with livestock consigned to your plant for slaughter?

A. At the first hearing quite a point was made about federal inspection of livestock, that it was readily performed at one point, such as a stockyards, but would be

difficult or imposible if required at various private sidings.

Our information is that all livestock inspected by the Meat Inspection Division before going to the killing floor, that this is done with respect to direct receipts by truck at Neuhoff, and at all other plants under government inspection where direct shipments are received, which do not go through a public yard.

Q. The Meat Inspection Division that you mentioned is a Bureau of the Department of Agriculture, is it not?

A. Yes.

Q. Charged by law with certain duties of this kind?

A. That is right.

Exam. Snider: Did I understand you to say that you [fol. 1311] understood that to be so, or that that was so, that they did inspect all of the livestock in your plant on all direct shipments?

The Witness: They do inspect all livestock before it goes to the killing floor, and on the killing floor.

Exam. Snider: I understood you to say that you understood that to be so. I just wanted you to state that it was so.

By Mr. Rynder:

Q. At your plant is it a fact that inspection is done by a federal inspector on duty at your plant?

A. Yes.

Q. And that is the only inspection necessary in connection with this class of livestock slaughter?

A. Yes.

Q. I observe that in the previous hearing some witness stated that the complainant, the Nashville Abattoir Hide and Melting Association, was not a federally inspected plant.

I believe you have stated that your plant is federally inspected.

A. Yes, it is.

Q. I have noticed that a witness stated that he did not at that time know of a single interstate shipment ever sent to the Abbatoir Company. Is the condition different from that with respect to your plant? Do you receive substantial interstate shipments in carloads by rail?

A. Yes, we do. They originate in Official and Western

[fol. 1312] Trunk Line Territories, and are therefore interstate.

Q. And I noticed that another witness, a Mr. Houston Thomas, said he was in the livestock commission business, and that he wanted to make a deal with the Abattoir people for the purpose of changing location of his business to the Abattoir facilities if delivery could be obtained. In other words, that he was a commission man who wanted to set up a second public livestock market in Nashville.

Is the establishment of any additional livestock market in Nashville contemplated in your complaint?

A. No, it is not.

Q. It would involve only the placement of cars on your siding for immediate unloading into your plant, is that right?

A. That is correct.

Q. And I observe that another witness testified that all of the livestock that he was interested in, in that case prior, was shipped to be sold on the Nashville market.

A. Yes.

Q. Is any of the livestock shipped to you at Nashville to be sold on the Nashville market?

A. No, none of it.

Q. I observe that another witness in the prior hearing testified that no livestock at that time was being shipped into Nashville consigned to the Abattoir Company, that very little of the livestock is sold previous to coming to [fol. 1313] Nashville, that it was consigned to commission men to handle, and that the Commission men there found buyers; with respect to the present situation of your company, is all of the livestock sold to you prior to being shipped to Nashville?

A. Yes.

Q. And is any of it consigned to commission men in Nashville for handling?

A. None of it.

Q. There was some point made at the prior hearing of the fact that livestock must be promptly delivered under the 36 hour law. Do you know of any reason why delivery could not be made at your plant within the time limits prescribed by law?

A. No, none.

Q. And I observe that in the prior hearing one witness stated that 75 per cent of the livestock coming to Nashville is not consumed there, but is bought at Nashville by packers and reshipped from the stockyards to other destinations.

Have you any impression as to whether that condition is considerably changed since 1914 or 1915?

A. Yes, it has changed considerably. We are consuming a much larger percentage.

Q. That is, Neuhoff consumes a much larger percentage of the livestock bought at the Nashville yards?

A. Yes, and there are other packers there that also purchase livestock on the Nashville market.

[fol. 1314] Q. Incidentally, do you purchase, that is, your purchase on the Nashville market very substantial quantities of livestock that are sent there for sale?

A. Yes, we do. We do that. We buy on the Nashville stockyards every day that it is open.

Q. But that livestock bought on the Nashville stockyards is entirely apart and aside from anything involved in this case?

A. That is right.

Q. You are speaking here only of the livestock bought at other points, consigned to your plant at Nashville?

A. Direct, yes.

Q. Mr. Tompkins, will you please state what facilities you have at your plant for the unloading and placing of livestock in the pens?

A. Neuhoff present car unloading facilities accommodate the placement of two cars at a time. A spur track at these facilities was recently built at an expenditure of approximately $800. In addition to this, new yards were recently constructed, and were built to accommodate the unloading of livestock shipments. Providing for this service increased the expense of the new yards approximately $3,000. However, a larger number of cars can at any time be accommodated by the use of movable chutes, which can be placed at the car door and permit the unloading at points immediately adjacent to Neuhoff livestock pens. It would [fol. 1315] also be possible to unload livestock with such a chute from the terminal track of Adams Street to Neuhoff pens on the opposite side of Adams Street.

Q. And the pens to which you refer are pens for the holding of livestock immediately adjacent to your plant, pending the slaughter of the livestock?

A. That is correct.

Mr. Rynder: I believe that is all on direct.

Mr. Fort: I have no questions.

Cross examination

By Mr. Mohr:

Q. What is the volume of livestock received by Neuhoff during the peak season, per day, what would be the number of cars?

A. It would vary with the season and the specie. It extends fairly well around the year. It is pretty hard to place the maximum on it, but it would probably be four or five doubles.

Q. Four or five doubles?

A. Yes.

Q. That means that would be ten cars?

A. If you shipped them in singles.

Q. I was wondering if, from what you said, there would be sufficient track capacity at your plant to receive all of your livestock during the peak of the season.

A. I think so.

Q. Without any additional switching or coming back and forth to take care of it?

[fol. 1316] A. If you ship them in singles instead of doubles, why, you might; you would have to make more than one switch, yes.

Q. That would be additional switching.

A. Yes.

Mr. Mohr: That is all.

By Exam. Snider:

Q. Do you designate when you buy this livestock whether it will come in singles or doubles?

A. Hogs, calves and lambs are all ordered, you always order doubles, but I understand it is the railroad's privilege, if no doubles are available, to supply two singles.

Q. But you could handle the livestock in doubles?

A. Yes.

Q. If they do not come in doubles, it is not your fault, if you order in doubles.

A. That is right.

By Mr. Mohr:

Q. You have facilities for unloading double deck cars?

A. Yes.

Mr. Mohr: That is all.

Exam. Snider: Any further questions? If not, the witness is excused.

(Witness excused.)

GILBERT F. FORD was sworn and testified as follows:

Direct examination.

By Mr. Rynder:

Q. Please state your name and residence.

[fol. 1317] A. Gilbert F. Ford, Chicago, Illinois.

Q. And your business occupation?

A. I am in charge of the rate division of Swift and Company, general transportation department, and Neuhoff Packing Company is a wholly owned subsidiary of Swift and Company.

Q. And in that connection do you have the same familiarity with its rate problems, transportation problems, that you do with any of the other plants of the parent company or subsidiaries?

A. Yes.

Q. And have you visited Nashville and become familiar with the location of the tracks?

A. I have.

Q. And the facilities that we are talking about?

A. I have, a number of times. The last time was during this month.

Q. Will you please describe briefly the routes by which livestock comes into Nashville and in a general way the movements that are made in getting it to the stockyards or that will be made in getting it to the Neuhoff plant?

Mr. Rynder: Perhaps at this time, Mr. Examiner, before Mr. Ford goes into this explanation, it would be well to offer for identification certain exhibits. I presume that will be marked for identification Exhibit No. 1.

Exam. Snider: It will be marked for identification as Exhibit No. 1.

[fol. 1318] (Exhibit No. 1, Witness Ford, marked for identification.)

Mr. Rynder: The next is a similar map of the L. and N., which they were kind enough to give us, and I think our supply is the same number. I assume that will be marked Exhibit 2 for identification.

Exam. Snider: That will be marked Exhibit No. 2 for identification.

(Exhibit No. 2, Witness Ford, marked for identification.)

Mr. Rynder: Now, the next is a more detailed map of the Nashville terminal area. I assume that will be marked No. 3 for identification.

Exam. Snider: It will be so marked.

(Exhibit No. 3, Witness Ford, marked for identification.)

By Mr. Rynder:

Q. With the assistance or reference to the maps marked for identification Exhibits 1, 2 and 3, will you proceed to describe the terminal delivery practices in connection with livestock at Nashville?

A. Most of Neuhoff's livestock shipments are received over the L. and N. and originate in Official Trunk Line territory, Western Trunk Line. The small number of cars received from the southern part of the state of Kentucky and the northwestern part of Tennessee. This means that the livestock moving into Nashville over the L. and N. Railroad will enter Nashville from a northeasterly direc-

[fol. 1319] tion. In both instances, it is practice of the L. and N. Railroad to set off perishable and livestock freight at the Maplewood Station. At this point, the cars are picked up by switching crews of the Nashville terminal and perhaps I should say there that the Nash-

ville terminals are merely the terminal facilities of the two railroads, the L. and N., and the N. C. and St. L., and moved from Maplewood Station to the Cane Avenue yards, by the crews, which are the breakup yards.

The approximate distance from Maplewood to Cane Avenue yards is six miles. Cane Avenue cars move by the terminal lines to the Nashville Union Stockyards, a distance of approximately a mile and a half. On some occasions the L. and N. traffic moves to Radnor yard, which is shown on the L. and N. Railroad map, Exhibit No. 2. Radnor yard is the main breakup yard for the handling of north and southbound shipments. Cars which are set out at Radnor are picked up at that point by the Nashville terminal switch crews and moved into the Cane Avenue yards.

The distance from Radnor to the Cane Avenue yards is approximately 8 miles. From Cane Avenue cars are moved to the Nashville Union Stockyards, in the same manner as if they had been set out at Maplewood station.

Most of the livestock shipments received by the N.C. and St. L. originate in Official and Western Trunk Line ter- [fol. 1320] ritories. A small percentage in the western sections of Kentucky and Tennessee. This traffic enters Nashville from a westerly direction into the Cane Avenue yards, where the N.C. and S.L. trains are broken up for final delivery.

From this point deliveries are made to Nashville Union Stockyards in the same manner as the shipments previously described arriving by the L. and N. As stated the approximate distance from Cane Avenue yards to the Nashville Union Stockyards is one and a half miles. The approximate distance from the Nashville Union Stockyards on the Nashville Terminal tracks is one and a half miles. This would make a total distance of three miles from the Cane Avenue yards to the Neuhoff private siding. The stockyards are better shown on Exhibit 3.

Q. By reference to Exhibit 3, can you show the Examiner the approximate location that you have been describing?

A. Swift and Company location or the Neuhoff location, rather, is in the lower lefthand corner.

Mr. Mohr: You have the map upside down, do you not?

The Witness: Have I?

Mr. Mohr: The printing is upside down.

The Witness: Yes, I have it upside down. The Neuhoff location is in the upper righthand corner of Exhibit 3. You will note the Cumberland River runs along about the middle or a little above the middle of the exhibit, and the [fol. 1321] first street is Adams Street, the first street running practically parallel with the river.

In getting from these various yards, they switch around through the city over to the upper righthand corner of this exhibit, and then pull back into these sidings. The Neuhoff location is at Taylor and Adams streets. If you will note there Van Buren runs into the river, and the next extension of Van Buren continues up to the top of the page, and then the very next street is Taylor.

Now, the track of the Nashville terminal is laid in Adams Street, and if you will notice a switch takes off from the Nashville terminal tracks just before you reach Taylor Street, and runs into the block surrounded by Adams, Taylor, Monroe, and First Avenue. It is just a little short mark that runs into that corner.

Then as you go on further on this Nashville terminal track in Adams street, you find that there are two switches that run off from that track towards the river, and they are the ones that serve our plant. The packing house itself. The tracks previously mentioned are the ones that serve the livestock yards of Neuhoff Packing Company.

Mr. Mohr: Would you mind stating whether the Nashville stockyards are?

The Witness: The Nashville stockyards, instead of continuing on Adams Street, if you will look at the next [fol. 1322] street which is First Avenue, the tracks are laid in First Avenue and run on in the same direction that we have been coming from the switch point to across the large intersection, which is Jefferson Street, and then Jackson Street, and then the very next street is Whiteside Street, and that portion, or the stockyards are located in the portion of those two blocks, and we now take delivery into our trucks from chutes that face on Whiteside Street, between First, Second and Third Avenues.

By Mr. Rynder:

Q. Mr. Ford, with respect to the rates at which livestock moves in the south, will you please state the origin and any other facts about them?

A. The level of the livestock rates from points within the south to Nashville as well as those from the Western district to Nashville and other points in the south is that prescribed by the Commission, and livestock to and from the south, 253 ICC 241, decided August 11, 1942. The rates there prescribed were duly published by all of the carriers in Southern territory, including the defendants in this case, and are now applicable not only to Nashville, but also to all other points in the south, including those at which defendants and other southern carriers deliver carloads of livestock upon the private sidings of a packing plant.

This includes such points as Atlanta, Georgia, Knoxville, Tennessee, Memphis, Tennessee, Evansville, Indiana, [fol. 1323] Birmingham, Alabama, and others. That is to say, switching service to and in such as is requested in the present complaint is actually performed by the defendants and other carriers at numerous points in the south under precisely the same scale of livestock rates, and it cannot be said that the livestock rates are upon too low a level or are inadequate to permit of this switching service.

Q. The situation is that that uniform livestock scale applies interstate in the south, regardless of whether the livestock is placed at the plant or stockyards or whatnot.

A. That is right.

Q. Mr. Ford, do the railroads which are defendants in this case deliver to the Neuhoff Packing Company all kinds and classes of freight shipped to it for use at its plant?

A. Yes.

Mr. Rynder: Can that be marked for identification as Exhibit No. 4?

Exam. Snider: It will be so marked.

(Exhibit No. 4, Witness Ford, marked for identification.)

By Mr. Rynder:

Q. Mr. Ford, in Exhibit 4 for identification, have you shown a list of some of the inbound and outbound com-

modities that are commonly shipped to and from the Neuhoff plant and delivered on the private siding at its plant?

A. Yes. The last page of the exhibit shows a representa-
[fol. 1324] tive commodities inbound that are considered, you might say, supplies for the operation of the packing house. All of such shipments are delivered on our private siding at Nashville.

The right hand side of this page shows numerous commodities which are our finished products, and the destinations to which we ship such products. Such products are loaded on our private siding, and are switched to the carrers' lines for these destinations.

Q. May I ask this, Mr. Ford: The destination points on shipments from Nashville are not intended to be exhausted but rather illustrative, are they not?

A. Illustrative, and very limited as to the general territory they might ship to.

Q. Is that also true of the inbound shipments?

A. That is also true.

Q. As illustrative of inbound shipments of livestock, to the Neuhoff Packing Company at Nashville, did you obtain a limited number of livestock contracts for such shipments?

A. Yes.

Mr. Rynder: May the documents just distributed be marked Exhibit 5 for identification?

Exam. Snider: It will be so marked.

(Exhibit No. 5, Witness Ford, marked for identification.)

By Mr. Rynder:

[fol. 1325] Q. Are the documents that have been distributed and marked for identification Exhibit 5 true and correct copies of livestock contracts covering what they purport to show on their face?

A. They are.

Q. And were they obtained by you solely for the purpose of showing the method of billing direct livestock to Neuhoff at Nashville from various points?

A. Yes.

Q. They show, I believe, the Neuhoff Packing Company

at Nashville in each instance as the consignee of the shipment?

A. That is correct.

Q. Mr. Ford, what is shown on the first sheet of the document marked Exhibit 4?

A. That is an extract from a tariff of Agent Pope, Tariff No. 18 ICC 15, and covers the switching of livestock at Nashville, Tennessee. The right hand column is what we are particularly interested in, and that provides, following Note (A) that the Nashville Union Stockyards constitute the exclusive depot of the L. and N. Railroad and the N. C. and St. L. Railway for the receipt and delivery of livestock at Nashville, Tennessee, and then there are certain exceptions in connection with Note (B), and I might call to your attention Note 4 at the bottom, which is one of those exceptions to the individual of exclusive delivery through the Nashville stockyards.

No. 4 provides the delivery of dairy cattle and livestock [fol. 1326] of all kinds for breeding, show purposes, when receipt or delivery at the racetrack siding at the State Fair Grounds is requested.

Q. From that do you infer that there at the present time are at least two authorized deliveries in Nashville?

A. Yes.

Q. And what do you show on the second page of your exhibit?

A. That is the location of plants, packing plants in the south, and showing whether they are public yards or private yards, particularly, Atlanta, Georgia, Chattanooga, Tennessee, Jackson, Tennessee, Knoxville, Tennessee, Memphis, Tennessee, and North Birmingham, Alabama. They are all packing house points, and there are no public yards at Jackson, Tennessee, or North Birmingham, Alabama.

Q. And do the tariffs provide for delivery to the plants that you have mentioned?

A. Yes.

Q. Mr. Ford, on the fourth and fifth sheets of your Exhibit No. 4, will you undertake to show whether delivery of livestock direct to the side tracks or pens of packing companies is a more or less general practice throughout the United States?

A. Yes.

Q. And in what way have you attempted to show that?

A. I have attempted to show that, but have only used packing house points throughout the United States at which [fol. 1327] Swift and Company or its affiliates operate packing houses, and the list shown on these two pages is a complete list of all of the points at which we take delivery at our own packing houses, and not through the stockyards.

Q. These points are, I guess, practically all of them, off the lines of the defendants in this case.

A. Yes.

Q. And you put it in simply to show that there is a very general practice of delivering livestock to packing plants did you not?

A. That is right.

Mr. Rynder: Mr. Examiner, may I have the document I have just distributed marked for identification at Exhibit 6?

Exam. Snider: It will be so marked.

(Exhibit No. 6, Witness Ford, marked for identification.)

By Mr. Rynder:

Q. The figures shown on Exhibit 6 are of course self-explanatory, but what was your purpose in preparing it?

A. One of the principal reasons for preparing it was that we actually slaughter more livestock at the Neuhoff Packing Company than is received at the Nashville Union Stockyards?

Q. At various seasons?

A. At various seasons, indicating that their supply is not adequate for our needs.

[fol. 1328] Q. If you got everything that came there, you would not have enough?

A. That is correct.

Q. It indicates one reason who Neuhoff goes to other places to buy livestock, certain species and certain times of the year, is that right?

A. Yes.

Mr. Mohr: The information is shown in heads of livestock, so many heads?

The Witness: That is right.
Mr. Mohr: Not weight nor cars.
The Witness: That is right.

By Mr. Rynder:

Q. Mr. Ford, do you know whether written request was made of the defendants for delivery of livestock on the private side track of the Neuhoff Packing Company?
A. Such request has been made.

Mr. Rynder: I hand you a carbon copy of a letter, and I would like to call the attention of the defendants to the fact that this letter was written by our transportation man Mr. Stacey, at Nashville, whom we could not bring here today. I am therefore unable to have him personally identify it, but I will be glad to show it to you first, with the reply, to see if there is any objection.
Exam. Snider: Off the record.

(Discussion off the record.)

Exam. Snider: On the record.

[fol. 1329] Mr. Rynder: It is stipulated and agreed by and between complainant and defendants what written request for delivery of carload shipments of livestock upon its private side track at Nashville was made by Neuhoff Packing Company to the defendants, and said request was declined by said defendants in accordance with the provisions of their tariff.
Mr. Mohr: That is all right.
Mr. Fort: All right.
Mr. Rynder: That is all now.
Mr. Fort: I have no questions of Mr. Ford.
Mr. Mohr: I have no questions of Mr. Ford.
Exam. Snider: If there are no further questions, of this witness, he is excused.

(Witness excused.)

Exam. Snider: Is that the complainant's case?
Mr. Rynder: Except for the stipulation that I want to bring up.

Mr. Examiner, I offer in evidence the documents, Exhibits 1 to 6, inclusive.

Exam. Snider: They will be received.

(Exhibits 1 to 6, incl., Witness Ford, received in evidence.)

Exam. Snider: Is that complainant's case on direct?

Mr. Rynder: Except for a stipulation which I will now mention.

[fol. 1330] Mr. Examiner, in the preparation of this case, I requested counsel for the L. and N. and N.C. and St. L. to investigate and determine and advise me, if possible, with respect to deliveries of livestock, carloads of livestock, at plants at other points in the south, at which there were also livestock markets.

Counsel were kind enough to do that, and if it is agreeable to them, I should like to have those letters which I am sorry I do not have copies of, become a part of the record, by stipulation.

Mr. Mohr: It will be satisfactory to us to copy them in.

Mr. Fort: It is all right with us.

Exam. Snider: Could not those be reproduced and filed in the form of exhibits, that the truth of these things will be agreed to by the parties, or do you think it is better to have the letters copied into the record.

Mr. Rynder: If the Examiner is willing, I would prefer to have them become part of the record, just as if we had orally here stipulated to these facts.

Exam. Snider: It is easier to put them in by copying the letters, than it is to read each one and stipulate that fact?

Mr. Rynder: This gives exactly what the defendants have stipulated, and if they may go in as if I had read them, I will appreciate that.

Exam. Snider: It shall be done in that way.

[fol. 1331]

Louisville and Nashville Railroad Company

Law Department

Louisville 1, Kentucky

March 4, 1946
A-4121

Neuhoff Packing Co. v. L&NRR Co., et al.,

ICC Docket No. 29467

Mr. R. D. Rynder
Chicago, Ill.

Dear Mr. Rynder:

With further reference to your letter of the 21st ultimo regarding stipulation concerning certain facts which you desire to develop at the hearing of the above-styled case.

The investigation conducted disclosed that we deliver live stock to both the packing house plants and the public stock yards at Evansville, Ind., Knoxville, Tenn., and Atlanta, Ga.

At Birmingham there is no public stock yard and live stock consigned to Armour & Company and Alabama Packing Company is delivered by the Belt, a switching carrier located at that point.

At Lexington neither the Kentucky Independent Packing Company nor the Munns Packing Company has any facilities for unloading live stock; both take delivery at the public stock yards.

[fol. 1332] At Memphis, Tenn., live stock that we handle for delivery to the Dixie-National Stockyard and the packing house plant of Abram Bros. is handled through the chute and pens of the Leewood Stockyard, a private concern. On shipments destined to Memphis Packing Company and the South Memphis Public Stock Yards, delivery is made through the Frisco and the unloading for both concerns is performed at the stock yards which adjoin the Memphis Packing Company's plant.

We are willing to stipulate the foregoing facts. If you have information that is at variance with the foregoing

please let me know and I will give the matter further attention.

I assume that you have handled or will handle with the NC&St. L. the matter of stipulation covering shipments delivered by that carrier, particularly at points not reached by the L&N Railroad.

Yours very truly,

M. W. A. Northcutt,
General Solicitor.

[fol. 1333] Office of Special Counsel, Interstate Commerce Cases

1110 Shoreham Building

Washington 5, D. C.

Frank W. Gwathmey, *Special Counsel*

Charles P. Reynolds, *Assistant Special Counsel*

Refer to File No. 4863

June 3, 1946, fwg.

Neuhoff Packing Co. v. Louisville & Nashville RR Co. et al.

I.C.C. Docket 29467

Mr. Ross D. Rynder,
Law Department,
Swift & Company,
Union Stock Yards,
Chicago 9, Ill.

Dear Mr. Rynder:

With reference to your letters of April 16th and May 21st, I have now received the following advice from Mr. H. L. Hanes respecting the handling of livestock by the N.C. & ST. L. Ry., at Atlanta, Ga., and Chattanooga and Jackson, Tenn.:

"*At Atlanta, Ga.:* We deliver livestock cars for the packer (White Provision Co.) direct to their plant. Livestock for

this concern is not handled through the public (National) Stock Yards.

"*At Chattanooga, Tenn.:* The J. H. Allison Co., packing [fol. 1334] house does not have facilities for unloading livestock at the plant which is located on property adjoining the public stock yards—Foust-Yarnell Stock Yards—and cars containing livestock for the packing company are delivered direct to Foust-Yarnell Stock Yards from which point stock is driven to the packing house slaughter pens near by. The packing house has contract with the stock yards for unloading, feeding, watering, etc., livestock for immediate slaughter as well as that requiring feed and water.

"*At Jackson, Tenn.:* There is no public stock yard. The Jackson Packing Company is located on G.M. & O. R.R.'s tracks and it is our understanding livestock for this concern is placed on consignee's private or assigned siding."

We are willing to stipulate the above facts, and if you will prepare and forward to me an appropriate stipulation I shall be glad to execute and return it in order that you may offer it at the hearing which, I note, has now been set for July 15, 1946, at Nashville, Tenn.

With my kind regards,

Very truly yours,

Frank W. Gwathmey,
Special Counsel.

cc Mr. H. L. Hanes, Commerce Agent, Nashville, Chattanooga & St. Louis Railway, Nashville 2, Tenn.

[fol. 1335] Exam. Snider: Is that your case in chief, Mr. Rynder?

Mr. Rynder: Just a second.

The stipulation on behalf of the N.C. and St. L., to which I have just referred, says that the L. and N. delivers livestock to the plant of the White Provision Company at Atlanta. Our later investigation has indicated that the deliveries are also made at Atlanta to Armour and to the United Butchers Abattoir. If the correctness of that can

be checked within a reasonable time, so that you could advise us or the Commission, either that it is right or wrong, I would appreciate it.

Mr. Hanes: I can say now that it is right.

Mr. Rynder: It is right?

Mr. Hanes: Yes. We took those on our own tracks when we received this letter.

Mr. Rynder: Thank you. I believe that that concludes the direct case for the complainants.

Exam. Snider: We will take a five-minute recess.

(A short recess was taken.)

H. L. HANES was sworn and testified as follows:

Direct examination.

By Mr. Fort, Jr.:

Q. State your name.

A. H. L. Hanes.

Q. What is your position?

A. I am with the Nashville and Chattanooga, St. Louis [fol. 1336] Railway, Nashville, Tennessee.

Q. Will you outline briefly your experience?

A. I have been in the railroad business for more than 40 years.

Q. Proceed.

A. I have been in the Traffic Department practically all of that time. Before the other war, I was assistant freight agent of N. C. and St. L.

Mr. Rynder: We will concede his qualifications.

By Mr. Fort, Jr.:

Q. Are you familiar with the issues in this case?

A. Yes, sir.

Q. Will you give your testimony in your own way?

A. Mr. Examiner, I have three exhibits, and if it is satisfactory, I will identify these now.

Exam. Snider: They will be Exhibits 7, 8 and 9.

(Exhibits 7, 8 and 9, Witness Hanes marked for identification.)

The Witness: Switching within the terminal limits of Nashville, Tennessee, served by the Louisville and Nashville Railroad Company and the Nashville, Chattanooga and St. Louis Railway, is performed by the Nashville Terminals, which is a jointly owned facility of these two lines with Mr. J. P. Polk as Superintendent. Switching rates and service charges applicable within the switching limits of the Nashville Terminals are published in J. P. Polk, [fol. 1337] Agent's, Terminal Charge Tariff No. 19, I.C.C. No. 16, effective January 25, 1946. This tariff in addition to providing rates, rules and regulations contains a list of industries located in the terminals showing business in which each listed industry is engaged, location and track number on which situated, the latter being for information and convenience of employees particularly.

The Nashville Union Stock Yards, Neuhoff Packing Co. and Swift & Co. are served by the Nashville Terminals.

I offer for identification as Exhibit No. 7 a sketch of that portion of the Nashville Terminals in which are situated these three locations. The approximate distance from the junction with the main line tracks to the Nashville Union Stock Yards, Neuhoff Packing Co. and Swift & Co. by rail and from the stock yards to Swift & Co. and Neuhoff's by rail and by truck are as follows:

	From Junction with Main Line Tracks	From Union Stock Yards	
	Miles By Rail	Miles By Rail	By Truck
Union Stock Yards (Track location 174)	0.17		
Swift & Co. Shown on sketch as Neuhoff Packing Co. Stock Chute. (Track location 191)	1.56	1.39	0.69
Neuhoff Packing Co. (Track locations 192 and 192-A)	1.56	1.39	0.69

[fol. 1338] It will be observed from this sketch that in order to reach Swifts and Neuhoffs, engines traveling from the main line junction move along the First Avenue track past the stock yards (17/100 of a mile from the junction) to Hune Street, thence in a northerly direction about one-fifth of a mile to connection with a track crossing Burns Ave. and Van Buren Street, running southeast along Adams Street to the plants of Swift & Co. and Neuhoff Packing Co. The distance from the junction with the main line to Swifts, shown on the sketch as "Neuhoff Stock Chute" being 1.56 miles, the same as the packing company.

I now offer for identification as Exhibit No. 8 an extract (being Section 10) of an original contract dated March 11th, 1904, between the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway and W. J. Cummins & Associates, purchasers of the property formerly belonging to the Union Stock Yards Company of Nashville.

It is shown in this exhibit that this contract was transferred and extended from time to time since March 11, 1904. The last extension, dated January 22, 1940, to the Nashville Union Stock Yards, Inc., extended the life of the contract until March 11, 1954, and that the L&N RR and NC&St. L. Ry. agreed that they will not lease or rent any of their grounds in the City of Nashville for the establishment of a stock yard or other stock yards in the City of Nashville and that they will establish no other stock depot in the City of [fol. 1339] Nashville and that they will deliver and cause to be delivered to the Nashville Union Stock Yards, all live stock shipped over their lines of road consigned to the City of Nashville, and agreeing to make the Nashville Union Stock Yards their stock depot for the City of Nashville, and unless compelled to do so by law they agreed not to deliver live stock at any other point or points in Nashville, but to deliver all live stock shipped to Nashville at the Nashville Union Stock Yards. (There is one exception by mutual agreement to this provision carried in Paragraph (b) of Item 55 of Agent Polk's I.C.C. No. 16 relating to movement of live stock, to and from the race track siding near the State Fair Grounds.)

At this place I want to call attention to the Commission's decision in Docket 8136 of June 22, 1916, Nashville Abattoir,

Hide & Melting Association, et al., v. L&N RR Co., et al., I & S Docket 715, Live Stock switching at Nashville, Tenn., 40 I.C.C. 134, and offer for identification Exhibit No. 9, which is a copy of Item 55 of Agent Polk's Terminal Charge Tariff No. 19, I.C.C. No. 16, providing that the Nashville Union Stock Yards constitute the exclusive depot of the L&N RR and NC & St.L. Ry., for the receipt and delivery of live stock at Nashville, except as provided in Paragraph (b).

This provision in Mr. Polk's tariff is issued in compliance with order of the Interstate Commerce Commission in Docket 8136, 40 I.C.C. 134, decided June 22, 1916, previously [fol. 1340] referred to and in conformity with Section 10 of contract shown in Exhibit No. 8.

Our records show that during 1945, the Neuhoff Packing Co., received 561 cars of live stock via rail at Nashville which were handled through the Nashville Union Stock Yards in accordance with contract and provisions of Agent Polk's tariff.

Our records also show that the NC & St.L. Ry. delivered direct to the Neuhoff Packing Company's tracks, locations 192 and 192-A, during the year, 1945, 56 carloads of various commodities other than live stock.

That is a statement of the situation as it is today, and we are simply telling you and the Commission what the situation is and leaving it up to the Commission to decide what shall be done with this complaint.

Mr. Fort: I ask that Exhibits 7, 8 and 9 be received in evidence.

Exam. Snider: Any objections?

Mr. Rynder: None.

Exam. Snider: They will be received.

(Exhibits 7, 8 and 9, Witness Hanes, received in evidence.)

Q. (Direct continued by Mr. Mohr) Is the stockyards the sole delivery point and receiving point for stock of both carriers at Nashville?

A. Yes, except as provided in that exception.

[fol. 1341] Q. Now, with respect to through traffic that is stopped off for feed, rest and water, where is that done?

A. That is done at the Union Stock Yards and at Radnor Yard.

Q. The same place?

A. Yes.

Mr. Mohr: That is all of the direct.

Cross examination

By Mr. Rynder:

Q. Just one question. Mr. Hanes, in the first part of your statement, you gave certain distances, I expect you have it before you.

A. Yes, sir.

Q. Would those distances be substantially the same if the shipment were dead freight?

A. Yes, sir.

Mr. Rynder: Thank you.

Exam. Snider: Is the Commission to understand the only reason you are not making deliveries at the Neuhoff Packing Company plant is because of this contract that you have with Mr. Cummins and his associates, with respect to making no deliveries at other stock yards?

The Witness: That is correct.

Exam. Snider: That is the only reason?

The Witness: That is the only reason.

Exam. Snider: The consideration for this contract is what?

Mr. Mohr: To take care of the railroad's needs. Under [fol. 1342] the law, the railroads are required to load and unload ordinary livestock, and in order to, that is, the livestock that they transport, to make delivery, to provide a place for loading and unloading, and to do that properly they had to have some kind of stock yard facilities, and to meet this obligation, the carriers made arrangements with the stock yards to do it for them. Not only to load and unload, but also to take care of those instances in which the carriers are required to stop in transit for loading, unloading, feed and rest.

Because of the necessity of taking care of the peak loads of the railroads' business, the stock yards felt that they ought to get all of the business and that is what caused that

arrangement to be made. They insisted on getting all of the business that is loaded and unloaded in Nashville, and the carriers acquiesced in that proportion. I have here, Mr. Examiner——

Mr. Rynder: Before you leave that, Mr. Mohr, perhaps we would agree as lawyers, the I.C.C. Act requires the unloading by the carrier only of the livestock delivered at public stock yards.

Mr. Mohr: That is right.

Mr. Rynder: And that you would not be under the obligation to deliver, that is, to unload livestock if it were placed at our Neuhoff plant.

Mr. Mohr: That is correct.

I have, Mr. Examiner, copies, complete copies of the [fol. 1343] contract referred to by the witness, dated November 11, 1904, which runs for ten years. That contract was supplemented later by a number of contracts which extended the life thereof, and changed the location of the stock yards and also the owners thereof.

If it is agreeable with Mr. Rynder, I can have these made part of the record. I only have an original and one carbon.

Exam. Snider: I presume you do construe in view of your delivery of race horses, that a finding by the Commission that such a practice is unreasonable would be enough to vitiate the contract as being unlawful. This has great import, greater import, than it seems to me on the face of the thing. The only reason you are not doing it is because you have a contract with some private individual that you would not do it.

Mr. Mohr: That is correct.

Exam. Snider: I am just thinking out loud, I do not know how we are coming out so far as the Commission's decision on the contract, if we should make one.

Anyway, we will see what we do about it after you offer the contract.

Mr. Mohr: That is correct.

Mr. Rynder: If I may suggest something, it is this, that [fol. 1344] if the railroad were required by an order of the Commission to do what the complainants seek, that would be requiring it by law to do a certain thing.

Exam. Snider: I think you are right.

Mr. Rynder: It would not even vitiate the contract.

Mr. Mohr: I was wondering if I should make them all one exhibit. I offer them as an exhibit. May I put in the record what they consist of? The original, that is, the contract marked 620-5 is a contract between the railroads and W. J. Cummins and Associates, the purchasers of the Union Stock Yards.

It is a contract about making the stockyards the railroads' depot, and under these subsequent contracts is still in effect.

The one marked 620-6 extends the other contract for a period of 20 years to March 11, 1924. The one marked 620-7, the Tennessee Packing Company and Stock Yards Corporation, which became the owners of the stock yards by this contract, became parties to and agreed to and to perform and abide by the terms and provisions of the original contract.

The contract marked 620-8 is where the Union Stock Yards is taken over by the successors, to the Tennessee Packing and Stock Yards Corporation.

The one marked 620-9 is a contract with the Union Stock Yards, the then present owner of the stock yards, and deals with the movement thereof to a new location at 1st and Jefferson Streets, and it provides that the terms and conditions of the contract then in effect will apply to the [fol. 1345] new yards.

6200-10 is a transfer from the Union Stock Yards to the Nashville Union Stock Yards Company, and the one marked 620-11 is the contract between the railroads and the Nashville Union Stock Yards extending it until March 11, 1954.

Exam. Snider: I do not think those are necessary unless you do, Mr. Rynder.

Mr. Mohr: They were all referred to by Mr. Hanes.

Exam. Snider: They are purely extensions, though, aren't they?

Mr. Mohr: As he indicated, they have some provisions in them that may be interesting to the Commission.

Exam. Snider: I have no objection.

Mr. Mohr: I should like to have them in there so there will be no question as to what they provide.

Mr. Examiner, we will ask that they be received in evidence.

Exam. Snider: Without objection, they will be received and marked 10 to 16, inclusive.

(Exhibits 10 to 16, inclusive, Witness Hanes. Marked for identification and received in evidence.)

The Witness: I want to call attention to Exhibit No. 8, which sets forth, in those exhibits there, except they go into detail.

Exam. Snider: Any other witnesses?

(Witness excused.)

Mr. Mohr: That is all for the defendants.

[fol. 1346] Exam. Snider: Is that the case?

Mr. Mohr: Yes.

Exam. Snider: Do you desire briefs in the case?

Mr. Rynder: I would like to, Mr. Examiner. There may be some interesting law points involved in this case, as well as the facts.

Exam. Snider: Briefs will be filed September 15. If there is nothing further, the hearings are closed.

(Thereupon, the hearing adjourned at 11.30 a.m., Tuesday, July 30, 1946.)

EXHIBIT NO. 33

~~ICC No. 29809~~ Exhibit 33
Witness: Starbuck

EXHIBIT No. 1

DELIVERIES TO UNION STOCK YARDS TERRITORY

Date	Engine	Conductor	Cicero Time	Union Stock Yards Stock	Meat	Dead Freight	Empties
4-16-47	9227	Hall	2:27 A.M.	2			
	9370	Moody	4:40 A.M.	13		22	1
	9375	Marsh	8:02 A.M.	3			
	4964	Grant	6:03 P.M.			14	
4-17-47	9375	Schultz	1:31 A.M.		4	3	
	9368	Forrester	4:09 A.M.	3			
	4962	O'Connor	5:43 A.M.	6			
(To W. Ave.)	9367	Black	6:46 A.M.	3			
(From W.Ave.)	9367	Junken					
	9375	Grant	4:49 P.M.	6		20	
	9370	Drinkwater	10:25 P.M.	7			
4-18-47	9375	Moody	4:54 A.M.	2		22	2
	9134	Murray	6:40 A.M.	1			
	9227	Payne	2:15 P.M.	1			
	4962	Grant	4:58 P.M.			13	
	9374	Drinkwater	10:52 P.M.	1			
4-19-47	9376	Black	3:40 A.M.		2	17	3
	4980	Moody	5:13 A.M.	2			
	6002	O'Connor	6:13 A.M.	1			
	4980	Schmidt	4:22 P.M.			10	
4-20-47	540	Murdock	12:06 A.M.	4			
	4962	Moody	3:51 A.M.			13	1
	9376	Payne	12:50 P.M.	27			
	5310	Grant	4:20 P.M.	5		10	
	9374	Gugy	10:30 P.M.	1			
4-21-47	4962	O'Connor	1:30 A.M.	9	6	6	
	9370	Black	3:06 A.M.	5			
	4964	Moody	5:35 A.M.	3			
	9374	Brower	10:31 A.M.	1			
	4964	Grant	5:30 P.M.			22	4
4-22-47	9376	Pandell	1:17 A.M.	6			
	4962	Moody	3:34 A.M.	10	4	15	1
	9227	Black	6:07 A.M.	6			
	9372	Duffy	12:30 P.M.	2		4	
	4962	Grant	5:26 P.M.	4			
	9372	Drinkwater	11:15 P.M.	6			
4-23-47	4962	Moody	3:27 A.M.	12	1	8	
	9372	Carr	7.51 A.M.	9			
	9372	Brower	1:15 P.M.	4			
	4962	Grant	5:40 P.M.			32	3
	9372	Able	9:14 P.M.	8			

1157

Date	Engine	Conductor	Cicero Time	Union Stock Yards Stock	Meat	Dead Freight	Empties
4-24-47	4980	Moody	3:01 A.M.	4	4	8	1
(To W. Ave.)	9201	Murray	5:34 A.M.	2			
(From W.Ave.)	9372	Hall	5:52 A.M.	W. Ave			
	544	Herwood	8:00 A.M.	3			
	9370	Brower	11:13 A.M.	2			
	4980	Grant	4:42 P.M.	5		16	
4-25-47	4962	Moody	4:14 A.M.	2	7	8	
	9372	Brower	10:20 A.M.	2			
	5310	Grant	5:15 P.M.			35	1
4-26-47	9379	Pandell	12:03 A.M.	1			
	9359	Moody	3:23 A.M.	1	2	16	4
	9247	Smith	4:34 A.M.	5			
	5310	Moody	7:42 A.M.	1			
	9370	Turner	10:49 A.M.	1			
	5310	Grant	6:27 P.M.			23	1
4-27-47	5310	Moody	3:57 A.M.	3	1	4	1
	9213	Grant	4:17 P.M.	1		14	1
	9247	Prawdzik	8:43 P.M.	12	1		
4-28-47	4949	O'Connor	2:58 A.M.	22			
	5310	Moody	4:16 A.M.	3	3	16	
	4949	Grant	5:57 P.M.			27	
	9374	Drinkwater	9:30 P.M.	5			
4-29-47	4980	Moody	3:22 A.M.	11		8	3
	9370	Black	4:05 A.M.	2			
	9372	Brower	9:21 A.M.	5			
	4980	Grant	4:40 P.M.	1		1	
4-30-47	9370	Hall	2:26	4			
	4943	Moody	5:07 A.M.	8		16	
	5310	O'Connor	6:33 A.M.	15			
	5310	Grant	4:30 P.M.	5		8	1
	9372	Able	10:37 P.M.	4			
5-1-47	4943	Moody	5:14 A.M.	10	3	11	
(To W. Ave.)	9371	Hall	7:30 A.M.	5			
(From W.Ave.)	9371	Brower					
	5310	Grant	6:02 P.M.	1		12	
5-2-47	4962	Moody	4:27 A.M.	4	3	16	2
	4962	Grant	4:57 P.M.			10	1
5-3-47	9375	Black	2:57 A.M.		5		
	4980	Moody	4:56 A.M.			27	3
	9375	Brower	9:57 A.M.	3			
	4962	Grant	6:39 P.M.			16	
							1348

Date	Engine	Conductor	Cicero Time	Union Stock Yards Stock	Meat	Dead Freight	Empties
5-4-47	5310	Moody	5:50 A.M.			12	2
	9374	Arney	10:35 A.M.	2			
	4980	Grant	4:56 P.M.	1		18	
5-5-47	5310	O'Connor	12:54 A.M.	12			
	4962	Moody	3:10 A.M.	4		14	2
	4962	Grant	4:30 P.M.	2		11	2
5-6-47	9371	Pandell	1:46 A.M.	4	3	4	
	4962	Moody	5:44 A.M.	10			
	9371	Turner	9:10 A.M.	1			
	4980	Grant	5:31 P.M.	2		20	1
5-7-47	4962	Moody	4:35 A.M.	2	2	7	
	5310	O'Connor	6:33 A.M.	6			
	9371	Arney	10:45 A.M.	3			
	4962	Grant	4:30 P.M.	1		17	
	9367	Murdock	10:27 P.M.	4			
5-8-47	9358	Kral	3:33 A.M.	2	2		
	4980	Moody	4:45 A.M.	7		14	
	9371	Black	7:11 A.M.			1	
	9376	Turner	1:35 P.M.	8			
	4980	Grant	8:49 P.M.			9	
5-9-47	9358	Spicer	3:55 A.M.	1	2	25	1
	4964	Moody	4:48 A.M.	2		2	
	9370	Brower	10:32 A.M.			1	
	4962	Grant	4:34 P.M.			17	1
	9378	Murdock	11:12 P.M.	8			
5-10-47	9376	Black	4:22 A.M.		3	3	
	4980	Moody	5:00 A.M.	3			
	9201	Grant	4:41 P.M.			15	
	9374	Drinkwater	10:00 P.M.	1			

EXHIBIT NO. 34

The Central Manufactanufacturing District

SHOWING RAIL AND WATER CONN[illegible]AIL AND WATER CONNECTIONS AND

The Chicago Junction Railway and The [illegible]l The Chicago River & Indiana Railroad

KEY MAP
Showing Locations of
Central Manufacturing District
DEVELOPMENTS
in
CHICAGO

Central Manufacturing District
Chicago Junction Railway
Chicago River & Indiana Railroad
" " " Trackage Rights
Railroad Property
South Side Elevated Railroad
Street Car Lines
Parks and Boulevards
— June 1, 1937 —

For information regarding industrial locations ... address The Central Manufacturing District, 1305 First National Bank Bldg., Chicago.
- Phone RAndolph 2232 -

THE CENTRAL MANUFACTURING DISTRICT

Omaha Packing Co.

CHICAGO JUNCTION RAILWAY

CHICAGO

THE CENTRAL MANUFACTURING DISTRICT

THE CENTRAL MANUFACTURING DISTRICT

PACKINGTOWN

THE UNION STOCKYARD AND TRANSIT CO.

Swift & Co. Packing Facilities

Armour & Co. Packing Facilities

1350

EXHIBIT NO. 35
Witness: Starbuck

EXHIBIT NO. 2

Report of live stock handled for Omaha Packing Company from January 1, 1947 to December 31, 1947:

Month	Cars received from Conn Line	Cars received in off line	Total
January	295	224	519
February	250	308	558
March	247	262	509
April	203	178	381
May	226	195	421
June	262	151	413
July	270	174	444
August	315	210	525
September	355	315	670
October	462	329	791
November	437	199	636
December	275	241	516
TOTAL	3597	2786	6393

Chicago, Illinois

EXHIBIT NO. 36

Witness: Starbuck

EXHIBIT NO. 3

REPORT OF LIVE STOCK HANDLED FOR OMAHA PACKING COMPANY

Year	From Connecting Line	Line Haul	Total
1942	3596	4282	7878
1943	4689	4033	8722
1944	4635	3474	8109
1945	2714	2307	5021
1946	2228	1976	4204
1947	3597	2786	6393

Chicago, Illinois

EXHIBIT NO. 37

Witness: Starbuck

EXHIBIT NO. 4

STOCK RECORD TO U. S. YARDS

1947

Month	Trips	Cars	Average Cars Per Trip	Average Trips Per Day
January	115	704	6.12	3.7
February	117	555	4.74	4.2
March	126	629	4.9	4.1
April	113	545	4.36	3.7
May	92	372	4.04	3.
June	80	415	5.18	2.7
July	101	408	4.03	3.25
August	113	486	4.3	3.64
September	127	804	6.33	4.2
October	140	730	5.21	4.5
November	126	818	6.49	4.2
December	112	681	6.08	3.6
TOTAL	1362	7147	5.2	3.7

1946

January	119	1262	10.6	3.8
February	125	1467	11.7	4.46
March	132	1171	8.87	4.25
April	121	986	8.14	4.
May	101	658	6.51	4.6
June	103	551	5.35	3.4
July	134	1110	8.28	4.3
August	101	718	7.	3.25
September	93	505	5.42	3.
October	152	1387	9.	4.9
November	155	1283	8.27	5.16
December	134	1014	7.56	4.3
TOTAL	1470	12111	8.2	4.0

Chicago, Illinois

EXHIBIT NO. 38

Witness _____

CHICAGO, ROCK ISLAND & PACIFIC R.R. CO.

Statement showing for week ending January 24, 1948, movements from and to Burr Oak, and other Chicago Yards of the Rock Island, to and from, or through Chicago Junction Railway trackage at and in vicinity of Union Stock Yards, Chicago, Illinois.

January 18th to 24th, inclusive

DATE	ENGINE NO.	FOREMAN	DEPARTED FROM	TIME	LOADS	EMPTIES	ARRIVED AT	TIME	LOADS	EMPTIES
1/18/48	2131	Spier	Burr Oak	645 AM	2	-	U.S. Yds.	800 AM	1	-
	701		U.S. Yds.	810 AM	-	1	R.I. 44 St. Yds.	825 AM	-	1
			Delayed 25" setting car meat Englewood							
1/18/48	2100	Rettker	Burr Oak	115 AM	31	-	CBQ	905 AM	4	-
			CBQ	915 AM	Lite	-	Burr Oak	1230 PM	Lite	-
			235 AM to 520 AM Held Root St. account congestion CJ Ry. trucks							
			535 AM - 545 AM Ashland Ave. switches							
			550 AM - 600 AM Robey St. switches							
			605 AM - 615 AM C&. crossing for target							
			620 AM - 625 AM Ash St. switches							
			630 AM - " Set out five (5) loads at C.P.T.							
			735 AM - 750 AM 14th St. for B&O targets							
			810 AM - 830 AM Lunch							
			830 AM - 915 AM CBQ engine on Lead							
			947 AM - 1125 AM Following Wabash engine 1557 from Robey St. to Butler St.							
			1155 AM - 1200 PM 47th St. R.I. Yd. for water							

1354

14163

1164

DATE	ENGINE NO.	FOREMAN	DEPARTED FROM	TIME	LOADS	EMPTIES	ARRIVED AT	TIME	LOADS	EMPTIES
1/18/48	2539	Rowe	Burr Oak	625 PM	24	16	Ashland Ave. Yd.	410 AM	24	16
			Ashland Ave. Yd.	415 AM	13	-	C.P.T.	450 AM	13	-
			C.P.T.	515 AM	2	-	CN/-Tot. Terml.	555 AM	2	-
			CN/-Tot. Terml.	600 AM	Lite	-	Burr Oak	730 AM	Lite	-
			730 PM to 1015 PM At Packers Ave. for switches							
			1025 PM - 405 AM Ashland Ave., west end, for track to enter yard.							
1/18/48	2030	Jennings	44th St.	745 PM	Lite	-	Ashland Ave. Yd.	1035 PM	Lite	-
			Ashland Ave. Yd.	1150 PM	31	1	44th St.	1230 AM	31	1
			805 PM to 1020 PM Laurel St. behind R.I. engine 2539							
1/18/48	2058	Neilsen	47th St.	710 AM	Lite	-	Ashland Ave. Yd.	740 AM	Lite	-
			Ashland Ave. Yd.	900 AM	3	2	44th St. Yd.	950 AM	3	2
			905 AM to 915 AM Ashland Ave. for switches							
1/18/48	2590	Eaves	Burr Oak	545 AM	16	2	U.S. Yds.	730 AM	10	-
			U.S. Yds.	825 AM	-	10	44th St. Yd.	840 AM	-	10
			600 AM to 610 AM Gresham for target							
			630 AM - 650 AM R.I. 47th St. Yard setting out six (6) loads and two (2) empties							
			700 AM - 720 AM Union Ave. on CJ Ry. for switches							
1/19/48	2100	Rottker	Burr Oak	620 AM	19	-	C.P.T.	840 AM	19	-
			C.P.T.	900 AM	Lite	-	Burr Oak	1105 AM	Lite	-
			650 AM to 655 AM R.I. 47th St. Yard for water							
			710 AM - 720 AM Laurel St. on CJ for CNW engine 2517							
			720 AM - 835 AM Following CNW engine 2517 from Laurel St. to Ash St.							
			910 AM - 955 AM Following Soo Line engine 605 from Robey St. to Ashland Ave.							
			1020 AM - 1040 AM Lunch R.I. 59th St.							

1355

DATE	ENGINE NO.	FOREMAN	DEPARTED FROM	TIME	LOADS	ENTTIES	ARRIVED AT	TIME	LOADS	ENTTIES
1/19/48	2596	Deas	47th St. (R.I.)	1130 AM	18	-	Ashland Ave.	105 PM	18	-
			Ashland Ave.	115 PM	13	-	C.P.T.	135 PM	13	-
			C.P.T.	145 PM	2	-	CNW-Pot. Terml.	210 PM	2	-
			CNW-Pot. Terml.	225 PM	Lite	-	44th St. Yd.	320 PM	Lite	-
			1155 AM to 105 PM Ashland Ave. account CEI train ahead making delivery to CJ Ry.							
1/19/48	1781	Keenan	47th St. (R.I.)	725 PM	1	1	Ashland Ave.	815 PM	1	1
			Ashland Ave. (South Yd)	830 PM	Lite	-	Ashland Ave. (North Yd.)	150 AM	Lite	-
			Ashland Ave. (North Yd.)	226 AM	10	2	44th St. Yd.	300 AM	10	2
			835 PM to 1200 AM Packers Ave. to cross from South Yd. to North Yd. Ashland Ave. by R.I. engine 2579							
			1250 AM - 140 AM Waiting to get in North Yd. Ashland Ave.							
1/19/48	2579	Rowe	Burr Oak	600 PM	21	6	Ashland Ave.	145 AM	20	6
			Ashland Ave.	150 AM	13	-	C.P.T.	235 AM	13	-
			C.P.T.	255 AM	4	-	CNW-Pot.Terml.	340 AM	4	-
			CNW-Pot. Terml.	410 AM	3	-	44th St. (R.I.)	710 AM	3	-
			726 PM to 755 PM Butler St. switches							
			805 PM - 1205 AM Packers Ave. for switches							
			1215 AM - 140 AM Ashland Ave. for track							
			410 AM - 440 AM Wood St. Yd. by NW engine 650 and C StP&P engine 1365							
			515 AM - 650 AM 27th St. to Ashland Ave. behind CNW engine 2520							
1/19/48	2058	Neilson	47th St.	740 AM	15	-	Ashland Ave.	840 AM	15	-
			Ashland Ave.	900 AM	Lite	-	44th St.	940 AM	Lite	-
			820 AM to 900 AM Ashland Ave. for track							

DATE	ENGINE NO.	FOREMAN	DEPARTED FROM	TIME	LOADS	EMPTIES	ARRIVED AT	TIME	LOADS	EMPTIES
1/20/48	2131	Shorick	Burr Oak	530 AM	27	1	U.S. Yds.	730 AM	7	-
			U.S. Yds.	815 AM	-	7	44th St. Yd.	830 AM	-	7
			620 AM to 705 AM R.I. 47th St. Yds. set out 20 loads 1 empty							
1/20/48	259	Rottkor	Burr Oak	120 AM	11	-	C.R.T.	335 AM	11	-
			C.R.T.	400 AM	Lito	-	44th St.	445 AM	Lito	-
			47th St. (R.I.)	725 AM	17	3	Ashland Ave.	755 AM	17	3
			Ashland Ave.	820 AM	16	-	C.R.T.	840 AM	16	-
			C.R.T.	910 AM	Lito	-	44th St.	1000 AM	Lito	-
			210 AM to 300 AM Ashland Ave. trains ahead							
			305 AM - 320 AM Roboy St. for switches							
			922 AM - 942 AM Roboy St. by CBQ stock train engine 4999 ahead							
1/20/48	2592	Rowe	Burr Oak	700 PM	43	4	Ashland Ave.	1105 PM	24	4
			Ashland Ave.	1115 PM	9	-	C.R.T.	1150 PM	9	-
			C.R.T.	1215 AM	9	-	CNW-Pot. Terml.	100 AM	9	-
			CNW-Pot. Terml.	120 AM	4	-	CBQ	150 AM	4	-
			CBQ	200 AM	3	-	44th St.	330 AM	3	-
			800 PM to 805 PM Set out 19 cars at 47th St.							
			835 PM - 1020 PM Rockers Ave. for switches							
1/20/48	1723	Keenan	47th St.	805 PM	18	-	U.S. Yds.	830 PM	18	-
			U.S. Yds.	1010 PM	-	18	44th St.	1040 PM	-	18
			44th St.	1100 PM	-	1	Ashland Ave.	1150 PM	-	1
			Ashland Ave.	1255 AM	15	2	44th St.	145 AM	15	2
			1125 PM to 1140 PM Ashland Ave. for switches							
			100 AM - 110 AM Ashland Ave. for switches							
1/20/48	1963	Jennings	47th St.	130 AM	1	-	U.S. Yds.	200 AM	1	1
			U.S. Yds.	215 AM		1	44th St.	230 AM	-	1
			No delays.							

DATE	ENGINE NO.	FOREMAN	DEPARTED FROM	TIME	LOADS	EMPTIES	ARRIVED AT	TIME	LOADS	EMPTIES
1/20/48	237	Hooro	47th St.	235 PM	-	2	U.S. Yds.	315 PM	-	2
			U.S. Yds.	410 PM	2	-	44th St.	445 PM	2	-
			No delays.							
1/20/48	2058	Neilsen	44th St.	610 AM	Lite	-	Ashland Ave.	840 AM	Lite	-
			Ashland Ave.	920 AM	6	2	44th St.	950 AM	6	2
			No delays.							
1/21/48	705	Ditmars	Burr Oak	610 AM	3	-	U.S. Yds.	705 AM	3	-
			U.S. Yds.	730 AM	3	-	44th St.	750 AM	3	-
			No delays.							
1/21/48	259	Rottker	Burr Oak	110 AM	12	-	Ashland Ave.	225 AM	12	-
			Ashland Ave.	245 AM	3	-	C.P.T.	257 AM	3	-
			C.P.T.	325 AM	Lite	-	Burr Oak	500 AM	Lite	-
			Burr Oak	645 AM	11	-	C.P.T.	810 AM	11	-
			C.P.T.	830 AM	2	-	CNW-Pot. Torml.	910 AM	2	-
			CNW-Pot. Torml.	1005 AM	Lite	-	Burr Oak	1235 PM	Lite	-

335 AM to 350 AM Western Ave. for switches
402 AM - 408 AM Union Ave. for switches
740 AM - 800 AM Western Ave. for switches
840 AM - 855 AM For target to cross Illinois Northern Ry.
1020 AM - 1055 AM AT&SF Ry. crossing - Wabash engine 1555 ahead.
1055 AM - 1135 AM Following Wabash engine 1555 from AT&SF crossing to Butler St. - arrived at 44th St. 1140 AM

1358

DATE	ENGINE NO.	FOREMAN	DEPARTED FROM	TIME	LOADS	ENTITIES	ARRIVED AT	TIME	LOADS	ENTITIES
1/21/48	2628	Rowe	Burr Oak	540 PM	26	7	Ashland Ave.	1135 PM	26	7
			Ashland Ave.	1145 PM	10	-	C.P.T.	1235 AM	10	-
			C.P.T.	1235 AM	6	-	CNW-Tot. Terml.	115 AM	6	-
			CNW-Tot. Terml.	125 AM	Lite	-	44th St.	225 AM	Lite	-
			655 PM to 705 PM Setting out one car (R.I.) 47th St. Yard							
			730 PM - 835 PM Ashland Ave. for switches east end							
			840 PM - 1130 PM For track to set out west end Ashland Ave. Yd.							
1/21/48	2058	Neilsen	47th St.	710 AM	Lite	-	Ashland Ave.	740 AM	Lite	-
			Ashland Ave.	900 AM	11	1	44th St.	1000 AM	11	1
			No Delays.							
1/22/48	259	Kettker	Burr Oak	115 AM	22	2	Ashland Ave.	240 AM	22	2
			Ashland Ave.	300 AM	19	-	C.P.T.	315 AM	19	-
			C.P.T.	435 AM	4	-	CNW-Tot. Terml.	500 AM	4	-
			CNW-Tot. Terml.	545 AM	1	-	47th St.	800 AM	1	-
			205 AM to 210 AM Taking water 47th St. (R.I.)							
			230 AM - 235 AM Ashland Ave. for switches							
			550 AM - 620 AM Following IHB engine 412 from 14th St. to Western Ave.							
			630 AM - 720 AM Kobey St. Soo Line engine 2434 ahead							
			733 AM - 748 AM Root St. Nickel Plate engine 14 ahead							
			753 AM - 756 AM (R.I.) 44th St. for target							
1/22/48	2539	Rowe	Burr Oak	520 PM	7	3	Ashland Ave.	1250 AM	7	3
			Ashland Ave.	145 AM	13	11	44th St.	220 AM	13	11
			535 PM to 620 PM Gresham (R.I.) for target							
			700 PM - 900 PM Laurel St. trains ahead							
			905 PM - 930 PM Ashland Ave. trains ahead							
			935 PM - 1245 AM West end Ashland Ave. Yd. for tracks							

DATE	ENGINE NO.	FOREMAN	DEPARTED FROM	TIME	LOADS	EMPTIES	ARRIVED AT	TIME	LOADS	EMPTIES
1/22/48	2058	Neilsen	47th St.	700 AM	Lite	-	Ashland Ave.	740 AM	Lite	-
			Ashland Ave.	850 AM	9	3	44th St.	930 AM	9	3
1/23/48	233	Rottker	Burr Oak	705 AM	17	4	Ashland Ave.	905 AM	17	4
			Ashland Ave.	915 AM	7	-	C.P.T.	935 AM	7	-
			C.P.T.	955 AM	5	-	CNW-Pot. Terml.	1040 AM	5	-
			CNW-Pot. Terml.	1130 AM	1	-	44th St.	1240 PM	1	-
			745 AM to 750 AM Englewood for target							
			805 AM - 810 AM 47th St. for water							
			830 AM - 840 AM Ashland Ave. switches							
			845 AM - 900 AM West end Ashland Ave. Yd. blocked by CIL engine 11 ahead							
			1010 AM - 1020 AM 14th St. B&O Ry. target							
			1025 AM - 1035 AM Wood St. target							
			1142 AM - 1147 AM C&A crossing target							
			1152 AM - 1210 PM Western Ave. CJ Ry. engine 231 ahead							
1/23/48	2594	Rowe	Burr Oak	535 PM	10	3	Ashland Ave.	1000 PM	10	3
			Ashland Ave.	1005 PM	3	-	C.P.T.	1100 PM	3	-
			C.P.T.	1105 PM	Lite	-	44th St.	135 AM	Lite	-
			550 PM to 610 PM Gresham (R.I.) target							
			650 PM - 830 PM Laurel St. to Roboy St. trains ahead							
			830 PM - 1000 PM West end Ashland Ave. for admission to yard track							
			1120 PM - 1150 PM Ashland Ave. switches							
			1155 PM - 115 AM Packers Ave. trains ahead							
1/23/48	2596	Does	Burr Oak	1000 AM	18	4	Ashland Ave.	1155 AM	16	-
			Ashland Ave.	1205 PM	11	-	C.P.T.	1225 PM	11	-
			C.P.T.	1235 PM	4	-	CNW-Pot. Terml.	105 PM	4	-
			CNW-Pot. Terml.	120 PM	Lite	-	Ashland Ave.	230 PM	Lite	-
			Ashland Ave.	305 PM	9	1	44th St.	330 PM	9	1
			1055 AM to 1115 AM Set out 2 loads and 4 empties (R.I.) 47th St. Yd.							
			130 PM - 150 PM 26th St. trains ahead							
			155 PM - 220 PM C&A crossing trains ahead							

1169

1360

DATE	ENGINE NO.	FOREMAN	DEPARTED FROM	TIME	LOADS	EMPTIES	ARRIVED AT	TIME	LOADS	EMPTIES
1/23/48	705	Ditmars	Burr Oak	620 AM	16	-	U.S. Yds.	705 AM	16	-
			U.S. Yds.	810 AM	-	-	44th St.	830 AM	-	16
1/24/48	2030	Neilsen	47th St.	700 AM	Lito	-	Ashland Ave.	740 AM	Lito	-
			Ashland Ave.	920 AM	22	3	44th St.	950 AM	22	3
1/24/48	1723	Keenan	44th St.	810 PM	Lito	-	Ashland Ave.	930 PM	Lito	-
			Ashland Ave.	1020 PM	26	2	44th St.	1130 PM	26	2
			835 PM to 900 PM Packers Ave. for switches							
			910 PM - 920 PM Ashland Ave. for switches							
			1030 PM - 1040 PM Ashland Ave. for switches							
			1055 PM - 1110 PM Halsted St. for switches							
1/24/48	2592	Rowe	Burr Oak	655 PM	15	10	Ashland Ave.	1015 PM	15	10
			Ashland Ave.	1020 PM	3	-	C.P.T.	1040 PM	3	-
			C.P.T.	1050 PM	2	-	C.B.Q.	1115 PM	2	-
			C.B.Q.	1120 PM	1	-	CNW-Pot. Terml.	1145 PM	1	-
			CNW-Pot. Terml.	1155 PM	Lito	-	44th St.	1250 AM	Lito	-
			800 PM to 1015 PM West end Ashland Ave. Yd. for admission to yard track							

Explanation of abreviations and terms;

U.S. Yds.	-	Union Stock Yards.
Lito	-	Denotes engine and caboose without cars.
R.I.	-	Chicago, Rock Island and Pacific Railroad.
C.P.T.	-	Chicago Produce Terminal.
CNW-Pot. Terml.	-	C&NW Potatoe Terminal.
Target	-	Block signals.
Switches	-	Lining up switches to permit movement of train.
Taking water	-	Filling locomotive water tank.

1170

1361

DEFENDANT'S EXHIBIT NO. 39
Witness: W. Heide

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

Record of Time Consumed by Crews on Runs from C. R. I. & P. Burr Oak Yards to C. & N. W. Potato Terminal via Ashland Avenue and back to Burr Oak Yards.

Date	Engine No.	Crew Foreman	Time Consumed
October 16, 1947	2030	L. J. Rowe	15 Hrs. 55 Min.
22	2030	" " "	15 " 15 "
24	2030	" " "	15 " 05 "
28	2030	" " "	15 " 35 "
November 1, 1947	1723	" " "	15 " 55 "
4	2043	" " "	16 " 00 "
14	2043	B. Keenan	15 " 55 "
17	1963	J. M. Payton	15 " 55 "
28	1963	" " "	15 " 35 "
December 2, 1947	1963	" " "	15 " 55 "
3	1723	L. J. Rowe	15 " 30 "
4	1963	J. M. Payton	15 " 55 "
11	1953	" " "	16 " 55 "
12	2043	L. J. Rowe	16 " 00 "
January 18, 1947	2539	" " "	15 " 45 "
19	2579	" " "	15 " 55 "
24	2030	W. J. Neilsen	15 " 55 "
27	2594	L. J. Rowe	15 " 45 "
28	2579	" " "	15 " 30 "
29	2100	Rettker	15 " 00 "
29	2594	L. J. Rowe	15 " 05 "

E. C. Kiesele
EXHIBIT NO. 40

TABULATION
SHOWING EFFECT OF CONSOLIDATION
OF TRAINS AT BENSENVILLE YARD

LIVESTOCK CARS COMING INTO BENSENVILLE

	August 1947:	December 1947:
Total number of trains	133	188
Cars of livestock	545	931
Average number of cars of livestock per train:	4	6
Average number of cars of livestock per day:	18	30
Average number of trains per day:	4	5

LIVESTOCK CARS BENSENVILLE TO U.S. YARDS, ILLINOIS

	August 1947:	December 1947:
Total number of stock trains Bensenville to Chutes:	57	67
Average number of cars of livestock per train:	10	14
Average number of trains per day:	2	2

[fol. 1364–1365]

74—282

E. G. Kieseler

EXHIBIT 41

Representative Movements From Bensenville To Union Stock Yards

Date	Train	No. Cars Contents	Destination	Departure From Bensenville	Arrival U. S. Y. Chutes	Elapsed Time	Delay Ashland Ave. For Set Outs
12 /2/47	#1	2 (livestock) 4 (perishables)	U. S. Yards CJ	8:22 p.m.	#3— 11:15 p.m.	2 hrs. 53 mins.	55 mins.
"	#2	37 (livestock)	U. S. Yards	4:05 a.m.	#3— 6:50 a.m.	2 hrs. 45 mins.	
"	#3	35 (livestock) 4 (perishables)	U. S. Yards CJ	6:20 a.m.	#3— 11:15 a.m.	4 hrs. 55 mins.	1 hr. 8 mins.
12/ 3/47	#1	17 (livestock) 4 (perishables)	U. S. Yards CJ	8:57 p.m.	#7— 11:20 p.m.	2 hrs. 33 mins.	45 mins.
"	#2	37 (livestock)	U. S. Yards	4:10 a.m.	#3— 6:35 a.m.	2 hrs. 25 mins.	
"	#3	1 (livestock) 2 (perishables)	U. S. Yards CJ	6:30 a.m.	9:00 a.m.	2 hrs. 30 mins.	15 mins.
12/ 9/47	#1	3 (livestock) 1 (perishable)	U. S. Yards CJ	11:30 p.m.	#9— 2:40 a.m.	3 hrs. 10 mins.	55 mins.
"	#2	40 (livestock)	U. S. Yards	4:20 a.m.	#3 & #4 8:05 a.m.	3 hrs. 45 mins.	
"	#3	3 (livestock) 5 (perishables)	U. S. Yards CJ	7:05 a.m.	11:00 a.m.	3 hrs. 55 mins.	1 hr. 17 mins.
12/11/47	#1	3 (livestock) 5 (perishables)	U. S. Yards CJ	5:00 p.m.	#5— 9:45 p.m.	4 hrs. 45 mins.	1 hr. 47 mins.
"	#2	24 (livestock)	U. S. Yards	3:25 a.m.	#3— 5:55 a.m.	2 hrs. 30 mins.	
"	#3	2 (livestock) 6 (perishables)	U. S. Yards CJ	6:35 a.m.	#4— 8:50 a.m.	2 hrs. 25 mins.	25 mins.

1173

[fol. 1365a] I. C. C. Docket No. 29809 Defendants' Exhibit 42

Exhibits introduced and made part of record in Swift v. Alton R. Co. I. C. C. No. 27862.

[fol. 1366] Appendix

The following numbered exhibits were introduced and made part of the record before the Interstate Commerce Commission in *Swift & Co.* v. *The Alton Railroad et al.*, Dkt. No. 27862.

Exhibit Number	Title
47	Agreement of 1892 between Chicago Junction Railway and U. S. Yards & Transit Co. and Armour, Morris and Swift.
48	Agreement of 1892 between Chicago Junction Railway and U. S. Yards & Transit Co. and small packers.
49	Swift complaint in Swift & Co. v. U. S. Yards & Transit Co., 1891.
50	Complaint in Morris & Co. v. The U. S. Yard & Transit Co., 1891.
51	Complaint in Armour & Co. v. U. S. Yard & Transit Co., 1891.
52	Answer in The Morris Case, 1891.
53	Affidavit of J. D. Besler in Swift & Co. v. U. S. Yard & Transit Co., 1891.
54	Affidavit of A. J. Earling in Armour v. U. S. Yard & Transit Co., 1891.
55	Affidavit of J. D. Springer in Morris & Co. v. U. S. Yard & Transit Co., 1891.
56	Stipulation in Swift & Co., v. U. S. Yard & Transit Co., 1891.
57	Stipulation in Armour & Co. v. U. S. Yard & Transit Co., 1891.
58	Stipulation in Morris & Co. v. U. S. Yard & Transit Co., 1891.

[fol. 1367]

59	Report of The Federal Trade Commission on the Meat-Packing Industry, Part III, Methods of the five packers in controlling the meat packing industry, 1919.
60	Report of the Federal Trade Commission on the Meat-Packing Industry, letter to the president, 1919.
62	Consent decree in United States v. Swift & Co. et al., 1920.
65	Affidavit of Sheldon E. Holmes in Armour, Swift and Morris cases against U. S. Yards & Transit Co., 1891.
66	Affidavit of George Alexander in Swift, Armour and Morris cases against U. S. Yard & Transit Co., 1891.
70	Excerpt from statement of L. F. Swift before Senate Committee on Agriculture, 1919.
72	Report of the Federal Trade Commission on the Meat-Packing Industry, Part III, Methods of the five packers in controlling the meat-packing industry. (Excerpts from chapter I, sections 6 to 13, pages 21 to 35).
73	Report of the Federal Trade Commission on the Meat-Packing Industry, Part III, table of stockyards owned by packers on pages 24 and 25.
74	Petition of Swift Group of dependents, dated April 12, 1921, presenting plan for carrying out consent decree in United States v. Swift & Co. et al.

Exhibit Number	Title
75	Order of United States District Court for District of Columbia approving Swift Plan, dated April 12, 1921.
76	Order of United States District Court for District of Columbia appointing Harry New trustee of stockyards shares owned by Swift & Co., dated June 16, 1932.
77	Order of United States District Court for District of Columbia approving sale of certain stockyards shares owned by Swift & Co. dated August 13, 1936.
78	Order of United States District Court for District of Columbia approving John Walsh trustee of stockyards shares owned by Swift, dated June 15, 1937.

(Here follow 2 Photolithographs, side folios 1368 and 1369)

1176A

EXHIBIT NO. 47

(E)

United States of America

Received

TREASURY DEPARTMENT

WASHINGTON

May 11, 1936

PURSUANT to the provisions of Section 661, Chapter 17, Title 28 of the d States Code (Section 882 of the Revised Statutes of the United States), eby certify that the annexed is a true copy of a photostat of agreement Jersey City, New Jersey, January 15, 1892, between The Chicago Junction ays and Union Stock Yards Company, and Philip D. Armour and others, and n Morris and others, and Gustavus F. Swift and others,

in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

F. A. Birgfeld

Chief Clerk, Treasury Department.

1368

11768

THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY,

AND

PHILIP D. ARMOUR AND OTHERS,

AND

NELSON MORRIS AND OTHERS,

AND

GUSTAVUS F. SWIFT AND OTHERS.

AGREEMENT,

Dated Jersey City, N. J., January 15, 1892.

1300

[fol. 1370] An Agreement, made and entered into at the City of Jersey City, State of New Jersey, this 15th day of January, A.D. one thousand eight hundred and ninety-two, by and between The Chicago Junction Railways and Union Stock Yards Company (hereinafter called the "New Jersey Company") as party of the first part, and Philip D. Armour, Jonathan O. Armour, Philip D. Armour, Junr., and George H. Webster, individually and as co-partners, composing the firm of Armour & Company; Nelson Morris, Frank E. Vogel and Edward Morris, individually and as co-partners, composing the firm of Nelson Morris & Company, and Gustavus F. Swift, Edwin C. Swift, Louis F. Swift and Edward F. Swift, all of the City of Chicago, State of Illinois, parties of the second part.

Whereas the party of the first part, The Chicago Junction Railways and Union Stock Yards Company, is a Corporation organized and existing under the laws of the State of New Jersey, United States of America, with an authorized capital stock of thirteen million dollars ($13,000,-[fol. 1371] 000) divided into sixty-five thousand shares of six per cent. preferred stock of the par value of one hundred dollars ($100) each, namely $6,500,000, and sixty-five thousand shares of common or general stock of the par value of one hundred dollars ($100) each, namely $6,500,000, and of which said capital stock shares amounting in the aggregate to over the sum of $12,400,000 have been duly issued and are now outstanding; and which said Company was formed and incorporated for the purpose, among other things, of purchasing and holding shares of the capital stock of the Union Stock Yard and Transit Company (hereinafter called the "Transit Company"); and

Whereas the said Transit Company was incorporated in the year 1865 under the laws of the State of Illinois, with power to locate, construct and maintain, at or in proximity to the City of Chicago, yards, inclosures, buildings, railway lines, &c., for the conduct or accommodation of the business of a General Union Stock Yard for cattle and live stock; and

Whereas the said Transit Company in or about the year 1865 constructed and has since maintained in said City of Chicago large yards and extensive buildings, plant and

railways necessary for the conduct of said stock yards business, which premises are owned by said Company, and represent the investment of its capital stock of $13,200,000 divided into 132,000 shares of the par value of $100 each; and

[fol. 1372] Whereas the said New Jersey Company purchased and acquired about 129,770 shares of said capital stock of said Transit Company, for which shares the said New Jersey Company paid the sum of over $22,000,000, partly in cash and partly in its bonds, which said bonds are part of a total issue of ten million dollars ($10,000,000), due July 1st, 1915, with interest at the rate of 5 per cent. per annum, payable semi-annually, and are secured by a deed of trust pledging as collateral security for their payment 120,000 of the shares of said Transit Company; and

Whereas the principal revenue and income of said Transit Company are derived from yardage charges on cattle and live stock, and from the sale of feed for such cattle and live stock, and which revenue and income from such yardage and charges have annually increased since the establishment of the stock yards of said Transit Company, and now amount to about the sum of $2,000,000 per annum; and

Whereas the market and demand for cattle and live stock at the yards of the Transit Company in the City of Chicago arise from and by reason of the presence of many large slaughtering, packing and canning plants and establishments on premises in the immediate neighborhood or contiguous to said stock yards, in the part of said city known as Packingtown, and the largest and the principal of such slaughtering, packing and canning plants and establish-
[fol. 1373] ments are owned or controlled by the parties of the second part hereto, whose purchases of cattle and live stock at said yards have for several years last past represented and constituted about fifty-five (55) per cent of the demand and market for cattle at the said yards; and

Whereas said co-partnership of Nelson Morris & Company are the owners and holders of all of the shares of the capital stock of the Fairbank Canning Company and said Gustavus F. Swift, Edwin C. Swift, Louis F. Swift and Edward F. Swift are the owners and holders of a majority of the shares of the capital stock of Swift and Company,

both of said corporations being organized under the laws of the State of Illinois; and

Whereas the said parties of the second part have purchased and acquired certain premises at Packingtown aforesaid, known as the "Central Stock Yards," near the yards of the said Transit Company, and have constructed and erected on said premises various platforms, pens, sheds, railway sidings &c., for the purpose of receiving and distributing among themselves any and all cattle and live stock owned or purchased by them outside of the City of Chicago, or directly consigned to them or either of them, and thereby avoiding the payment of any yardage charges to the said Transit Company and have demanded that the said Transit Company permit the use of their railway tracks for the transportation and delivery of such cattle and live stock to their said Central Stock Yards, and said Armour [fol. 1374] & Company, Swift and Company, and Nelson Morris & Company have recently commenced three several suits in equity in the Circuit Court of Cook County, State of Illinois, against the said Transit Company, claiming and demanding as relief that the said Court by order and decree compel the said Transit Company to afford facilities over its railways for the transportation and delivery of any and all cattle and live stock belonging or consigned to them or any of them or to said Central Stock Yards without the payment of the usual yardage charges thereon as heretofore paid by them and collected by said Transit Company; and

Whereas if such parties succeed in such litigation and discontinue purchasing live stock at such yards of the Transit Company to the extent of the capacity of said Central Stock Yards, the demand and market in Chicago for live stock would be diminished to the extent of over 500,000 cattle per annum, thus increasing *pro tanto* the demand and market in other States, viz., at Kansas City, at Omaha and elsewhere, to the great injury and diminution of the market at Chicago, and to the loss and damage of said Transit Company's income and yardage to the extent of over $100,000 per annum; and

Whereas the said New Jersey Company desires to secure and provide, for the use of the said Transit Company, prem-

[fol. 1375] ises located near the City of Chicago and suitable for the business of stock yards in case it shall hereafter become necessary to remove thereto the said yards of the Transit Company by reason or because of the growth of the City of Chicago or municipal ordinances or legislation or other causes; and

Whereas the said parties of the second part have caused to be purchased and now own at Tolleston, in the State of Indiana, and within about ten miles of the City of Chicago, a tract of land consisting of about four thousand acres which is believed to be the most suitable location within such distance for the purposes mentioned, and which they have acquired for the purpose and with the intention of removing their entire slaughtering, packing and canning plants and establishments from said Packingtown, in the City of Chicago, to the said premises at Tolleston, State of Indiana, and of inducing other slaughtering, packing and canning concerns to likewise remove their plants and establishments to said Tolleston property, and with the intention of locating and establishing in the State of Indiana, stock yards for the use of all parties locating on or in proximity to said premises, and have entered into negotiations and contracts with one or more railway companies to furnish the required facilities for the transportation to and from said property of cattle, live stock, &c.; and

Whereas the removal from the City of Chicago to Tolleston aforesaid of the businesses and slaughtering, packing [fol. 1376] and canning plants and establishments so owned or controlled by said parties of the second part and said Swift and Company and the Fairbank Canning Company would diminish the demand and market for cattle and live stock at Chicago, and shipments thereof to the yards of said Transit Company, so as to result in a large decrease of its business, revenue and income, and so as to remove from said City of Chicago, State of Illinois, into another State, about one-half of the present demand and market at Chicago for live stock, to the great injury generally of the City of Chicago, and particularly of the business of said Transit Company; and

Whereas the said parties of the second part have consented to compromise their claims and demands against the said Transit Company as set forth and alleged in said

three suits; also to transfer, surrender and convey to said Transit Company the said Central Stock Yards together with the railway sidings, platforms, pens, sheds, fixtures and appliances thereon, and to release and convey thereto all covenants or easements claimed and alleged in the said suits; also to continue for the period of fifteen years from the first day of July, 1891, to conduct their several businesses at Chicago as aforesaid, and to purchase cattle and live stock at said yards of the Transit Company, and pay yardage charges upon cattle and live stock purchased and owned by or consigned to them; also to transfer and convey [fol. 1377] to said New Jersey Company one thousand acres of said tract of land at Tolleston, in the State of Indiana, and also to further covenant and agree as hereinafter particularly set forth, upon the terms and for the considerations below stated:

Now this Agreement witnesseth that the parties hereto for and in consideration of the premises and of the covenants and agreements hereinafter set forth, have covenanted and agreed and do hereby covenant and agree to and with each other as follows:

First.—The said parties of the second part covenant and agree, upon demand of the said New Jersey Company, to cause to be conveyed to said Transit Company, all and singular the premises known as the Central Stock Yards, including any and all railway sidings, platforms, pens, sheds, fixtures and appliances whatsoever, together with all covenants, rights, privileges and easements thereunto in any way appertaining, and including the covenants, rights, privileges and easements mentioned, referred to or set forth in the bills of complaint in said suits so pending in the Circuit Court of Cook County, Illinois. Such conveyance of said premises to said Transit Company shall be for the sum or consideration of one dollar, lawful money of the United States of America, payable by said Transit Company, and shall be in fee simple free and clear of all liens and incumbrances whatsoever.

[fol. 1378] Second.—The said parties of the second part covenant and agree that they will cause each and all of the said suits to be discontinued and abandoned at their own proper cost and expense, and that they will not, nor

will any of them, at any time during the continuance of this agreement, make or set up against the said Transit Company the claims and demands alleged in the bills of complaint in said suits, nor directly or indirectly bring or cause to be brought any similar suits at law or in equity making or alleging any claims or demands similar to those set forth in said bills of complaint.

Third.—The said parties of the second part further covenant and agree to convey or cause to be conveyed unto the said New Jersey Company, its nominees or assigns, one thousand acres of said land at Tolleston in fee simple free from all liens or incumbrances whatsoever, such land being more particularly described as follows:

"A tract of land containing one thousand (1,000) acres more or less, situated in the County of Lake and State of Indiana, being a part of sections two (2) and three (3) in township thirty-six (36) north, range eight (8) west and a part of sections thirty-four (34) and thirty-five (35) in township thirty-seven (37) north, range eight (8) west, described as follows, to wit: Beginning at a point on the south line of said section three (3) nine hundred seventy-eight and five-tenths (978.5) feet east of the southwest corner of said section three (3), and running thence east along the south line of said section, a distance of forty-two hun-
[fol. 1379] dred eighty-three and one-tenth (4283.1) feet to the southeast corner of said section; thence north along the east line of said section three (3), seventeen hundred and eighty-eight (1788.0) feet; thence east 0° 56′ south (true bearing as governed by true meridian monumented at southwest corner of section four (4), township thirty-six (36) north, range (8) west seven hundred fifty-six and eight-tenths (756.8) feet; thence north 0° 56′ east (true bearing as governed by said true meridian) seventy hundred twenty-three and four-tenths (7023.4) feet to the shore of Lake Michigan; thence westwardly along said shore to a point north 0° 56′ east (true bearing as governed by said true meridian) from point of beginning; thence south 0° 56′ west (true bearing as governed by said true meridian) a distance of forty-one hundred twenty-six and four

tenths (4126.4) feet to the north line of said section three (3), thence westwardly along said north line eleven hundred and fifty-five (1155.0) feet to the northwest corner of said section three (3); thence southwardly along the west line of said section three (3), twelve hundred forty-eight and one-tenth (1248.1) feet to a stone monument marking the southeast corner of Lake Shore and Michigan Southern Railroad Company's land; thence eastwardly parallel to the north line of said section three (3), eleven hundred and ten (1110.0) feet to a point north 0° 56′ east (true bearing as governed by said true meridian) from point of beginning; thence south 0° 56′ west (true bearing as governed by said true meridian) thirty-six hundred fifty-one and two-tenths (3651.2) feet to point of beginning, excepting the right of way across said premises of the Lake Shore & Michigan Southern Railway Company and of the Baltimore & Ohio Railroad Company."

Fourth.—The parties of the second part further covenant and agree, that during the period of fifteen years from the [fol. 1380] first day of July, 1891, unless the Transit Company's yards are during that time removed from the City of Chicago, and in such event, then until such removal within said period, they and said Swift and Company and the Fairbank Canning Company shall and will continue their several businesses and slaughtering, packing or canning plants and establishments at Packingtown aforesaid and covenant, undertake and guarantee that any and all cattle and live stock slaughtered by them or any of them, or said companies or either of them, on their said premises or within two hundred miles of the City of Chicago, during such period, shall pass through and use said yards, and pay the usual yardage and charges therefor.

Fifth.—The said parties of the second part further covenant, undertake and guarantee that the said Transit Company shall receive and collect from its yardage and charges on cattle and live stock, owned or purchased by or consigned to said parties of the second part and said companies, at said yards, the aggregate sum of at least two million dollars ($2,000,000) within six years from said 1st of July, 1891. If, at the expiration of said six years, the said

yardage and charges on such cattle and live stock shall not have equalled the said sum of $2,000,000, then the said parties of the second part covenant and agree that they will immediately and on demand pay to the said New [fol. 1381] Jersey Company whatever sum may be necessary to make up the said $2,000,000.

Sixth.—The said parties of the second part further covenant and agree that during the term of fifteen years from the said 1st of July, 1891, they will not themselves use, or permit others to use, any portion of said remaining three thousand acres at Tolleston for slaughtering, canning or packing-house purposes, and that during said term no portion of said three thousand acres shall be sold or conveyed without there being inserted in the deeds or grants thereof a condition or restriction against the use of the premises for any such purposes during said term, unless the said New Jersey Company shall in writing expressly waive such condition in each and every instance. The said parties of the second part shall give, grant and convey to said New Jersey Company, its nominees, or assigns, any and all reasonable easements and connections over said remaining three thousand acres, in order to enable the said one thousand acres or any part thereof to be connected by road or railway with Lake Michigan or any railways, canals, roads or highways in the neighborhood of said one thousand acres, and the said New Jersey Company, its nominees or assigns, as owners of the said one thousand acres, shall likewise grant to the parties of the second part, their nominees or assigns, such easements and connections over the said one thousand acres as may [fol. 1382] be reasonably necessary to connect any part of the said three thousand acres with said one thousand acres or with Lake Michigan, or any railways, canals, roads or highways in the neighborhood.

Seventh.—The said parties of the second part further covenant and agree that during the term of fifteen years from the said 1st of July, 1891, they, and said Swift and Company and said Fairbank Canning Company will aid, assist and co-operate with said Transit Company and said New Jersey Company in all lawful ways in furthering and promoting the business and interests of said Transit Company, and likewise covenant and agree that during said

period they and said Swift and Company and said Fairbank Canning Company, will not, nor will any of them in said City of Chicago, or at any place within two hundred miles thereof, establish or carry on, directly or indirectly, or be concerned or interested in any manner or form whatsoever in any stock yards for the receipt and use of their own live stock.

Eighth.—The said parties of the second part further covenant and agree that as long as the said Transit Company shall conduct the business of a general stock yard for cattle and live stock at the City of Chicago, State of Illinois, on its premises aforesaid, or any part thereof, they and said Swift and Company and said Fairbank Canning Company will not, nor will any of them, within [fol. 1383] the limits of the City of Chicago, establish or carry on, directly or indirectly, or be concerned or interested in any manner or form whatsoever in any stock yards in said city for the receipt and use of their own live stock.

Ninth.—The said parties of the second part further covenant and agree that they will do or cause to be done, execute or cause to be executed, any and all such further acts, deeds and instruments as may be necessary for the more effectually carrying out this agreement according to its true intent and purpose and that may be reasonably advised or required by said New Jersey Company or its counsel. The covenants herein recited on the part of the parties of the second part are joint and several, and said parties and each of them jointly and severally, guarantee the due performance of all the obligations and conditions hereof by the other parties of the second part, and shall be jointly and severally responsible in damages to the said Transit Company or said New Jersey Company, their successors or assigns, for any and all breach or breaches thereof, by one or more of said parties of the second part.

Tenth.—The party of the first part hereto, said New Jersey Company, covenants and agrees to execute, issue and deliver to said parties of the second part three million dollars ($3,000,000) of income bonds, dated July 1st, 1891, [fol. 1384] and payable as to principal on or before the 1st day of July, 1907, with interest payable semi-annually on the first days of January and July of each year at such rate not exceeding five per cent. per annum as the net

surplus income of said company shall suffice to pay, as hereinafter provided, beginning from said 1st of July, 1891, the first semi-annual payment of interest to accrue as of the 1st day of January, 1892. The said income bonds shall, among other things, provide that the interest thereon shall accrue and be payable in each and every year only out of the net income of said New Jersey Company if sufficient, after paying its present fixed charges on its issue of $10,000,000 Collateral Trust Bonds, its current expenses, and the six per cent. cumulative dividends on $6,500,000 of its Preferred Stock, but before its common or general stock shall receive or be paid or entitled to any dividend. The interest on said income bonds shall be payable in each year only out of net income of such year as aforesaid, and shall not be cumulative; that is to say the income of one year shall not be used to provide for any previous deficiency nor to provide for any future payments. Said bonds, however, shall contain the provision that in each and every year the party of the first part shall, after paying out of its net income its said present fixed charges, current expenses and six per cent. dividend on said preferred stock, set aside semi-annually, beginning on the 1st [fol. 1385] day of July, 1892, the sum of $100,000 before any dividend is paid on or set aside for the common stock, provided the surplus net income of the Company shall be sufficient so to do; or if insufficient, then such amount of surplus net income, if any, as may have been collected or received; but this provision shall not be cumulative. The said sum of $100,000 semi-annually or such lesser sum as such surplus net income may represent shall be used and applied, if sufficient (first) to pay or provide interest for the current half year on such income bonds then outstanding; and (secondly) the balance, if any, of such sum shall be used for the purpose of redeeming the said income bonds at par, to be drawn by lot in the usual way, or, at the option of said New Jersey Company, instead of drawing the same by lot, such surplus may be used to purchase and cancel said bonds. The principal and interest on said income bonds shall be payable at the office or agency of the New Jersey Company in the City of New York, and the Central Trust Company of New York shall be the Trustee of said issue of bonds. The said income bonds

shall further provide that no new bonds ranking prior to or equal to said income bonds shall be issued by said party of the first part without the consent of the holders of seventy-five per cent. of the said income bonds then outstanding. The form and provisions of said income bonds shall be such as may be agreed upon by the counsel [fol. 1386] for the respective parties hereto, and such bonds shall be lithographed or engraved, executed and delivered with all convenient speed.

Eleventh.—The party of the first part shall have the right and option to deliver to said parties of the second part shares of its said common stock, at par, in lieu of any or all of said income bonds, less the coupons for interest past due at the time of making such delivery, which coupons shall be paid to the parties of the second part. Should such income bonds be delivered prior to the first day of May, 1892, then and in that event said New Jersey Company shall have the right and option, until such last mentioned date, to exchange any of its said common stock at par for any or all of said bonds with their coupons not then due.

Twelfth.—The parties of the second part covenant and agree that they will hold and not alienate, dispose of or transfer any of said income bonds, for the period of eighteen months from the date hereof, and will at all times during the period of five years from the date hereof, hold and own at least $1,000,000 of said bonds, and not alienate, dispose of or transfer said $1,000,000 of bonds during said term of five years. If, however, any shares of stock be delivered in lieu of or in exchange for bonds as aforesaid, then and in that event the said parties of the second part shall at all times during said term of five years, own and [fol. 1387] hold, and not alienate, dispose of or transfer $1,000,000 par value of such stock, if so much, be delivered in lieu of or in exchange for bonds, but if insufficient, then all shares of stock so delivered and sufficient bonds to make the total holding $1,000,000 par value in bonds and stock shall be held for said period of five years. If, however, more than $1,000,000 of stock be so delivered or exchanged, then and in that event, the parties of the second part shall be at liberty to sell and dispose of any surplus

of stock over $1,000,000 par value as and when they may desire so to do.

Thirteenth.—Should there be any delay in the execution and delivery of said income bonds for any cause whatsoever, any and all amounts due and payable on said income bonds, whether for interest or redemption purposes, shall in the meantime be deposited with the Central Trust Company of New York, to be held as Trustee under this agreement.

Fourteenth.—Any and all previous agreements heretofore executed and now existing between the parties hereto are hereby cancelled and annulled.

In witness whereof, the said party of the first part has, by resolution of its Board of Directors, duly caused these presents to be signed in its name by its Vice-President,

(Here follow 3 photos, fols. 1388, 1389, 1390)

11884

19

and its seal to be attested by its Secretary, and the parties of the second part have affixed their hands and seals—these presents being executed in duplicate.

Signed in the presence of :

Wm. D. Guthrie
49 Wall Street, N. Y. C.

The Chicago Junction Railways and Union Stock Yards Company
by John Lowrey Nelson
Vice-President

Attest: Wm C Lackey
Secretary

Signed in presence of
Edward J. Martyn
208 Stabelist
Chicago Ills

Executed by
Jonathan C. Bemis
Gustavus F. Swift
Edwin C. Swift
Nelson Morris & Co by Wm C Lackey Att'y
Philip D. Armour
George H. Phillips
Nelson Morris
Edward Morris
Edward F. Swift
Louis F. Swift
Nelson Morris
Philip D Armour

1388

11883

EXHIBIT NO. 48

United States of America

TREASURY DEPARTMENT

WASHINGTON

May 11, 1936

PURSUANT to the provisions of Section 661, Chapter 17, Title 28 of the ited States Code (Section 882 of the Revised Statutes of the United States), hereby certify that the annexed is a true copy of a photostat of agreement ted, Jersey City, June 23, 1892, between The Chicago Junction Railways and ion Stock Yards Company and Henry Botsford and others, and The Chicago cking and Provision Company and others,

on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

E. A. Birgfeld

Chief Clerk, Treasury Department.

[illegible]—TREASURY DEPARTMENT, Chief Clerk and Superintendent.

1888

12-20

THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY

AND

HENRY BOTSFORD AND OTHERS,

AND

THE CHICAGO PACKING AND PROVISION COMPANY AND OTHERS.

AGREEMENT.

Dated, Jersey City, June 23rd, 1892.

1390

[fol. 1391] An Agreement, made and entered into at the City of Jersey City, State of New Jersey, this 23d day of June, A. D. one thousand eight hundred and ninety-two, by and between The Chicago Junction Railways and Union Stock Yards Company, as party of the first part; Henry Botsford, Samuel W. Allerton, Charles P. Libby, John Cudahy, John C. Hately, William Jones, Josiah Stiles, Hugh Shields, William H. Silberhorn, Anderson Fowler, Robert Stobo, Thomas E. Wells, and Phineas L. Underwood and James Viles, Jr., individually and as co-partners composing the firm of Underwood & Co., as parties of the second part, and The Chicago Packing and Provision Company, The Allerton Packing Company, The Anglo-American Provision Company, The Thomas J. Lipton Company, The W. H. Silberhorn Company, Libby, McNeil & Libby (a corporation), The International Packing Company, T. E. Wells Company, John Cudahy Packing Company, Hately Brothers Company, and Jones-Stiles Packing Company, all being corporations duly organized and existing under the laws of the State of Illinois, as parties of the third part.

Whereas, the party of the first part, The Chicago Junction Railways and Union Stock Yards Company, is a cor-
[fol. 1392] poration duly organized and existing under the laws of the State of New Jersey, with an authorized capital stock of thirteen million dollars ($13,000,000), divided into sixty-five thousand shares of six per cent preferred stock of the par value of one hundred dollars ($100) each, namely: Six million five hundred thousand dollars ($6,500,000); and sixty-five thousand shares of common general stock of the par value of one hundred dollars ($100) each, namely: Six million five hundred thousand dollars ($6,500,000); and which said Company was formed and incorporated for the purpose, among other things, of investing its capital in the shares of the capital stock of the Union Stock Yard and Transit Company (hereinafter called the "Transit Company"), and of which capital stock said New Jersey Company now owns and holds over 127,000 shares; and

Whereas, the principal revenue and income of said Transit Company are derived from yardage on live stock

and feed charges; and the market and demand for live stock at the yards of the Transit Company, in the City of Chicago, arise from and by reason of the presence of slaughtering, packing and canning plants and establishments on premises in the immediate neighborhood or contiguous to said yards, and many of such slaughtering, packing and canning plants and establishments are owned, controlled or managed by the parties of the second and third [fol. 1393] parts hereto, and the yards of the Transit Company have been built and arranged largely to accommodate the livestock for such establishments; and

Whereas, the parties of the second and third parts are about to remove their said plants and establishments from their present location to certain premises known as the Stickney Tract (situated in and on sections sixteen to twenty-one and twenty-eight to thirty, all inclusive, in Township thirty-eight North Range thirteen East of third principal meridian, Cook County, Illinois), and to discontinue making their purchases of live stock at the yards and market of the Transit Company, which would tend to greatly diminish its business, but are willing to remain and continue their business at the Transit Company's yards in consideration of the payments hereinafter set forth.

Now this agreement witnesseth, that the parties hereto, for and in consideration of the premises, and of the covenants and agreements hereinafter set forth, have covenanted and agreed, and do hereby covenant and agree to and with each other as follows:

First.—The parties of the second and third parts, except the said Underwood and Viles, severally covenant and guarantee, each for himself or itself, that for and dur- [fol. 1394] ing the period of five years, from the first day of July, 1893, all live stock of every nature and kind slaughtered or packed by them, or any of them, respectively, at any place in or within seventy-five miles of the City of Chicago, shall be purchased by them at said yards of the Transit Company, or be there delivered to them, or shall pass through and use the yards of the said Transit Company, and that the usual yardage and charges shall be paid on all such live stock to the said Transit Company.

Second.—The parties of the third part and said Underwood and Viles jointly and severally undertake and

guarantee that the said Transit Company shall receive and collect from yardage and charges on live stock owned or purchased by, or consigned to the parties of the second and third parts hereto, or some of them, at said yards, the aggregate sum of at least five hundred thousand dollars ($500,000) within five years from the first day of July, 1892. If at the expiration of the said term of five years, the said yardage and charges paid to the Transit Company on such livestock shall not have equalled the said sum of five hundred thousand dollars ($500,000), then the said parties of the third part and said Underwood and Viles, jointly and severally, covenant and agree that they will forthwith, on demand, pay to the said New Jersey Company whatever deficit there may be between the actual yardage and charges collected by the Transit Company during such period on live stock owned or purchased by or con- [fol. 1395] signed to the parties of the second and third parts hereto, at said yards, and said guaranteed sum of five hundred thousand dollars ($500,000).

Third.—The parties of the third part and said Underwood & Company do severally covenant and guarantee, each for himself or itself, that they shall and will continue the business of their respective slaughtering, packing and canning plants and establishments upon the premises adjoining or contiguous to the yards of the Transit Company, for the said period of five years from July 1st, 1892.

Fourth.—The said parties of the second and third parts further severally covenant and agree, each for itself or himself, that so long as the said Transit Company shall conduct the business of a general stockyard for live stock, at the City of Chicago, on its premises aforesaid, or any part thereof, they will not, nor will any of them, within the present limits of the City of Chicago, establish or carry on, directly or indirectly, or be concerned or interested in, any manner or form whatsoever, in any stockyards within said City, for the receipt and use of live stock to be slaughtered or packed by them, or any of them, respectively, other than the yards of the Transit Company.

Fifth.—The said parties of the second and third parts [fol. 1396] further severally covenant and agree, that dur-

ing the term of five years, from the said first day of July, 1892, they will aid, assist and co-operate with said Transit Company and said New Jersey Company in all lawful ways in furthering and promoting the business and interests of said Transit Company.

Sixth.—The parties of the second and third parts severally covenant and agree that they will not nor will any of them, at any time during the period of ten years from the first day of July, 1892, unless the Transit Company's yards are during that time removed from the City of Chicago, and in such event, then until such removal within said period, establish or carry on, directly or indirectly, or be concerned or interested in any manner or form whatsoever in any plants or establishments for slaughtering, packing or canning purposes that may be situated or erected on or within three miles of the premises known as the Stickney Tract, situated as aforesaid.

Seventh.—The parties of the second and third parts further jointly and severally covenant and agree to remise, release and discharge, and by these presents do remise, release and forever discharge the said Transit Company and said party of the first part of and from all and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, contracts, [fol. 1397] controversies, agreements, trespasses, discriminations, damages, claims and demands whatsoever in law or in equity which against them or either of them the parties of the second and third parts, or any of them, ever had, or now have for, upon or by reason of any matter, cause or thing whatsoever to the day of the date of these presents.

Eighth.—The parties of the second and third parts further severally covenant and agree that they will do, or cause to be done, execute or cause to be executed, any and all such further acts, deeds and instruments as may be necessary for the more effectually carrying out this agreement according to its true intent and purpose, and that may be reasonably advised or required by said party of the first part, its successors or assigns, or its or their counsel.

Ninth.—The party of the first part hereto covenants and agrees, in consideration of the foregoing, to pay to

said Henry Botsford, of the second part hereto, as Trustee, for the account, benefit and advantage of the parties of the second and third parts, on or before the first day of August, 1892, the sum of one hundred thousand dollars ($100,000), in cash.

Tenth.—The party of the first part further covenants and agrees to deposit, or cause to be deposited, on or before the first day of August, 1892, with the American [fol. 1398] Trust and Savings Bank, of the City of Chicago, three hundred thousand dollars ($300,000), in five per cent income bonds at par (with coupons maturing on and after January 1st, 1893), of the issue particularly described in a certain agreement dated January 15th, 1892, between said party of the first part and Philip D. Armour *et al.* or of any issue of five per cent income bonds ranking equal to said income bonds. Such income bonds are to be held by the said American Trust and Savings Bank for the period of one year from July 1st, 1892, when one-half thereof, namely, one hundred and fifty thousand dollars ($150,000) shall be delivered upon the order of said Henry Botsford, as Trustee, for the account, benefit and advantage of the parties of the second and third parts, or in case of his death, refusal or inability to act upon the order of said Charles P. Libby, of the second part hereto, for said account, and the remaining one-half shall be held by said Trust and Savings Bank for the further term of one year from July 1st, 1893, and on the expiration thereof, namely, on or after July 1st, 1894, shall be delivered to or upon the order of said Henry Botsford, Trustee, or his said successor as aforesaid, for the like account, benefit and advantage. The party of the first shall have the privilege of delivering temporary printed income bonds to be held by the said American Trust and Savings Bank until the delivery in lieu thereof and exchange therefor of

engraved bonds, which shall be engraved, executed and delivered with all convenient speed.

ELEVENTH.—The said American Trust and Savings Bank executes these presents (one of the triplicate originals being deposited with it) as evidence of its receipt of six temporary income bonds each for $50,000 and of its acceptance of the deposit herein provided for, and it agrees and covenants on its part with the party of the first part and the other parties hereto, to hold and retain said income bonds so to be deposited with it for and during the periods above mentioned and to deliver the same as provided in Article Tenth hereof, and not otherwise.

IN WITNESS WHEREOF, each of the parties of the first and third parts have duly caused these presents to be executed in its name by its President (or Vice-President), and its corporate seal to be affixed and attested by its Secretary by order of its Board of Directors, and the parties of the second part have affixed hereto their hands and seals (all as of the date aforesaid) in triplicate.

THE CHICAGO JUNCTION RAILWAYS AND UNION STOCK YARDS COMPANY,

By ..... President.

Attest: ..... Secretary.

10

THE CHICAGO PACKING AND PROVISION COMPANY,
By A. J. Patterson
President.

Attest: William J. Lee
Secretary.

THE ALLERTON PACKING COMPANY,
By Samuel Nicholson
President.

Attest: W. Robertson
Secretary.

THE ANGLO-AMERICAN PROVISION COMPANY,
By Robert Stobo
Vice President.

Attest: Josiah Harrison
Asst. Secretary.

11

THE THOMAS J. LIPTON COMPANY,
By .....
N. C. C. President.

Attest:
Wm. G. Garth .....
Secretary.

THE W. H. SILBERHORN COMPANY,
By .....
W. H. Silberhorn
President.

Attest:
R. R. Hetrick .....
Secretary.

LIBBY, MCNEIL & LIBBY (a corporation),
By .....
P. Libby
President.

Attest:
E. Young .....
Secretary.

12

THE INTERNATIONAL PACKING COMPANY.

By J. C. Wells
Vice President.

Attest: Geo. B. Strauch
Asst. Secretary.

E. WELLS COMPANY.

By E. Wells
President.

Attest: John Roberts Esq
Secretary.

JOHN CUDAHY PACKING COMPANY.

By John Cudahy
President.

Attest: Morris Cassard
Secretary.

13

HATELY BROTHERS COMPANY,

By ..... President.

Attest: ..... Secretary.

JONES STILES PACKING COMPANY,

By ..... President.

Attest: ..... Secretary.

THE AMERICAN TRUST & SAVINGS BANK,

By ..... President.

Attest: ..... Secretary.

Henry Balfour (Seal)
Thos C Weeks [L. S.]
John Quesenbery [L. S.]
Samuel W Allder (L. S.)
Underwood & Co (Seal)
James Vile Jr (Seal)
Thos P Libby [L. S.]
Robert Stobo (L. S.)
Nat Wakely (L. S.)
Joseph Stiles [L. S.]
[illegible] [L. S.]
P G Underwood [L. S.]
W H Gilbraith [L. S.]
[illegible] [L. S.]
Madison Fowler (L. S.)

State of ILLINOIS)
City of Chicago,)ss.
County of Cook.)

12-32-5

I, ALFRED S. AUSTRIAN, a Notary Public of the State of Illinois in and for the County of Cook, duly commissioned and sworn and resident at the City of Chicago aforesaid, DO HEREBY CERTIFY that,

Henry Botsford, the President of the Chicago Packing & Provision Company;

J.B.Robertson, the Secretary of the Allerton Packing Company;

Robert Stobo, the Vice President of the Anglo American Provision Company;

Hugh Shiells, the Vice President of the Thomas J.Lipton Company;

R.R.Hetrick the Secretary of the W.H.Silberhorn Company;

C.P.Libby, the President of Libby,McNeil & Libby (a corporation;

George R.T.Ward, the Secretary of the International Packing Company;

John Roberts,Jr. the Secretary of the T.E.Wells Company;

John Cudahy the President of the John Cudahy Packing Company;

Walter C.Mately, the President of the Mately Brothers Company;

Josiah Stiles President of the Jones & Stiles Packing Company, and

~~J.E.Chapman the Secretary of the American Trust & Savings Bank,~~

all personally known to me to be the same persons whose names are subscribed to the foregoing instrument as President, Vice President, or Secretary of their said respective corporations; this day severally appeared before me in person and being by me first severally duly sworn according to law did each for himself depose and say that he was the said President, Vice President or Secretary of said respective Company above mentioned, that he knew the Corporate Seal of his said Company, that the seal affixed to the foregoing instrument was such Corporate seal, that the same was thereunto affixed by order of the Board of Directors of his said Company, and that he signed his name thereto by the like order of the said Board, and they thereupon severally duly acknowledged that they so signed, sealed and delivered said instrument as the free and voluntary act and deed of said corporation, and as their own free and voluntary act and deed as such President, Vice President or Secretary of said respective Company for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 19th day of July A.D.1907.

Alfred S. Austrian
Notary Public

STATE OF ILLINOIS, }
CITY OF CHICAGO, } ss.
County of Cook, }

I, , a Notary Public of the State of Illinois in and for Cook County, duly commissioned and sworn and resident at the City of Chicago aforesaid, do hereby certify that Frederick H. Winston, the President of The Chicago Junction Railways and Union Stock Yards Company; Henry P. Eustace, the President of The Chicago Packing and Provision Company; J. B. Robertson, the Secretary of The Allerton Packing Company; Robert Stobo, the President of The Anglo-American Provision Company; Hugh Hillis, the President of The Thomas J. Lipton Company; R. R. Hetrick, the Secretary, the President of The W. H. Silberhorn Company; , the President of Libby, McNeil & Libby (a corporation); Wm. R. P. Ward, the President of The International Packing Company; F. R. Peterson, Director, the President of the T. E. Wells Company; John Cudahy, the President of the John Cudahy Packing Company; Walter C. Hately, the President of the Hately Brothers Company; Josiah Stiles, the President of the Jones-Stiles Packing Company; and S. R. Chapman, the Secretary, the President of the American Trust and Savings Bank, all personally known to me to be the same persons whose names are subscribed to the foregoing instrument as Presidents of their respective corporations, severally appeared before me in person, and being by me first severally duly sworn according to law, did each for himself depose and say: that he was the President of the Company above mentioned, that he knew the corporate seal of his said Company, that the seal affixed to the foregoing instrument was such corporate seal, that the same was thereunto affixed by order of the Board of Directors of his said Company, and that he signed his name thereto by the like order of the said board; and they thereupon severally duly acknowledged that they so signed, sealed and delivered said instrument as the free and voluntary act and deed of said respective corporations, and as their own free and voluntary act and deed as such Presidents, for the uses and purposes therein set forth.

Given under my hand and official seal, this day of June, 1892.

1406

1202

State of Illinois }ss
Cook County

I. Elton E Rice
A Notary Public in and for the County and State aforesaid do hereby certify that Franklin H Head personally known to me and to me known to be the Vice President of the American Trust and Savings Bank, and acknowledged that said instrument was executed by him for and on behalf of said Bank and that the seal thereto affixed is the corporate seal of said Bank
Witness my hand and Notarial Seal this 1st day of August 1892

Elton E Rice
Notary Public

[fol. 1408] STATE OF ILLINOIS,
Cook County, ss.:

To the Honorable, the Judges of the Circuit Court of Cook County:

In Chancery Sitting.

Your orator, Swift and Company, a corporation organized and doing business under the laws of the State of Illinois, of the County of Cook and State of Illinois, respectfully represents unto your Honor that the Union Stock Yard and Transit Company of Chicago is a corporation incorporated by special act of the General Assembly of the State of Illinois, approved and in force February 13th, 1865, with power, among other things, to locate, construct and maintain upon certain lands in convenient proximity to the southern limits of the City of Chicago necessary yards, structures and buildings for the accommodation of the business of a general Union Stock Yards for cattle and live stock, and also with power to construct a railway with one or more tracks as may be expedient from the grounds selected for the said yards so as to connect outside of the City of Chicago the same with the tracks of all the railroads which terminate in said City of Chicago within certain limits, as defined by the terms of said Act; and also with power and authority to locate and from time to time renovate, change, alter, construct and reconstruct said railroad and railroad tracks and [fol. 1409] side tracks and conveniences, and with the further power to transport and allow to be transported thereon with steam or other power, between said railroads and cattle yards, cattle and live stock and persons accompanying the same, and all freight and property of every kind as well as stock and cattle, and also with power to fix and establish, take and receive such rates of toll for all freight and property so transported between said railroads as the directors of said Union Stock Yard and Transit Company may from time to time establish.

Your orator further shows that said Union Stock Yard and Transit Company under its said charter also had power and authority to receive, take and hold all such voluntary grants and donations of land and real estate as might be made to said company for the purposes aforesaid, and all

lands and easements necessary for its right of way, and for the purpose of effectuating the said grant said corporation had conferred upon it by said charter the right and power of acquiring all lands necessary for such right of way under the power of eminent domain, and especially in the manner provided for in "an Act to amend a law condemning the right of way for the purposes of internal improvement"; approved June 22, A.D. 1852, and Acts amendatory thereof. And your orator charges the fact to be that the corporators named in said Act proceeded to organize said corporation by the election of a Board of Directors and other proper officers, and from and after said date until the present time [fol. 1410] has been and is a corporation duly organized, and exercising the powers of railroad corporations, and is a common carrier of freight of all kinds and character under and in pursuance of the powers conferred upon it by said special charter.

Your orator further represents unto your Honors that in the carrying out of the objects and purposes for which said corporation was organized it became the owner of the East Half of Section Five and the East Twenty-five acres of the North-east Quarter of the North-west Quarter of Section Five in Township Thirty-eight, North, Range Fourteen, East of the Third Principal Meridian in said Cook County, and located thereon its yards and pens for stock yard purposes and constructed its lines of railroad connecting said East Half of Section Five with all of the lines of railroad terminating in the City of Chicago so that at the present time the said Union Stock Yard and Transit Company is the owner of and operating by itself or by others one hundred and thirty miles of railroad track specially connecting the said East Half of Section Five with the main line of the Chicago, Burlington & Quincy Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railroad Company, the Chicago & Alton Railroad Company, the Chicago & Northwestern Railway Company, the Chicago, Rock Island & Pacific Railroad Company, the Wisconsin Central Railroad Company and other [fol. 1411] railway companies, and is operating its said railway to such an extent that during the year 1889 it handled thereon or thereover 1,076,551 freight cars, being more than 25 per cent. of all the freight cars handled at Chicago

by all the railroads centering in said city as is represented and published by said Union Stock Yard and Transit Company.

Your orator further represents unto your Honors that at the time the said Union Stock Yard and Transit Company established its yards as aforesaid on the east half of said Section Five, and the East Twenty-five acres of the North-east Quarter of the Northwest Quarter of Section Five John F. Tracy, Martin L. Sykes, Jr., and Henry H. Porter were the owners in fee of a large part of the South half and the West Fifteen acres of the North-east Quarter of the North-west Quarter of said Section Five; that said premises last described were then vacant and unoccupied and immediately adjoined on the west the said lands in Section Five hereinbefore described as belonging to the Union Stock Yard and Transit Company; that for the purpose of inducing the establishment of manufacturing and slaughtering establishments on said premises the said Porter, Sykes and Tracy subdivided the said premises into blocks and streets and alleys and recorded the plat of said subdivision in the Recorder's office of Cook County as a private subdivision called Packer's Addition to Chicago, reserving the fee of the streets and alleys in said subdivision to themselves for the [fol. 1412] benefit of the owners and occupants of the blocks in said subdivision and for the construction of railroad tracks which would connect said property with the railway tracks of the said Union Stock Yard and Transit Company, and thereby with the railroad tracks of other railroad companies with which said Union Stock Yard and Transit Company's tracks might be connected.

Your orator further represents that at the period aforesaid Henry H. Walker, Briggs Swift, James D. Lehmer and Nathan Powell were the owners in fee of the South-west Quarter of said Section Five immediately adjoining on the south the lands of said Porter, Sykes and Tracy and immediate-adjoining on the west the lands of said Union Stock Yard and Transit Company, and for the purpose of obtaining the benefit of any contracts existing between the said Porter, Sykes and Tracy and the Union Stock Yard and Transit Company and of railroad connections and facilities aforesaid which attached to the said lands of said Porter, Sykes and Tracy, the said Henry H. Walker, Briggs Swift,

James D. Lehmer and Nathan Powell as parties of the second part, on the 5th day of March, 1869 entered into a contract with the said John F. Tracy, Martin L. Sykes and Henry H. Porter as parties of the first part, by which contract it was agreed as follows:

"That whereas the said Tracy, Sykes and Porter are the owners of a large part of the South Half and the West fifteen acres of the North-east Quarter of the North-west quarter of Section Five, Town Thirty-eight, North Range Fourteen, East and by virtue of such ownership, and by [fol. 1413] contract with the owners of the residue of the said premises, are fully and lawfully authorized to make the contract herein contained.

And Whereas, the said Henry H. Walker, Briggs Swift, James D. Lehmer and Nathan Powell are the owners of the South-west Quarter of Section Five in the same township and range, which said last mentioned tract adjoins the said first mentioned tract on the south:

And Whereas, said parties of the second part are desirous to secure for their said tract of land certain rights of ingress and egress, and the use of certain streets and alleys and railroad track now laid out, or which may be hereafter constructed over the said land of the parties of the first part, and the said parties of the first and second parts have for that purpose agreed with each other as follows:

Parties of first part, in consideration of $12,000 and of the right to use in common with the parties of the first part and their assigns, the thirty foot alley to be constructed between the Blocks Five and Six and the lands of the parties of the second part, do hereby grant, sell and convey to said parties of the second part, their heirs and assigns as an appurtenance to the said south-west quarter of Section Five and passing with the same, the right to use for the purpose of ingress and egress to and from the said last named quarter section the street marked "private street" and the alleys marked "private alleys" and the private street [fol. 1414] or way marked "railroad track" on the plat of Packer's Addition in Book 166 of Maps, page 187, filed for record in the office of the Recorder of Deeds for Cook County, Illinois, on July 1st, 1868. Said parties of the first

part agree to build so much of said railroad track in said Addition as is now platted but not yet built, and to lay out and construct half of the alley thirty feet in width on the south line of Blocks Five and Six in said Addition, being the same alley, the use whereof is heretofore made a part of the consideration paid by said second party; parties of the first part also grant, sell and convey to parties of the second part the use for purposes of ingress and egress to and from said last named quarter section, the railroad track now built on the west and part of the south sides of said lands, being the same track now used by Nelson Morris.

It is further understood that the object of the said purchase by the parties of the second part of the rights and privileges hereinbefore mentioned is to procure a connection for their said premises by railroad tracks and streets with the Union Stock Yards' track and the street running east and west north of the Union Stock Yards' track and south of Egan Ave., and as other railroad tracks and streets connecting the same may be built by the party of the first part; that this agreement covers the right for said parties of the second part without further payment to parties of the [fol. 1415] first part, or their assigns, to make connections with the same whenever the said streets or railroad tracks may be extended by parties of the first part to the north line of said lands of said parties of the second part with the right of passage over such streets and railroad tracks in the same manner as this agreement as hereinbefore expressed, now gives them the same rights on all streets, railroad tracks and alleys now built. But nevertheless reserving to parties of the first part the right themselves to use, and the right to grant to any other person or persons, in their discretion, in common with parties of the second part and their assigns, the use of said private streets, alleys and railroad tracks and to both of the said parties hereto the right to grant to any other person or persons, in their discretion, owning any portion of the said premises hereinabove described, a like privilege in common with the said parties of the first and second parts to use said private streets, alleys and railroad tracks, and provided further it is the intent and purpose of this agreement in good faith to give to parties of the second part without further payment to parties of the first part or their assigns, the right to

connect with and use any such streets, alleys or railroads which the said parties of the first part might thereafter construct through their said premises to the lands of said parties of the second part."

[fol. 1416] Your orator further represents unto your Honors that afterwards and on the 26th day of November, 1875, the said Union Stock Yard and Transit Company desiring to obtain further privileges for railroad tracks in said North-west quarter of Section Five belonging to Porter, Sykes and Tracy, as aforesaid, than it then enjoyed, and to secure the control and operation of the railroad tracks therein, made, entered into and executed a certain contract and deed with the said Porter, Sykes and Tracy, in and by which the said Porter, Sykes and Tracy, parties of the first part, conveyed to said Union Stock Yard and Transit Company, parties of the second part, (which deed was dated November 26th, 1875), and recorded February 11th, 1876, in Book 563, page 142 of Cook County Records), certain lands and premises in said deed described and being a part of the North-west quarter of Section Five aforesaid, subject to certain conditions and covenants to be observed, kept and maintained by said Union Stock Yard and Transit Company. Among other covenants in said deed assumed by said Union Stock Yard and Transit Company were the following: "The said parties of the first part made and concluded an agreement in writing bearing date March 5th, 1869, (being the contract hereinbefore referred to), with one Henry H. Walker and others giving to them certain rights of passage over the private streets and alleys on the premises of the first party hereinbefore described, to which [fol. 1417] agreement reference is hereby made for more certainty herein. It is expressly understood and agreed by and between the parties hereto, in consideration as aforesaid, that this agreement in all its parts, is made subject to such legal rights and interests in said premises as the aforesaid agreement made with said Walker and others shall confer upon the parties thereto, and which shall be held to be in force by virtue thereof, and binding upon the parties of the first part hereto on the day of the execution and delivery hereof. The said second party for and in consideration of the covenants and agreements herein contained on the part of second party to be performed, and in considera-

tion of one dollar, covenants and agrees to and with said first party as follows:

"That it will during its corporate existence maintain and operate and permit other persons and corporations to operate in the same manner and under the same conditions as the same are now operated, the railroad tracks across the east twenty-five acres of the said North-east Quarter of the North-west Quarter of said Section Five hereinbefore more particularly described as the same are now constructed and located, so as to at all times give the railroad tracks now and hereafter to be laid on the premises of first party as hereinbefore described good and sufficient railroad connections with the other tracks of said second party upon the premises herein first above conveyed and with its other [fol. 1418] tracks connecting with the general railroad tracks in use in said Cook County.

"The said second party further covenants and agrees that it will at all times during its corporate existence maintain the said railroad tracks in good condition for all the business that may be required to be done over them at its own proper charge and cost, that it will permit at all times during the continuance of this agreement to first parties, or either of them, and to any or all persons or corporations to whom said parties and their grantor have heretofore, or to whom they may hereafter convey, whether by lease or fee, any portion of the premises hereinbefore particularly described, free access to and free use of all or any of the tracks heretofore or that may hereafter be laid upon any of such premises (not for standing, but for the passage of cars and wagons) for the transportation of any lawful business for which such parties, persons or corporations require such use.

"It is expressly understood and agreed by and between the parties hereto that the several conveyances, covenants and agreements herein contained on the part of each of the parties hereto to be performed, shall extend to, bind and are for the benefit of as well the parties hereto as the successors of the second party, and the assigns of second party, and the assigns or grantees of first party, or their predecessors whether now owning or occupying any portion [fol. 1419] of the premises hereinbefore described, or who shall hereafter become owners or occupants of any portion

of said premises, whether mediately or immediately from said first party."

"That the right of access to said railroad tracks, and the rights to the use of such tracks as hereinbefore stated for all business purposes shall be and remain an appurtenance to each and every lot and block, and to all the said premises hereinbefore described, and that all said covenants and agreements shall be taken and held to be covenants running with the land to all persons or corporations now owning or who may become owners thereof in any manner whatsoever."

Your orator further represents unto your Honors that afterwards and on or about the 12th day of October, A. D. 1878, the said Union Stock Yard and Transit Company, desiring to secure certain additional rights of way and privileges across the South-west quarter of said Section Five for its said railway, entered into an agreement in writing, recorded in the Recorder's Office of Cook County, Illinois, in Book 848, page 154, with James D. Lehmer who was then the owner thereof, by which the said James D. Lehmer conveyed to the said Union Stock Yard and Transit Company certain lands and premises in said deed described, and being a portion of said South-west quarter of Section Five, and upon which portion of land so conveyed the said Union Stock Yard and Transit Company has constructed [fol. 1420] and is now operating a portion of its said railway, in and by which contract it was expressly covenanted that said right of way should be subject to the right of use in common with and by the other owners and occupants of property in said subdivision, said James D. Lehmer, and others now or hereafter entitled thereto under him or otherwise, of all streets and alleys including railroad streets, right of way and tracks laid down on the map or plat of said subdivision. And the said Union Stock Yard and Transit Company in said agreement specially covenanted and agreed with said James D. Lehmer, his heirs and assigns, to extend a double track, when required so to do by him or them, along said right of way thereby conveyed and also between Blocks Eleven and Twelve in Lehmer's subdivision of a portion of said South-west Quarter of Section Five to 47th Street; also that the owners and occupants of property in said South-west Quarter of Section

Five should severally and at all times have the right to make railway connections for business purposes with any track or tracks owned or operated by said company, which should include the right to have switches at every half block on each side of such track or tracks as said company might own or operate upon or over said land.

Your orator further represents unto your Honors that afterwards and on the 13th day of September, A. D. 1889, the said Union Stock Yard and Transit Company, desiring to obtain certain further rights of way and privileges for [fol. 1421] its railway in and upon said South-west Quarter of Section Five, made a further contract and agreement in writing, recorded in the Recorder's Office of Cook County, Illinois, in Book No. 2714 at page 247, with James D. Lehmer, who was then the owner of said above described property in and by which the said James D. Lehmer conveyed to the said Union Stock Yard and Transit Company certain premises in said deed described to be used only for the purposes of railway tracks and right of way, and upon the express covenants and agreements that said right of way should be used by said Union Stock Yard and Transit Company in common with and by the other owners and occupants of property in said South-west Quarter of Section Five, said James D. Lehmer and others now or hereafter entitled thereto under him or otherwise, and subject to the rights of the owners and occupants of property in said South-west quarter of said Section Five and others now or hereafter entitled thereto under said James D. Lehmer or otherwise, to make railroad connections for business purposes with any track or tracks situated on either of said tracts of land in said deed conveyed, and owned or operated by the said Union Stock Yard and Transit Company, which should also include the right of said owners and occupants to have a switch at every block on each side of the track or tracks owned and operated over said premises by said Union Stock Yard and Transit Company, and also the right of use in common with and by the owners and occupants of property in said Lehmer's [fol. 1422] subdivision now or hereafter entitled thereto, of all streets and alleys including the railroad streets, right of way and tracks laid down on the map or plat of the subdivision of said land.

Your orator further represents unto your Honors that

because of the inducements held out by the owners of the West half of Section Five aforesaid, by reason of the establishments of railroad tracks and connections and convenient access thereby to all the railroads centering in the City of Chicago and because of the promises and covenants contained in said contracts as aforesaid, between the said owners of the said west half of Section Five and the Union Stock Yard and Transit Company as aforesaid, your orator, as well as others, was induced to locate its business on the west half of said Section Five; that in the course of its business it has constructed a large number of valuable buildings for the purpose of slaughtering and preparing for market cattle, sheep and hogs and for the several industries connected therewith. That in the construction of said buildings and the machinery and appurtenances connected therewith it has expended more than three millions of dollars. That all of said buildings so constructed have been connected by railroad tracks and switches with the main and other tracks of the Union Stock Yard and Transit Company in accordance with said agreements, and the said Union Stock Yard and Transit Company without objection, since the establishment of said business to the present time has [fol. 1423] received from and delivered to your orator at its several buildings, slaughtering houses and places of business loaded and empty cars, freights and property necessary to the successful prosecution of its said business.

Your orator further states that it received and slaughtered in the prosecution of its business at said Union Stock Yards at its several slaughtering houses built on the West Half of Section Five aforesaid, during the year 1890, more than 700,000 head of cattle, more than 650,000 sheep and nearly 600,000 head of hogs.

Your orator further represents that up to the present time all of the live stock required by it in the carrying on of its business that has been purchased by your orator at other points than Chicago, has been received by it in the yards of the Union Stock Yard and Transit Company, for the reason that your orator had no other convenient place at which to receive such live stock, and the several railroad companies bringing such live stock to your orator had provided no convenient yard or place for the delivery thereof

other than in the yards of the Union Stock Yard and Transit Company.

Your orator further avers that Armour & Co. and Nelson Morris & Co., copartnerships, doing business in said City of Chicago, are engaged in similar business to your orator and have slaughtering and packing establishments located near your orator's on the west half of Section Five aforesaid, and that your orator in connection with said Armour & Co. and Nelson Morris & Co. for the purpose of pro- [fol. 1424] viding a suitable place for the receipt and delivery of their own live stock which might be purchased by them at points outside of the City of Chicago, purchased from said James D. Lehmer at a large expenditure of money the following described real estate, to wit: all that part of the North-west Quarter of the South-west Quarter of Section Five in Township Thirty-eight, North, Range Fourteen East of the Third Principal Meridian in the County of Cook and State of Illinois, bounded and described as follows, to-wit:

Commencing at a point thirty (30) feet South and three hundred sixty-eight and one-third (368⅓) feet West of the North-east corner of the North-west quarter of said Section Five (5), thence South parallel with the East line of said tract six hundred and three-tenths (600 3/10) feet, thence West parallel with the North line of said tract two hundred sixty-two and four tenths (262 4/10) feet, thence North parallel with the East line of said tract six hundred and three-tenths (600 3/10) feet, thence East parallel with the North line of said tract two hundred sixty-two and four-tenths (262 4/10) feet to the place of beginning, being a part of the real estate described in the contracts hereinbefore recited; together with and subject to the right of use in common with and by the other owners and occupants of property in said North-west quarter of the South-west quarter of Section Five (5) aforesaid, said James D. Lehmer and any others now or hereafter entitled thereto under him or otherwise, of all streets and alleys which may here- [fol. 1425] after be laid out through said north-west quarter of the South-west quarter of Section Five (5), including railroad streets.

Also, with the right of use in common with the parties aforesaid, the Union Stock Yard and Transit Company

and any others entitled thereto of any right or rights of way and other rights and privileges, which may attach to the land aforesaid or which the said James D. Lehmer may have in common with others under a certain deed between John F. Tracy and others of the one part and said James D. Lehmer and others of the other part, dated March 5, 1889 and recorded in the Recorder's office of said Cook County on March 30, 1869 in Book 508, page 69; together with all the rights and privileges to make railroad connections for business purposes with the railroad tracks of the Union Stock Yard and Transit Company and all other privileges, so far as they may appertain to said premises, reserved by the said James D. Lehmer in his certain deed conveying to the Union Stock Yard and Transit Company of Chicago, certain premises in the South-west quarter of Section Five (5) aforesaid, dated September 13, 1889, and recorded in the Recorder's office of said Cook County on September 13th, 1889, in Book 2714, page 247, and that the said premises have been conveyed by the said James D. Lehmer and wife by means conveyences to Albert H. Veeder and Edward J. Martyn as trustees for your orator and the said Armour & Co. and Nelson Morris & Co. for their joint use.

[fol. 1426] Your orator further states that said premises last described are a portion of the North-west Quarter of the South-west Quarter of said Section Five and are a part of the premises entitled to the privileges reserved by the contracts between Porter, Sykes and Tracy and Lehmer, Walker, Swift and Powell and between Porter, Sykes and Tracy and the Union Stock Yard and Transit Company and the two contracts between James D. Lehmer and the Union Stock Yard and Transit Company, all of which have been hereinbefore set out and referred to.

Your orator further represents that the said premises are immediately south of and adjacent to Forty-third Street and north of and adjacent to Forty-fourth Street; that the main tracks of the Union Stock Yard and Transit Company pass these premises on both the north and the south sides thereof, and that at the time of the purchase of the said premises by Veeder and Martyn in trust as aforesaid, the same were connected by suitable frogs and switches with both of said named tracks of the Union

Stock Yard and Transit Company and were so connected by the Union Stock Yard and Transit Company for the said James D. Lehmer in accordance with the contracts and agreements hereinbefore set out.

Your orator further states that the said premises have been converted by it, in conjuction with the said Armour & Co. and Morris & Co. into cattle yards and pens, with suitable and convenient unloading tracks and chutes and are connected as aforesaid with the main tracks of the Union [fol. 1427] Stock Yard and Transit Company and are as convenient to the Union Stock Yard and Transit Company in all respects for the delivery and unloading of cars of live stock as are the premises of the Union Stock Yard and Transit Company located on the East Half of Section Five as aforesaid.

And your orator states that it has connected the said premises by means of a viaduct with its slaughtering establishment and that the said premises are more convenient for it in the receipt of its live stock than are the premises of the Union Stock Yard and Transit Company. That your orator is able to prosecute its slaughtering and packing business with greater convenience and economy if its live stock purchased at points outside of the City of Chicago are delivered to it on said premises, than if they are delivered in the yards of the Union Stock Yard and Transit Company, and your orator says that it has no other yard or place belonging to it or under its control where its live stock necessary to the successful prosecution of its business can be delivered.

Your orator further states unto your Honors that for convenience in making consignments of live stock to said premises it has designated said premises "The Central Stock Yards, located at the corner of Justine and 43rd Streets," and the same are designed for the sole and exclusive use of the owners thereof, to wit: your orator, Armour & Co. and Nelson Morris & Co. for the receipt of [fol. 1428] their own cattle bought by them at points outside of Chicago and transported to said premises for the purpose of being slaughtered at their said slaughtering and packing establishments.

Your orator further represents that ever since the establishments of the various industries aforesaid of your orator

on the west half of said Section Five and for many years last past the various railroad companies entering the City of Chicago and connecting with said Union Stock Yard and Transit Company's railway have received from and delivered to your orator at its said various establishments freight of all kinds and descriptions except live stock, in cars without breaking bulk over the tracks of the Union Stock Yard and Transit Company and the switches connecting the same with the private tracks of your orator, the Union Stock Yard and Transit Company preferring that the several railroads should thus deliver their freight over their tracks, instead of themselves furnishing the motive power therefor, and to such an extent that during the year 1890 more than fifteen thousand cars of freight were received by your orator at said place of business or shipped therefrom by your orator over the tracks of the Union Stock Yard and Transit Company and the various railroads connecting therewith; that the Union Stock Yard and Transit Company has not provided itself with motive power and has never undertaken to furnish motive power for the transportation of such freight. And your orator states that all the live stock which it has slaughtered at its [fol. 1429] said establishments has up to the present time been delivered to it in the yards of the Union Stock Yard and Transit Company for the reason that your orator has not, up to the time of the commission of the grievances hereinafter stated any other suitable or convenient place for the receipt of such live stock, and because the several railroad companies bringing such live stock into the City of Chicago had provided no suitable or convenient place for unloading or delivering the same to your orator.

Your orator further represents unto your Honors that from and after the construction of said yards and pens of your orator known and designated as the Central Stock Yards it was the duty of the said Union Stock Yard and Transit Company under the contracts hereinbefore recited and referred to, and under the statutes in such case made and provided, as well as under its special charter, to receive all freights consigned to your orator at said Central yards at the point of connection with any and all railroads with the tracks of said Union Stock Yard and Transit Company leading to and connecting the premises of your orator with

the main or other tracks of said connecting railroad companies, or to permit said other railroad companies to use the tracks of said Union Stock Yard and Transit Company for the delivery of such freight so consigned to your orator. Yet your orator charges the fact to be that notwithstanding the covenants of said Union Stock Yard and Transit Company hereinbefore recited and its duty to your orator there- [fol. 1430] under, as well as its duty under its charter and the law affecting railroad corporations and common carriers, it has wrongfully refused and continues to refuse to receive from any and all railroads making such connections any and all shipments of live stock or live freight consigned to your orator for delivery at said Central yards, to the great damage and injury of your orator.

Your orator further states unto your Honors that on the 25th day of April, 1891, at Kansas City, in the State of Missouri, your orator delivered to the Hannibal & St. Joseph Railroad Company to be transported by the said Hannibal & St. Joseph Railroad Company and its connection, the Chicago, Burlington & Quincy Railroad Company, and to be delivered to your orator on its said premises described as the Central Stock Yards, corner of Justine and 43rd Streets in the City of Chicago, six cars containing 98 cattle, being cars numbered C. B. & Q 8107, C. B. & Q. 8279, C. B. & Q. 4336, C. B. & Q. 12883, H. & St. Joe. 3156 and S. L. 392; that said cars of cattle were transported by said Railroad Companies from said Kansas City in the State of Missouri to the Junction of the said Chicago, Burlington & Quincy Railroad Company with the railway tracks of said Union Stock Yard and Transit Company, in said Cook County; that at said junction of said railway tracks the parties in charge of said cars were met by the officers and servants of the Union Stock Yard and Transit Company, and were forbidden to move said cars [fol. 1431] onto the tracks of said Union Stock Yard and Transit Company, and the said Union Stock Yard and Transit Company refused to permit the said Chicago, Burlington and Quincy Railroad Company to enter upon the tracks of said Union Stock Yard and Transit Company or to pass over the same, or to use the same for the delivery of such freight so consigned as aforesaid to

your orator upon its premises known as the Central Stock Yards.

Your orator further represents unto your Honors that in the prosecution of its business upon its said premises large shipments of cattle and other live stock purchased outside of the City of Chicago and also at points beyond the State of Illinois are being consigned to your orator for delivery upon said premises known as the Central Stock Yards. That your orator is the owner of a large number of cattle at different points upon the lines of railroads leading to the City of Chicago and connecting with said tracks of said Union Stock Yard and Transit Company which your orator intends to have conveyed and transported to it and delivered upon said premises, but your orator charges that said Union Stock Yard and Transit Company wrongfully and wilfully refuses to receive any of said cattle or other live stock consigned to your orator to be delivered upon said premises as aforesaid, or to permit the same to be transported over its said tracks connecting with said premises, and has given notice to all connecting railroad companies that it will not hereafter receive any live stock con- [fol. 1432] signed to any yards owned by your orator in Chicago, and that the stock so consigned will not be permitted to be hauled over the tracks of said company; and further charges that such stock cannot be delivered to your orator upon its said premises, by any railway line or lines other than those controlled and operated by the said Union Stock Yard and Transit Company.

Your orator avers that it is ready and willing to pay all reasonable and lawful charges for the transportation of said freight or for its delivery to your orator upon its said premises, but as your orator is informed and believes the said Union Stock Yard and Transit Company has given out and notified all connecting railroads that no freight so consigned will be allowed to pass over its said tracks or be delivered to your orator upon its said premises, nor can any delivery be made of such freight except as heretofore made upon and through the premises and yards of the said Union Stock Yards and Transit Company, said last named company insisting that it has the legal right to force or compel your orator to cause all shipments of live stock so consigned to your orator for delivery upon its said premises to be de-

livered at the yards or upon the premises of the said Union Stock Yard and Transit Company, and also claims the right to make and compel the payment of so-called yardage charges for all live stock so owned by or consigned to your orator for delivery upon its said premises, of 25 [fol. 1433] cents per head for cattle, 6 cents per head for sheep, 8 cents per head for hogs and 15 cents per head for calves, which said charge is made as a charge in favor of said Union Stock Yard and Transit Company and in addition to the freights charged for the transportation of said live stock.

Your orator further shows unto your Honors as before stated, that there are no tracks over which deliveries can be made to its said premises, of cattle purchased outside the City of Chicago and consigned to your orator at its said place of business, except the tracks of the said Union Stock Yard and Transit Company; that unless the cattle so purchased outside the City of Chicago can be shipped to your orator over the said tracks of the Union Stock Yard and Transit Company and delivered to your orator at its said Central Yards, its business will be irreparably injured; that there is no basis upon which the damages resulting to your orator from the acts and doings of said Union Stock Yard and Transit Company above recited, can be estimated, and that your orator's legal remedies in the premises are wholly inadequate.

[for. 1434] Forasmuch therefore as your orator is without remedy in the premises, except in a court of equity where such matters are properly cognizable and relievable, and to the end that the said Union Stock Yard and Transit Company of Chicago, which is made party defendant to this bill of complaint, may be required to make full and direct answer to the same (but not under oath, its answer under oath being hereby expressly waived), and that the said defendant, the Union Stock Yard and Transit Company of Chicago may be restrained by the order of this Honorable Court from interfering with any railroad or transportation company having made connections with the tracks of said Union Stock Yard and Transit Company as hereinbefore charged that desires to deliver live stock to your orator upon the premises above described, and known as the Cen-

tral Stock Yards, and from refusing to permit the use of its tracks or tracks to any railroad company so desiring or attempting to deliver live stock to your orator at its said yards, and from refusing to permit the use of its railway tracks to any such railway company for the purpose of delivering live stock to your orator at said Central Stock Yards, and that the said Union Stock Yard and Transit Company may be compelled by order of this Honorable Court, to receive from any connecting railroad company desiring to make such delivery, cars of live stock consigned to your orator at said Central Stock Yards, and to transport the same over its railway tracks to such Central Stock Yards, or in default thereof that it be compelled [fol. 1435] to permit the use of its said railway tracks to any connecting railroad over which to transport cars of live stock consigned to your orator at such Central Stock Yards from such connecting road, and that your orator may have such other, further and different relief as to your Honors may seem meet.

May it please your Honors to grant the writ of summons in Chancery directed to the Sheriff of the County of Cook and State of Illinois, commanding him that he summon the defendant, the Union Stock Yard and Transit Company of Chicago to be and appear before said court on the first day of the next term thereof, to be held at the Court House in the city of Chicago, County of Cook aforesaid, then and there to answer this bill, etc.

And may it please your Honors to grant unto your orator the People's Writ of Injunction to be directed to the said defendant, the Union Stock Yard and Transit Company of Chicago, restraining and commanding it, its agents, employes and attorneys, in manner and form as aforesaid.

And your orator will ever pray, etc.

Swift and Company, by G. F. Swift, Pres.

Albert H. Veeder, Campbell & Custer, Walker & Eddy, Solicitors and of Counsel.

[fol. 1436] STATE OF ILLINOIS,
Cook County, ss:

G. F. Swift, being first duly sworn on oath says that he is the President of Swift and Company, the complainant in the above and foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof and that the matters and things therein contained are true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to them he believes it to be true.

Affiant further says that he believes that serious and irreparable damage will result to the business of said Swift and Company unless an injunction is speedily granted herein as prayed for in said bill.

G. F. Swift.

Subscribed and sworn to before me this 30th day of April A. D. 1891. D. E. Hartwell. (Notarial Seal.)

[fol. 1437] [Endorsed:] 90859. Circuit Court. 4418. Swift and Company vs. The Union Stock Yards and Transit Company of Chicago. Bill. Filed Apr. 30, 1891. 1-1. Henry Best, Clerk. Ret. for —. Albert H. Veeder, Campbell & Custer, E. Walker, Solicitors for Complt.

[fol. 1438] STATE OF ILLINOIS,
County of Cook, ss:

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of records and files ther-of, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfectly and complete copy of a certain Bill filed in this office on the 30th Day of April 1891 in a certain cause lately pending in said Court, on the Chancery side thereof, between Swift & Company, Complainant, and Union Stock Yard & Transit Co., Defendant.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 13th day of June 1938.

John E. Conroy, Clerk.

[fol. 1439] [Endorsed:] 90861. Circuit Court. 4420. Nelson Morris & Co. vs. The Union Stock Yard and Transit

Company. Bill, 4420. Apr. 30, 1891. Henry Best. Albert H. Veeder, Campbell & Custer, E. Walker, Solrs. for Complts.

[fol. 1440] STATE OF ILLINOIS,
County of Cook, ss:

To the Honorable, the Judges of the Circuit Court of Cook County.

In Chancery Sitting.

Your orators, Nelson Morris, Edward Morris and Frank E. Vogel composing the firm of Nelson Morris & Co. of the County of Cook and State of Illinois, respectfully represent unto your Honors that the Union Stock Yard and Transit Company of Chicago is a corporation incorporated by special act of the General Assembly of the State of Illinois, approved and in force February 13th, 1865, with power, among other things to locate, construct and maintain upon certain lands in convenient proximity to the southern limits of the City of Chicago necessary yards, structures and buildings for the accommodation of the business of a general Union Stock Yards for cattle and live stock, and also with power to construct a railway with one or more tracks as may be expedient from the grounds selected for the said yards so as to connect, outside of the City of Chicago, the same with the tracks of all the railroads which terminate in said City of Chicago within cetrain limits, as defined by the terms of said Act; and also with power and authority to locate and from time to time renovate, change, [fol. 1441] alter, construct and reconstruct said railroad and railroad tracks and side tracks and conveniences, and with the further power to transport and allow to be transported thereon with steam or other power between said railroads and cattle yards, cattle and live stock and persons accompanying the same, and all freight and property of every kind as well as stock and cattle, and also with power to fix and establish, take and receive such rates of toll for all freight and property so transported between said railroads as the directors of said Union Stock Yard and Transit Company may from time to time establish.

Your orators further show that said Union Stock Yard and Transit Company under its said charter also had power

and authority to receive, take and hold all such voluntary grants and donations of land and real estate as might be made to said company for the purposes aforesaid, and all lands and easements necessary for its right of way, and for the purpose of effectuating the said grant said corporation had conferred upon it by said charter the right and power of acquiring all lands necessary for such right of way under the power of eminent domain, and especially in the manner provided for in "an Act to amend a law condemning the right of way for the purposes of internal improvement"; approved June 22, A. D. 1852, and Acts amendatory thereof. And your orators charge the fact to be that the corporators named in said Act proceeded to organize said [fol. 1442] corporation by the election of a Board of Directors and other proper officers, and from and after said date until the present time has been and is a corporation duly organized and exercising the powers of railroad corporations, and is a common carrier of freight of all kinds and character under and in pursuance of the powers conferred upon it by said special charter.

Your orators further represent unto your Honors that in the carrying out of the objects and purposes for which said corporation was organized it became the owner of the east half of Section Five and the east twenty-five acres of the North East Quarter of the North West Quarter of Section Five in Township Thirty-eight, North, Range Fourteen, East of the Third Principal Meridian in said Cook County, and located thereon its yards and pens for stock yard purposes and constructed its lines of railroad connecting said east half of Section Five with all of the lines of railroad terminating in the City of Chicago so that at the present time the said Union Stock Yard and Transit Company is the owner of and operating by itself or by others one hundred and thirty miles of railroad track especially connecting the said east half of Section Five with the main line of the Chicago, Burlington & Quincy Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka and Santa Fe Railroad Company, the Chicago & Alton Railroad Company, the Chicago & Northwestern Railway Company, the Chicago, [fol. 1443] Rock Island & Pacific Railroad Company, the

Wisconsin Central Railroad Company, and other Railway Companies, and is operating its said railroad to such an extent that during the year 1889 it handled thereon or thereover 1,076,551 freight cars, being more than 25 per cent of all the freight cars handled at Chicago by all the railroads centering in said city as is represented and published by said Union Stock Yard and Transit Company.

Your orators further represent unto your Honors that at the time the said Union Stock Yard and Transit Company established its yards as aforesaid on the east half of said Section Five and the east twenty-five acres of the North East Quarter of the North West Quarter of Section Five John F. Tracy, Martyn L. Sykes Jr. and Henry H. Porter were the owners in fee of a large part of the South half and the West fifteen acres of the North East Quarter of the North West Quarter of said Section Five; that said premises last described were then vacant and unoccupied and immediately adjoined on the west the said lands in Section Five hereinbefore described as belonging to the Union Stock Yard and Transit Company; that for the purpose of inducing the establishment of manufacturing and slaughtering establishments on said premises the said Porter, Sykes and Tracy subdivided the said premises into blocks and streets and alleys and recorded the plat of said subdivision in the Recorder's office of Cook County [fol. 1444] as a private subdivision, called Packer's Addition to Chicago, reserving the fee of the streets and alleys in said subdivision to themselves for the benefit of the owners and occupants of the blocks in said subdivision and for the construction of railroad tracks which would connect said property with the railway tracks of the said Union Stock Yard and Transit Company, and thereby with the railroad tracks of other railroad companies with which said Union Stock Yard and Transit Company's tracks might be connected.

Your orators further represent that at the period aforesaid Henry H. Walker, Briggs Swift, James D. Lehmer and Nathan Powell were the owners in fee of the South West quarter of said Section Five immediately adjoining on the south the lands of said Porter, Sykes and Tracy and immediately adjoining on the west the lands of said Union

Stock Yard and Transit Company, and for the purpose of obtaining the benefit of any contracts existing between the said Porter, Sykes and Tracy and the Union Stock Yard and Transit Company and of railroad connections and facilities as aforesaid which attached to the said lands of said Porter, Sykes and Tracy, the said Henry H. Walker, Briggs Swift, James D. Lehmer and Nathan Powell as parties of the second part, on the 5th day of March, 1869 entered into a contract with the said John F. Tracy, Martin L. Sykes and Henry H. Porter as parties of the first part by which contract it was agreed as follows: "That whereas the said Tracy, Sykes and Porter are the owners of a large [fol. 1445] part of the South half, and the West fifteen acres of the North East quarter of the North West quarter of Section Five, Town Thirty-eight North, Range Fourteen East and by virtue of such ownership, and by contract with the owners of the residue of the said premises, are fully and lawfully authorized to make the contract herein contained.

And Whereas, the said Henry H. Walker, Briggs Swift, James D. Lehmer and Nathan Powell are the owners of the South West quarter of Section Five in the same township and range, which said last mentioned tract adjoins the said first mentioned tract on the south:

And Whereas, said parties of the second part are desirous to secure for their said tract of land certain rights of ingress and egress, and the use of certain streets and alleys and railroad track now laid out, or which may be hereafter constructed over the said land of the parties of the first part, and the said parties of the first part and second parts have for that purpose agreed with each other as follows:

Parties of first part, in consideration of $12,000 and of the right to use in common with the parties of the first part and their assigns, the thirty foot alley to be constructed between the Blocks Five and Six and the lands of the parties of the second part, do hereby grant, sell and convey to said parties of the second part, their heirs and assigns as an appurtenance to the said south west quarter of Section Five and passing with the same, the right to use for the purpose of ingress and egress to and from said last named quarter section the street marked [fol. 1446] "private street" and the alleys marked "pri-

vate alleys" and the private street or way marked "railroad track" on the plat of Packer's Addition in Book 166 of Maps, page 187, filed for record in the office of the Recorder of Deeds for Cook County, Illinois, on July 1st, 1868. Said parties of the first part agree to build so much of said railroad track in said Addition as is now platted but not yet built, and to lay out and construct half of the alley thirty feet in width on the south line of Blocks Five and Six in said Addition, being the same alley, the use whereof is heretofore made a part of the consideration paid by said second party; parties of the first part also grant, sell and convey to parties of the second part the use for purposes of ingress and egress to and from said last named quarter section, the railroad track now built on the west and part of the south sides of said lands, being the same track now used by Nelson Morris.

It is further understood that the object of the said purchase by the parties of the second part of the rights and privileges hereinbefore mentioned is to procure a connection for their said premises by railroad tracks and streets with the Union Stock Yards' track and the street running east and west north of the Union Stock Yards' track and south of Egan Ave., and as other railroad tracks and streets connecting the same may be built by the party of the first part; that this agreement covers the right for said parties of the second part without further pay-
[fol. 1447] ment to parties of the first part, or their assigns, to make connections with the same whenever the said streets or railroad tracks may be extended by parties of the first part to the north line of said lands of said parties of the second part with the right of passage over such streets and railroad tracks in the same manner as this agreement, as hereinbefore expressed, now gives them rights on all streets, railroad tracks and alleys now built. But nevertheless reserving to parties of the first part the right themselves to use, and the right to grant to any other person or persons, in their discretion, in common with parties of the second part and their assigns, the use of said private streets, alleys and railroad tracks and to both of the said parties hereto the right to grant to any other person or persons, in their discretion, owning any portion of the said premises hereinabove described, a

like privilege in common with the said parties of the first and second parts to use said private streets, alleys and railroad tracks, and provided further it is the intent and purpose of this agreement in good faith to give to parties of the second part without further payment to parties of the first part or their assigns, the right to connect with and use any such streets, alleys or railroads which the said parties of the first part might thereafter construct through their said premises to the lands of said parties of the second part."

Your orators further represent unto your Honors that afterwards and on the 26th day of November, 1875 the said Union Stock Yard and Transit Company desiring to obtain further privileges for railroad tracks in said North West quarter of Section Five belonging to Porter, Sykes [fol. 1448] and Tracy, as aforesaid, than it then enjoyed, and to secure the control and operation of the railroad tracks therein, made, entered into and executed a certain contract and deed with the said Porter, Sykes and Tracy, in and by which the said Porter, Sykes and Tracy, parties of the first part, conveyed to said Union Stock Yard and Transit Company, party of the second part (which deed was dated November 26th, 1875 and recorded February 11th, 1876, in Book 563, page 142 of Cook County Records) certain lands and premises in said deed described and being a part of the North West quarter of Section Five aforesaid, subject to certain conditions and covenants to be observed, kept and maintained by said Union Stock Yard and Transit Company. Among other covenants in said deed assumed by said Union Stock Yard and Transit Company were the following: "The said parties of the first part made and concluded an agreement in writing bearing date March 5th, 1869, (being the contract hereinbefore referred to) with one Henry H. Walker and others, giving to them certain rights of passage over the private streets and alleys on the premises of the first party hereinbefore described, to which agreement reference is hereby made for more certainty herein. It is expressly understood and agreed by and between the parties hereto, in consideration as aforesaid, that this agreement in all its parts, is made subject to such legal rights and interests in said premises as the aforesaid agreement

[fol. 1449] made with said Walker and others shall confer upon the parties thereto, and which shall be held to be in force by virtue thereof, and binding upon the parties of the first part hereto on the day of the execution and delivery hereof. The said second party for and in consideration of the covenants and agreements herein contained on the part of second party to be performed, and in consideration of one dollar, covenants and agrees to and with said first party as follows:

That it will during its corporate existence maintain and operate and permit other persons and corporations to operate in the same manner and under the same conditions as the same are now operated the railroad tracks across the East twenty-five acres of the said North East quarter of the North West quarter of said Section five hereinbefore more particularly described as the same are now constructed and located, so as to at all times give the railroad tracks now and hereafter to be laid on the premises of first party as hereinbefore described good and sufficient railroad connections with the other tracks of said second party upon the premises herein first above conveyed and with its other tracks connecting with the general railroad tracks in use in said Cook County.

The said second party further covenants and agrees that it will at all times during its corporate existence maintain [fol. 1450] the said railroad tracks in good condition for all the business that may be required to be done over them at its own proper charge and cost, that it will permit at all times during the continuance of this agreement to first parties, or either of them, and to any or all persons or corporations to whom said parties and their grantor have heretofore, or to whom they may hereafter convey, whether by lease or fee, any portion of the premises hereinbefore particularly described, free access to and free use of all or any of the tracks heretofore or that may hereafter be laid upon any of such premises (not for standing but for the passage of cars and wagons) for the transportation of any lawful business, for which such parties, persons or corporations require such use.

It is expressly understood and agreed by and between the parties hereto that the several conveyances, covenants

and agreements herein contained on the part of each of the parties hereto to be performed, shall extend to, bind and are for the benefit of as well the parties hereto as the successors of the second party, and the assigns of second party and the assigns or grantees of first party, of their predecessors whether now owning of occupying any portion of the premises hereinbefore described, or who shall hereafter become owners or occupants of any portion of said premises, whether mediately or immediately, from said first party.

[fol. 1451] That the right of access to said railroad tracks, and the rights to the use of such tracks as hereinbefore stated for all business purposes shall be and remain an appurtenance to each and every lot and block, and to all the said premises hereinbefore described, and that all said covenants and agreements shall be taken and held to be covenants running with the land to all persons or corporations now owning or who may become owners thereof in any manner whatsoever."

Your orators further represent unto your Honors that afterwards and on or about the 12th day of October, A. D. 1878, the said Union Stock Yard and Transit Company, desiring to secure certain additional rights of way and privileges across the South West quarter of said Section Five for its said railway, entered into an agreement in writing, recorded in the Recorder's Office of Cook County, Illinois, in Book 848, page 154, with James D. Lehmer who was then the owner thereof, by which the said James D. Lehmer conveyed to the said Union Stock Yard and Transit Company certain lands and premises in said deed described, and being a portion of said South West quarter of Section Five, and upon which portion of land so conveyed the said Union Stock Yard and Transit Company has constructed and is now operating a portion of its said railway; in and by which contract it was expressly covena-ted that said right of way should be subject to the right of use in common with and by the other owners and occupants of property in said subdivision, said James D. [fol. 1452] Lehmer, and others now or hereafter entitled thereto under him or otherwise, of all streets and alleys including railroad streets, right of way and tracks laid down on the map or plat of said subdivision. And the said

Union Stock Yard and Transit Company in said agreement specially convena-ted and agreed with said James D. Lehmer, his heirs and assigns, to extend a double track, when required so to do by him or them, along said right of way thereby conveyed, and also between Blocks eleven and twelve in Lehmer's subdivision, of a portion of said South West quarter of Section five to 47th Street; also that the owners and occupants of property in said South West quarter of Section five should severally and at all times have the right to make railway connections for business purposes with any track or tracks owned or operated by said company, which should include the right to have switches at every half block on each side of such track or tracks as said company might own or operate upon or over said land.

Your orators further represent unto your Honors that afterwards and on the 13th day of September, A. D. 1889 the said Union Stock Yard and Transit Company, desiring to obtain certain further rights of way and privileges for its railway in and upon said South West quarter of Section Five, made a further contract and agreement in writing, recorded in the Recorder's office of Cook County, Illinois, in Book No. 2714 at page 247, with James D. [fol. 1453] Lehmer who was then the owner of said above described property in and by which the said James D. Lehmer conveyed to the said Union Stock Yard and Transit Company certain premises in said deed described to be used only for the purposes of railway tracks and right of way, and upon the express covenants and agreements to that said right of way should be used by said Union Stock Yard and Transit Company in common with and by the other owners and occupants of property in said South West quarter of Section Five, said James D. Lehmer and others now or hereafter entitled thereto under him or otherwise, and subject to the rights of the owners and occupants of property in said South West quarter of said Section Five and others now or hereafter entitled thereto under said James D. Lehmer or otherwise, to make railroad connections for business purposes with any track or tracks situated on either of said tracts of land in said deed conveyed and owned or operated by the said Union Stock Yard and Transit Company, which should

also include the right of said owners and occupants to have a switch at every block on each side of the track or tracks owned and operated over said premises by said Union Stock Yard and Transit Company; and also the right of use in common with and by the owners and occupants of property in said Lehmer's subdivision now or hereafter entitled thereto, of all streets and alleys including the railroad streets, right of way and tracks laid down on [fol. 1454] the map or plat of the subdivision of said land.

Your orators further represent unto your Honors that because of the inducements held out by the owners of the West half of Section Five aforesaid by reason of the establishment of railroad tracks and connections and convenient access thereby to all the railroads centering in the City of Chicago and because of the promises and covenants contained in said contracts as aforesaid, between the said owners of the said West half of Section Five and the Union Stock Yard and Transit Company as aforesaid, your orators, as well as others, were induced to locate their business on the West half of said Section Five; that in the course of their business they have constructed a large number of valuable buildings for the purpose of slaughtering and preparing for market cattle, sheep and hogs and for the several industries connected therewith. That in the construction of said buildings and the machinery and appurtenances connected therewith they have expended more than three millions of dollars. That all of said buildings so constructed have been connected by railroad tracks and switches with the main and other tracks of the Union Stock Yard and Transit Company, in accordance with said agreements, and the said Union Stock Yard and Transit Company without objection, since the establishment of said business to the present time has received from and delivered to your orators at their several buildings, slaughtering houses and [fol. 1455] places of business loaded and empty cars, freights and property necessary to the successful prosecution of their said business.

Your orators further state that they received and slaughtered in the prosecution of their business at said Union Stock Yard at their several slaughtering houses built on the West half of Section Five aforesaid, during the year 1890

more than 470,000 head of cattle and more than one hundred and seventy thousand head of sheep.

Your orators further represent that up to the present time all of the live stock required by them in the carrying on of their business that has been purchased by your orators at other points than Chicago, has been received by them in the yards of the Union Stock Yard and Transit Company for the reason that your orators had no other convenient place at which to receive such live stock, and the several railroad companies bringing such live stock to your orators had provided no convenient yard or place for the delivery thereof other than in the yards of the Union Stock Yard and Transit Company.

Your orators further aver that Armour & Co. a co-partnership, and Swift and Company, a corporation, doing business in said City of Chicago, are engaged in similar business to your orators and have slaughtering and packing establishments located near your orators' on the West half of Section Five aforesaid, and that your orators in connec-[fol. 1456] tion with said Armour & Co. and Swift and Company for the purpose of providing a suitable place for the receipt and delivery of their own live stock which might be purchased by them at points outside of the City of Chicago, purchased from said James D. Lehmer at a large expenditure of money the following described real estate, to wit: all that part of the North West quarter of the South West quarter of Section Five in Township thirty-eight North, Range fourteen East of the Third Principal Meridian in the County of Cook and State of Illinois, bounded and described as follows, to wit:

Commencing at a point thirty (30) feet South and three hundred sixty-eight and one-third (368 1-3) feet West of the North-east corner of the North-West quarter of said Section five (5), thence South parallel with the East line of said tract six hundred and three-tenths (600 3-10) feet, thence West parallel with the North line of said tract two hundred sixty-two and four-tenths (262 4-10) feet, thence North parallel with the East line of said tract six hundred and three-tenths (600 3-10) feet, thence East parallel with the North line of said tract two hundred sixty-two and four-tenths (262 4-10) feet to the place of beginning, being a part

of the real estate described in the contracts hereinbefore recited; together with and subject to the right of use in common with and by the other owners and occupants of property in said North west quarter of the South west [fol. 1457] quarter of Section five (5) aforesaid, said James D. Lehmer and any others now or hereafter entitled thereto under him or otherwise, of all streets and alleys which may hereafter be laid out through said north west quarter of the south west quarter of section five (5), including railroad streets.

Also, with the right of use in common with the parties aforesaid, the Union Stock Yard and Transit Company and any others entitled thereto of any right or rights of way and other rights and privileges, which may attach to the land aforesaid or which the said James D. Lehmer may have in common with others under a certain deed between John F. Tracy and others of the one part and said James D. Lehmer and others of the other part, dated March 5, 1869 and recorded in the Recorder's office of said Cook County on March 30, 1869 in Book 508, page 69; together with all the rights and privileges to make railroad connections for business purposes with the railroad tracks of the Union Stock Yard and Transit Company and all other privileges, so far as they may appertain to said premises, reserved by the said James D. Lehmer in his certain deed conveying to the Union Stock Yard and Transit Company of Chicago certain premises in the South West quarter of Section five (5) aforesaid, dated September 13, 1889 and recorded in the Recorder's office of said Cook County on September 13th, 1889, in Book 2714, page 247; and that the said premises have been conveyed by the said James D. Lehmer and wife [fol. 1458] by mesne conveyances to Albert H. Veeder and Edward J. Martyn as trustees for your orators and the said Armour & Co. and Swift & Company for their joint use.

Your orators further state that said premises last described are a portion of the North West quarter of the South West quarter of said Section Five and are a part of the premises entitled to the privileges reserved by the contracts between Porter, Sykes and Tracy and Lehmer, Walker and Swift and Powell and between Porter, Sykes and Tracy and the Union Stock Yard and Transit Company

and the two contracts between James D. Lehmer and the Union Stock Yard and Transit Company, all of which have been hereinbefore set out and referred to.

Your orators further represent that the said premises are immediately South of and adjacent to Forty-Third street and North of and adjacent to Forty-fourth Street; that the main tracks of the Union Stock Yard and Transit Company pass these premises on both the North and the South sides thereof, and that at the time of the purchase of the said premises by Veeder and Martyn in Trust as aforesaid, the same were connected by suitable frogs and switches with both of said named tracks of the Union Stock Yard and Transit Company and were so connected by the Union Stock Yard and Transit Company for the said James D. Lehmer in accordance with the contracts and agreements hereinbefore set out.

[fol. 1459] Your orators further state that the said premises have been converted by them, in conjunction with the said Armour & Co. and Swift and Company into cattle yards and pens, with suitable and convenient unloading tracks and chutes and are connected as aforesaid with the main tracks of the Union Stock Yard and Transit Company and are as convenient to the Union Stock Yard and Transit Company in all respects for the delivery and unloading of cars of live stock as are the premises of the Union Stock Yard and Transit Company located on the East half of Section Five as aforesaid.

And your orators state that it has connected the said premises by means of a viaduct with its slaughtering establishments and that the said premises are more convenient for it in the receipt of its live stock than are the premises of the Union Stock Yard and Transit Company. That your orator is able to prosecute its slaughtering and packing business with greater convenience and economy if its live stock purchased at points outside of the City of Chicago are delivered to it on said premises, than if they are delivered in the yards of the Union Stock Yard and Transit Company; and your orators say that they have no other yard or place belonging to them or under their control, where their live stock necessary to the successful prosecution of their business can be delivered.

Your orators further state unto your Honors that for

[fol. 1460] convenience in making consignments of live stock to said premises it has designated said premises "The Central Stock Yards, located at the corner of Justine and 43rd Streets", and the same are designed for the sole and exclusive use of the owners thereof, to wit: your orators, Armour & Co. and Swift and Company for the receipt of their own cattle bought by them at points outside of Chicago and transported to said premises for the purpose of being slaughtered at their said slaughtering and packing establishments.

Your orators further represent that ever since the establishment of the various industries aforesaid of your orators on the West half of said Section 5 and for many years last past the various railroad companies entering the City of Chicago and connecting with said Union Stock Yard and Transit Company's railway have received from and delivered to your orators at their said various establishments freight of all kinds and descriptions except live stock, in cars without breaking bulk over the tracks of the Union Stock Yard and Transit Company and the switches connecting the same with the private tracks of your orators, the Union Stock Yard and Transit Company preferring that the several railroads should thus deliver their freight over their tracks instead of themselves furnishing the motive power therefor, and to such an extent that during the year 1890 more than 15,000 cars of freight were received by your orators at their said place of business or shipped therefrom, [fol. 1461] by your orators over the tracks of the Union Stock Yard and Transit Company and the various railroads connecting therewith; that the Union Stock Yard and Transit Company has not provided itself with motive power and has never undertaken to furnish motive power for the transportation of such freight. And your orators state that all the live stock which they have slaughtered at their said establishments has up to the present time been delivered to them in the yards of the Union Stock Yard and Transit Company for the reason that your orators had not, up to the time of the commission of the grievances hereinafter stated any other suitable or convenient place for the receipt of such live stock, and because the several railroad companies bringing such live stock into the City of Chicago had pro-

vided no suitable or convenient place for unloading or delivering the same to your orators.

Your orators further represent unto your Honors that from and after the construction of said yards and pens of your orators known and designated as the Central Stock Yards it was the duty of the said Union Stock Yard and Transit Company under the contracts hereinbefore recited and referred to, and under the statutes in such case made and provided, as well as under its special charter, to receive all freights consigned to your orators at said Central Yards at the point of connection with any and all railroads with [fol. 1462] the tracks of said Union Stock Yard and Transit Company leading to and connecting the premises of your orators with the main or other tracks of said connecting railroad companies, or to permit said other railroad companies to use the tracks of said Union Stock Yard and Transit Company for the delivery of such freight so consigned to your orators. Yet your orators charge the fact to be that notwithstanding the covenants of said Union Stock Yard and Transit Company hereinbefore recited and its duty to your orators thereunder, as well as its duty under its charter and the law affecting railroad corporations and common carriers, it has wrongfully refused and continues to refuse to receive from any and all railroads making such connections any and all shipments of live stock or live freight consigned to your orators for delivery at said Central Yards, to the great damage and injury of your orators.

Your orators further state unto your Honors that on the 25th day of April, 1891, your orators delivered to the Atchison, Topeka and Santa Fe Railroad Company to be transported by the said Railroad Company and to be delivered to your orators on their said premises described as the Central Stock Yards, corner of Justine and 43rd Streets in the City of Chicago, five loads of cattle; that said cars of cattle were transported by said Railroad Company from said Kansas City in the State of Missouri to the Junction of [fol. 1463] said Atchison, Topeka and Santa Fe Railroad Company with the railway tracks of the said Union Stock Yard and Transit Company in said Cook County; that at said junction of said railway tracks the parties in charge of said cars were met by the officers and servants of the Union

Stock Yard and Transit Company, and were forbidden to move said cars on to the tracks of said Union Stock Yard and Transit Company, and the said Union Stock Yard and Transit Company refused to permit the said Atchison, Topeka and Santa Fe Railroad Company to enter upon the tracks of said Union Stock Yard and Transit Company or to pass over the same, or to use the same for the delivery of such freight so consigned as aforesaid to your orators upon their premises known as the Central Stock Yards.

Your orators further represent unto your Honors that in the prosecution of their business upon their said premises large shipments of cattle and other live stock purchased outside of the City of Chicago and also at points beyond the State of Illinois are being consigned to your orators for delivery upon said premises known as the Central Stock Yards. That your orators are the owners of a large number of cattle at different points upon the lines of railroads leading to the City of Chicago and connecting with said tracks of said Union Stock Yard and Transit Company which your orators intend to have conveyed and transported to them and delivered upon said premises; but your orators charge [fol. 1464] that said Union Stock Yard and Transit Company wrongfully and wilfully refuses to receive any of said cattle or other live stock consigned to your orators to be delivered upon said premises as aforesaid, or to permit the same to be transported over its said tracks connecting with said premises, and has given notice to all connecting railroad companies that it will not hereafter receive any live stock consigned to any yards owned by your orators in Chicago, and that the stock so consigned will not be permitted to be hauled over the tracks of said company; and further charge that such stock cannot be delivered to your orators upon their said premises by any railway line or lines other than those cont-olled and operated by the said Union Stock Yard and Transit Company.

Your orators aver that they are ready and willing to pay all reasonable and lawful charges for the transportation of said freight or for its delivery to your orators upon their said premises, but as your orators are informed and believe the said Union Stock Yard and Transit Company has given out and notified all connecting railroads that no freight so

consigned will be allowed to pass over its said tracks or be delivered to your orators upon their said premises, nor can any delivery be made of such freight except as heretofore made upon and through the premises and yards of the said Union Stock Yard and Transit Company, said last named company insisting that it has the legal right to force or [fol. 1465] compel your orators to cause all shipments of live stock so consigned to your orators for delivery upon their said premises to be delivered at the yards or upon the premises of the said Union Stock Yard and Transit Company, and also claims the right to make and compel the payment of so-called yardage charges for all live stock so owned by or consigned to your orators for delivery upon its said premises, of 25 cents per head for cattle, 6 cents per head for sheep and 8 cents per head for hogs and 15 cents per head for calves, which said charge is made as a charge in favor of said Union Stock Yard and Transit Company and in addition to the freights charged for the transportation of said live stock.

Your orators further show unto your Honors as before stated; that there are no tracks over which deliveries can be made to their said premises, of cattle purchased outside the City of Chicago and consigned to your orators at their said place of business, except the tracks of the said Union Stock Yard and Transit Company; that unless the cattle so purchased outside the City of Chicago can be shipped to your orators over the said tracks of the Union Stock Yard and Transit Company and delivered to your orators at their said Central Yards, their business will be irreparably injured; that there is no basis upon which the damages resulting to your orators from the acts and doings of said Union Stock Yard and Transit [fol. 1466] Company above recited, can be estimated, and that your orators' legal remedies in the premises are wholly inadequate.

[fol. 1467] Forasmuch therefore as your orators are without remedy in the premises except in a court of equity where such matters are properly cognizable and relievable and to the end that the said Union Stock Yard and Transit Company of Chicago, which is made party defendant to this bill of complaint, may be required to make full and

direct answer to the same (but not under oath, its answer under oath being hereby expressly waived), and that the said defendant, the Union Stock Yard and Transit Company of Chicago may be restrained by the order of this Honorable Court from interfering with any railroad or transportation company having made connections with the tracks of said Union Stock Yard and Transit Company as hereinbefore charged that desires to deliver live stock to your orators upon the premises above described, and known as the Central Stock Yards, and from refusing to permit the use of its track or tracks to any railroad company so desiring or attempting to deliver live stock to your orators at their said yards and from refusing to permit the use of its railway tracks to any such railway company for the purpose of delivering live stock to your orators at said Central Stock Yards, and that the said Union Stock Yard and Transit Company may be compelled by order of this Honorable Court to receive from any connecting railroad company desiring to make such delivery cars of live stock consigned to your orators at said Central Stock Yards, and to transport the same over its railway tracks to such Central Stock Yards, or in default thereof that [fol. 1468] it be compelled to permit the use of its said railway tracks to any connecting railroad over which to transport cars of live stock consigned to your orators at such Central Stock Yards from such connecting road, and that your orators may have such other, further and different relief as to your Honors may seem meet:

May it please your Honors to grant the writ of summons in Chancery, directed to the Sheriff of the County of Cook and State of Illinois, commanding him that he summon the defendant, the Union Stock Yard and Transit Company of Chicago to be and appear before said court on the first day of the next term thereof to be held at the Court House in the City of Chicago, County of Cook aforesaid, then and there to answer this bill, etc.

And may it please your Honors to grant unto your orators the People's Writ of Injunction, to be directed to the said defendant, the Union Stock Yard and Transit Company of Chicago, restraining and commanding it, its

agents, employees and attorneys, in manner and form as aforesaid.

And your orators will ever pray, etc.

Nelson Morris, Edward Morris, Frank E. Vogel, Composing the firm of Nelson Morris & Co.; By Nelson Morris.

[fol. 1469] State of Illinois
Cook County, ss:

Nelson Morris, being first duly sworn on oath says that he is a member of the firm of Nelson Morris & Co. which is the complainant in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof and that the matters and things therein contained are true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to them he believes it to be true.

Affiant further says that he believes that serious and irreparable damage will result to the business of said Nelson Morris & Co. unless an injunction is speedily granted herein as prayed for in said bill.

Nelson Morris.

Subscribed and sworn to before me this 30th day of April, A. D. 1891. D. E. Hartwell, Notary Public.

Albert H. Veeder, Walker & Eddy, Campbell & Custer, Solicitors and of Counsel.

[fol. 1470] [Endorsed:] 90860, Circuit Court, 4419, Armour & Co. vs. Union Stock Yard and Transit Co. Bill, Filed, Apr. 30, 1891, Henry Best, Campbell & Custer, A. H. Veeder, E. Walker, Solicitors for Complts.

[fol. 1471] STATE OF ILLINOIS,
Cook County, ss:

To the Honorable, the Judges of the Circuit Court of Cook County. In Chancery Sitting:

Your orators, Philip D. Armour, Jonathan O. Armour, George H. Webster and Philip D. Armour Jr., composing the firm of Armour & Co., of the County of Cook and State of Illinois, respectfully represent unto your Honors that the Union Stock Yard and Transit Company of Chicago is a corporation incorporated by special act of the General Assembly of the State of Illinois, approved and in force February 13th, 1865, with power, among other things, to locate, construct and maintain upon certain lands in convenient proximity to the southern limits of the City of Chicago necessary yards, structures and buildings for the accommodation of the business of a general Union Stock Yards for cattle and live stock, and also with power to construct a railway with one or more tracks as may be expedient from the grounds selected for the said yards so as to connect, outside of the City of Chicago, the same with the tracks of all the railroads which terminate in said City of Chicago within certain limits, as defined by the terms of said Act; and also with power and authority to locate and from time to time renovate, change, alter, construct and reconstruct said railroad and railroad tracks [fol. 1472] and side tracks and conveniences, and with the further power to transport and allow to be transported thereon with steam or other power between said railroads and cattle yards, cattle and live stock and persons accompanying the same, and all freight and property of every kind as well as stock and cattle, and also with power to fix and establish, take and receive such rates of toll for all freight and property so transported between said railroads as the directors of said Union Stock Yard and Transit Company may from time to time establish.

Your orators further show that said Union Stock Yard and Transit Company under its said charter also had power and authority to receive, take and hold all such voluntary grants and donations of land and real estate as might be made to said company for the purposes aforesaid, and all lands and easements necessary for its right of way,

and for the purpose of effectuating the said grant said corporation had conferred upon it by said charter the right and power of acquiring all lands necessary for such right of way under the power of eminent domain, and especially in the manner provided for in "An Act to amend a law condemning the right of way for the purposes of internal improvement"; approved June 22, A. D. 1852, and Acts amendatory thereof. And your orators charge the fact to be that the corporators named in said Act proceeded to organize said corporation by the election of a Board of [fol. 1473] Directors and other proper officers, and from and after said date until the present time has been and is a corporation duly organized and exercising the powers of railroad corporations, and is a common carrier of freight of all kinds and character under and in pursuance of the powers conferred upon it by said special charter.

Your orators further represent unto your Honors that in the carrying out of the objects and purposes for which said corporation was organized it became the owner of the east half of Section five, and the east twenty-five acres of the Northeast quarter of the northwest quarter of Section five, in Township thirty eight, North, Range fourteen, east of the Third Principal Meridian in said Cook County, and located thereon its yards and pens for stock yard purposes and constructed its lines of railroad connecting said east half of Section five with all of the lines of railroad terminating in the City of Chicago so that at the present time the said Union Stock Yard and Transit Company is the owner of and operating by itself, or by others, one hundred and thirty miles of railroad track specially connecting the said east half of Section five with the main line of the Chicago, Burlington & Quincy Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railroad Company, the Chicago & Alton Railroad Company, the Chicago & Northwestern Railway Company, the Chicago, Rock Island & Pacific Railroad Company, the Wisconsin Central Railroad Company and other [fol. 1474] Railway Companies, and is operating its said railroad to such an extent that during the year 1889 it handled thereon or thereover 1,076,551 freight cars, being more than 25 per cent of all the freight cars handled at Chicago by all the railroads centering in said City, as is

represented and published by said Union Stock Yard and Transit Company.

Your orators further represent unto your Honors that at the time the said Union Stock Yard and Transit Company established its yards as aforesaid on the east half of said section five, and the east twenty-five acres of the northeast quarter of the northwest quarter of Section five, John F. Tracy, Martin L. Sykes, Jr., and Henry H. Porter were the owners in fee of a large part of the south half and the west fifteen acres of the northeast quarter of the northwest quarter of said Section five; that said premises last described were then vacant and unoccupied and immediately adjoined on the west the said lands in Section five hereinbefore described as belonging to the Union Stock Yard and Transit Company; that for the purpose of inducing the establishment of manufacturing and slaughtering establishments on said premises the said Porter, Sykes and Tracy subdivided the said premises into blocks and streets and alleys and recorded the plat of said subdivision in the Recorder's office of Cook County as a private subdivision called Packers Addition to Chicago, reserving the fee of the streets and alleys in said subdivision to themselves for the [fol. 1475] benefit of the owners and occupants of the blocks in said subdivision and for the construction of railroad tracks which would connect said property with the railway tracks of the said Union Stock Yard and Transit Company, and thereby with the railroad tracks of other railroad companies with which said Union Stock Yard and Transit Company's tracks might be connected.

Your orators further represent that at the period aforesaid Henry H. Walker, Briggs Swift, James D. Lehmer and Nathan Powell were the owners in fee of the southwest quarter of said Section five immediately adjoining on the south the lands of said Porter, Sykes and Tracy and immediately adjoining on the west the lands of said Union Stock Yard and Transit Company, and for the purpose of obtaining the benefit of any contracts existing between the said Porter, Sykes and Tracy and the Union Stock Yard and Transit Company, and of railroad connections and facilities as aforesaid which attached to the said lands of said Porter, Sykes and Tracy, the said Henry H. Walker, Briggs Swift, James D. Lehmer and Nathan Powell, as

parties of the second part, on the 5th day of March, 1869 entered into a contract with the said John F. Tracy, Martin L. Sykes and Henry H. Porter as parties of the first part, by which contract it was agreed as follows: "That whereas the said Tracy, Sykes and Porter are the owners of a large part of the south half, and the west fifteen acres of the northeast quarter of the northwest quarter of Section five, [fol. 1476] Town thirty-eight North, Range fourteen, East, and by virtue of such ownership, and by contract with the owners of the residue of the said premises, are fully and lawfully authorized to make the contract herein contained.

And Whereas, the said Henry H. Walker, Briggs Swift, James D. Lehmer and Nathan Powell are the owners of the southwest quarter of Section five in the same township and range, which said last mentioned tract adjoins the said first mentioned tract on the south:

And Whereas, said parties of the second part are desirous to secure for their said tract of land certain rights of ingress and egress, and the use of certain streets and alleys and railroad track now laid out, or which may be hereafter constructed over the said land of the parties of the first part, and the said parties of the first and second parts have for that purpose agreed with each other as follows:

Parties of the first part, in consideration of $12,000 and of the right to use in common with the parties of the first part and their assigns, the thirty foot alley to be constructed between the blocks five and six and the lands of the parties of the second part, do hereby grant, sell and convey to said parties of the second part, their heirs and assigns as an appurtenance to the said southwest quarter of Section five and passing with the same, the right to use for the purpose of ingress and egress to and from the said last named [fol. 1477] quarter section the street marked "private street" and the alleys marked "private alleys" and the private street or way marked "railroad track" on the plat of Packer's Addition in Book 166 of Maps, page 187, filed for record in the office of the Recorder of Deeds for Cook County, Illinois, on July 1st, 1868. Said parties of the first part agree to build so much of said railroad track in said Addition as is now platted but not yet built, and to lay out and construct half of the alley thirty feet in width on the

south line of Blocks five and six in said Addition, being the same alley, the use whereof is heretofore made a part of the consideration paid by said second party; parties of the first part also grant, sell and convey to parties of the second part the use for purposes of ingress and egress to and from said last named quarter section, the railroad track now built on the west and part of the south sides of said lands, being the same track now used by Nelson Morris.

It is further understood that the object of the said purchase by the parties of the second part of the rights and privileges hereinbefore mentioned is to procure a connection for their said premises by railroad tracks and streets with the Union Stock Yard's track and the street running east and west north of the Union Stock Yards' track and south of Egan Ave., and as other railroad tracks and streets connecting the same may be built by the party of the first part; that this agreement covers the right for said parties [fol. 1478] of the second part without further payment to parties of the first part, or their assigns, to make connections with the same whenever the said streets or railroad tracks may be extended by parties of the first part to the north line of said lands of said parties of the second part with the right of passage over such streets and railroad tracks in the same manner as this agreement, as hereinbefore expressed, now gives them the same rights on all streets, railroad tracks and alleys now built. But nevertheless reserving to parties of first part the right themselves to use, and the right to grant to any other person or persons, in their discretion, in common with parties of the second part and their assigns, the use of said private streets, alleys and railroad tracks and to both of the said parties hereto the right to grant to any other person or persons, in their discretion, owning any portion of the said premises hereinabove described, a like privilege in common with the said parties of the first and second parts to use said private streets, alleys and railroad tracks, and provided further it is the intent and purpose of this agreement in good faith to give to parties of the second part without further payment to parties of the first part or their assigns, the right to connect with and use any such streets, alleys or railroads which the said parties of the first part might thereafter

construct through their said premises to the lands of said parties of the second part".

[fol. 1479] Your orators further represent unto your Honors that afterwards and on the 26th day of November, 1875, the said Union Stock Yard and Transit Company desiring to obtain further privileges for railroad tracks in said north west quarter of Section five belonging to Porter, Sykes and Tracy, as aforesaid, than it then enjoyed, and to secure the control and operation of the railroad tracks therein, made, entered into and executed a certain contract and deed with the said Porter, Sykes and Tracy in and by which the said Porter, Sykes and Tracy, parties of the first part, conveyed to said Union Stock Yard and Transit Company, party of the second part, (which deed was dated November 26th, 1875, and recorded February 11th, 1876, in Book 563, page 142 of Cook County Records), certain lands and premises in said deed described and being a part of the northwest quarter of Section five aforesaid, subject to certain conditions and covenants to be observed, kept and maintained by said Union Stock Yard and Transit Company. Among other covenants in said deed assumed by said Union Stock Yard and Transit Company were the following: "The said parties of the first part made and concluded an agreement in writing bearing date March 5th, 1869 (being the contract hereinbefore referred to) with one Henry H. Walker and others, giving to them certain rights of passage over the private streets and alleys on the premises of the first party hereinbefore described, to which agreement reference is hereby made for more certainty herein. It is [fol. 1480] expressly understood and agreed by and between the parties hereto, in consideration as aforesaid, that this agreement in all its parts, is made subject to such legal rights and interests in said premises as the aforesaid agreement made with said Walker and others shall confer upon the parties thereto, and which shall be held to be in force by virtue thereof, and binding upon the parties of the first part hereto on the day of the execution and delivery hereof. The said second party for and in consideration of the covenants and agreements herein contained on the part of the second party to be performed, and in consideration of one dollar, covenants and agrees to and with said first party as follows:

That it will during its corporate existence maintain and operate and permit other persons and corporations to operate in the same manner and under the same conditions as the same are now operated the railroad tracks across the east twenty-five acres of the said northeast quarter of the northwest quarter of said Section five hereinbefore more particularly described as the same are now constructed and located, so as to at all times give the railroad tracks now and hereafter to be laid on the premises of first party as hereinbefore described good and sufficient railroad connections with the other tracks of said second party upon the premises herein first above conveyed and with its other tracks connecting with the general railroad tracks in use in said Cook County:

[fol. 1481] The said second party further covenants and agrees that it will at all times during its corporate existence maintain the said railroad tracks in good condition for all the business that may be required to be done over them at its own proper charge and cost, that it will permit at all times during the continuance of this agreement to first parties, or either of them, and to any or all persons or corporations to whom said parties and their grantor have heretofore, or to whom they may hereafter convey, whether by lease or fee, any portion of the premises hereinbefore particularly described, free access to and free use of all or any of the tracks heretofore or that may hereafter be laid upon any of such premises (not for standing, but for the passage of cars and wagons) for the transportation of any lawful business, for which such parties, persons or corporations require such use.

It is expressly understood and agreed by and between the parties hereto that the several conveyances, covenants and agreements herein contained on the part of each of the parties hereto to be performed, shall extend to, bind and are for the benefit of as well the parties hereto as the successors of the second party, and the assigns of second party, and the assigns or grantees of first party, or their predecessors whether now owning or occupying any portion of the premises hereinbefore described, or who shall hereafter [fol. 1482] become owners or occupants of any portion of

said premises, whether mediately or immediately from said first party.

That the right of access to said railroad tracks, and the rights to the use of such tracks as hereinbefore stated for all business purposes shall be and remain an appurtenance to each and every lot and block, and to all the said premises hereinbefore described, and that all said covenants and agreements shall be taken and held to be covenants running with the land to all persons or corporations now owning or who may become owners thereof in any manner whatsoever".

Your orators further represent unto your Honors that afterwards and on or about the 12th day of October, A. D. 1878, the said Union Stock Yard and Transit Company, desiring to secure certain additional rights of way and privileges across the southwest quarter of said Section five for its said railway, entered into an agreement in writing, recorded in the Recorder's office of Cook County, Illinois, in Book 848, page 154, with James D. Lehmer, who was then the owner thereof, by which the said James D. Lehmer conveyed to the said Union Stock Yard and Transit Company certain lands and premises in said deed described, and being a portion of said southwest quarter of Section five, and upon which portion of land so conveyed the said Union Stock Yard and Transit Company has constructed and is now operating a portion of its said railway; in and by which contract it was expressly covenanted that said right of way should be subject to the right of use in common with and by [fol. 1483] the other owners and occupants of property in said subdivision, said James D. Lehmer, and others now or hereafter entitled thereto under him or otherwise, of all streets and alleys including railroad streets, right of way and tracks laid down on the map or plat of said subdivision. And the said Union Stock Yard and Transit Company in said agreement specially covenanted and agreed with said James D. Lehmer, his heirs and assigns, to extend a double track, when required so to do by him or them, along said right of way thereby conveyed and also between blocks eleven and twelve in Lehmer's subdivision of a portion of said southwest quarter of Section five, to 47th Street; also that the owners and occupants of property in said southwest

quarter of Section five should severally and at all times have the right to make railway connections for business purposes with any track or tracks owned or operated by said company, which should include the right to have switches at every half-block on each side of such track or tracks, as said company might own or operate upon or over said land.

Your orators further represent unto your Honors that afterwards and on the 13th day of September, A.D. 1889 the said Union Stock Yard and Transit Company, desiring to obtain certain further rights of way and privileges for its railway in and upon said southwest quarter of Section five, made a further contract and agreement in writing, recorded in the Recorder's office of Cook County, Illinois in [fol. 1484] book No. 2714 at page 247, with James D. Lehmer who was then the owner of said above described property in and by which the said James D. Lehmer conveyed to the said Union Stock Yard and Transit Company certain premises in said deed described to be used only for the purposes of railway tracks and right of way, and upon the express covenants and agreements that said right of way should be used by said Union Stock Yard and Transit Company in common with and by the other owners and occupants of property in said southwest quarter of Section five, said James D. Lehmer and others now or hereafter entitled thereto under him or otherwise, and subject to the rights of the owners and occupants of property in said southwest quarter of said Section five and others now or hereafter entitled thereto under said James D. Lehmer or otherwise, to make railroad connections for business purposes with any track or tracks situated on either of said tracts of land in said deed conveyed and owned or operated by the said Union Stock Yard and Transit Company, which should also include the right of said owners and occupants to have a switch at every block on each side of the track or tracks owned and operated over said premises by said Union Stock Yard and Transit Company, and also the right of use in common with and by the owners and occupants of property in said Lehmer's subdivision now or hereafter entitled thereto, of all streets and alleys including the railroad streets, right of way and tracks laid down on the map or plat of the subdivision of said land.

[fol. 1485] Your orators further represent unto your

Honors that because of the inducements held out by the owners of the west half of Section five aforesaid, by reason of the establishment of railroad tracks and connections and convenient access thereby to all the railroads centering in the City of Chicago and because of the premises and covenants contained in said contracts as aforesaid, between the said owners of the said west half of Section five and the Union Stock Yard and Transit Company as aforesaid, your orators as well as others, were induced to locate their business in the west half of said Section five; that in the course of their business they have constructed a large number of valuable buildings for the purpose of slaughtering and preparing for market cattle, sheep and hogs and for the several industries connected therewith. That in the construction of said buildings and the machinery and appurtenances connected therewith they have expended more than three millions of dollars. That all of said buildings so constructed have been connected by railroad tracks and switches with the main and other tracks of the Union Stock Yard and Transit Company in accordance with said agreements, and the said Union Stock Yard and Transit Company without objection, since the establishment of said business to the present time has received from and delivered to your orators at their several buildings, slaughtering houses and places of business loaded and empty cars, freights and property necessary to the successful prosecution of their said business.

[fol. 1486] Your orators further state that they received and slaughtered in the prosecution of their business at said Union Stock Yards at their several slaughtering houses built on the west half of Section five aforesaid, during the year 1890 nearly three-quarters of a million head of cattle, nearly five hundred thousand sheep and nearly two million head of hogs.

Your orators further represent that up to the present time all of the live stock required by them in the carrying on of their business that has been purchased by your orators at other points than Chicago, has been received by them in the yards of the Union Stock Yard and Transit Company, for the reason that your orators had no other convenient place at which to receive such live stock, and the several railroad companies bringing such live stock to your orators

had provided no convenient yard or place for the delivery thereof other than in the yards of the Union Stock Yard and Transit Company.

Your orators further aver that Swift and Company, a corporation, and Nelson Morris & Co., a copartnership, doing business in said City of Chicago are engaged in similar business to your orators and have slaughtering and packing establishments located near your orators, on the west half of Section five aforesaid, and that your orators in connection with said Swift and Company and Nelson Morris & Co., for the purpose of providing a suitable place for the receipt and delivery of their own live stock which [fol. 1487] might be purchased by them at points outside of the City of Chicago, purchased from said James D. Lehmer at a large expenditure of money the following described real estate, to wit: all that part of the north west quarter of the southwest quarter of Section five in Township thirty-eight, North, Range fourteen, East of the Third Principal Meridian in the County of Cook and State of Illinois, bounded and described as follows, to wit:

Commencing at a point thirty (30) feet south and three hundred sixty-eight and one-third (368 1/3) feet west of the northeast corner of the northwest quarter of said Section five (5), thence south parallel with the east line of said tract six hundred and three-tenths (600 3/10) feet, thence west parallel with the north line of said tract two hundred sixty-two and four-tenths (262 4/10) feet, thence north parallel with the east line of said tract six hundred and three-tenths (600 3/10) feet, thence east parallel with the north line of said tract two hundred sixty-two and four tenths (262 4/10) feet to the place of beginning, being a part of the real estate described in the contracts hereinbefore recited; together with and subject to the right of use in common with and by the other owners and occupants of property in said northwest quarter of the southwest quarter of Section five (5) aforesaid, said James D. Lehmer and any others now or hereafter entitled thereto under him or otherwise, of all streets and alleys which may hereafter be laid [fol. 1488] out through said northwest quarter of the southwest quarter of Section five (5), including railroad streets.

Also, with the right of use in common with the parties

aforesaid, the Union Stock Yard and Transit Company and any others entitled thereto of any right or rights of way and other rights and privileges, which may attach to the land aforesaid or which the said James D. Lehmer may have in common with others under a certain deed between John F. Tracy and others of the one part and said James D. Lehmer and others of the other part, dated March 5, 1869 and recorded in the Recorder's office of said Cook County on March 30, 1869 in Book 508, page 69; together with all the rights and privileges to make railroad connections for business purposes with the railroad tracks of the Union Stock Yard and Transit Company and all other privileges, so far as they may appertain to said premises, reserved by the said James D. Lehmer in his certain deed conveying to the Union Stock Yard and Transit Company of Chicago certain premises in the southwest quarter of Section five (5) aforesaid, dated September 13, 1889 and recorded in the Recorder's office of said Cook County on September 13th, 1889, in Book 2714, page 247; and that the said premises have been conveyed by the said James D. Lehmer and wife by mesne conveyances, to Albert H. Veeder and Edward J. Martyn as trustees for your orators and the said Swift and Company and Nelson Morris & Co. for their joint use.

Your orators further state that said premises last de- [fol. 1489] scribed are a portion of the northwest quarter of the southwest quarter of said Section five and are a part of the premises entitled to the privileges reserved by the contracts between Porter, Sykes and Tracy and Lehmer, Walker, Swift and Powell and between Porter, Sykes and Tracy and the Union Stock Yard and Transit Company and the two contracts between James D. Lehmer and the Union Stock Yard and Transit Company, all which have been hereinbefore set out and referred to.

Your orators further represent that the said premises are immediately south of and adjacent to Forty-third Street and north of and adjacent to Forty-fourth Street; that the main tracks of the Union Stock Yard and Transit Company pass these premises on both the north and the south sides thereof, and that at the time of the purchase of the said premises by Veeder and Martyn in trust as aforesaid, the same were connected by suitable frogs and switches with both of said named tracks of the Union Stock Yard and

Transit Company and were so connected by the Union Stock Yard and Transit Company for the said James D. Lehmer in accordance with the contracts and agreements hereinbefore set out.

Your orators further state that the said premises have been converted by them in conjunction with the said Swift and Company and Nelson Morris & Co., into cattle yards and pens, with suitable and convenient unloading tracks and chutes and are connected as aforesaid with the main tracks of the Union Stock Yard and Transit Company and are as [fol. 1490] convenient to the Union Stock Yard and Transit Company in all respects for the delivery and unloading of cars of livestock as are the premises of the Union Stock Yard and Transit Company located on the east half of Section five as aforesaid.

And your orators state that they have connected the said premises by means of a viaduct with their slaughtering establishments and that the said premises are more convenient for them in the receipt of their live stock than are the premises of the Union Stock Yard and Transit Company. That your orators are able to prosecute their slaughtering and packing business with greater convenience and economy if their live stock purchased at points outside of the City of Chicago is delivered to them on said premises, than if it is delivered in the yards of the Union Stock Yard and Transit Company. And your orators say that they have no other yard or place belonging to them or under their control where their live stock necessary to the prosecution of their business, can be delivered.

Your orators further state unto your Honors that for convenience in making consignments of live stock to said premises they have designated said premises "The Central Stock Yards located at the corner of Justine and 43rd Streets", and the same are designed to the sole and exclusive use of the owners thereof, to wit: your orators, Swift and Company and Nelson Morris & Co. for the receipt of their own cattle bought by them at points outside of Chicago and transported to said premises for the purpose of being [fol. 1491] slaughtered at their said slaughtering and packing establishments.

Your orators further represent that ever since the establishment of the various industries aforesaid of your orators

on the west half of said Section 5 and for many years last past the various railroad companies entering the City of Chicago and connecting with said Union Stock Yard and Transit Company's railway have received from and delivered to you orators at their said various establishments freight of all kinds and descriptions except live stock, in cars, without breaking bulk, over the tracks of the Union Stock Yard and Transit Company and the switches connecting the same with the private tracks of your orators, the Union Stock Yard and Transit Company preferring that the several railroads should thus deliver their freight over their tracks instead of themselves furnishing the motive power therefor, and to such an extent that during the year 1890 more than 15,000 cars of freight were received by your orators at their said place of business or shipped therefrom by your orators over the tracks of the Union Stock Yard and Transit Company and the various railroads connecting therewith; that the Union Stock Yard and Transit Company has not provided itself with motive power and has never undertaken to furnish motive power for the transportation of such freight. And your orators state that all the live stock which they have slaughtered at said establishments has up to the present time been delivered to them in the yards of the Union Stock Yard and Transit Company for [fol. 1492] the reason that your orators had not, up to the time of the Commission of the grievances hereinafter stated any other suitable or convenient place for the receipt of such live stock, and because the several railroad companies bringing such live stock into the City of Chicago had provided no suitable or convenient place for unloading or delivering the same to your orators.

Your orators further represent unto your Honors that from and after the construction of said yards and pens of your orators known and designated as the Central Stock Yards it was the duty of the said Union Stock Yard and Transit Company under the contracts hereinbefore recited and re-referred to, and under the statutes in such case made and provided, as well as under its special charter, to receive all freights consigned to your orators at said Central Yards at the point of connection with any and all railroads with the tracks of said Union Stock Yard and Transit Company leading to and connecting the premises of your orators with

the main or other tracks of said connecting railroad companies, or to permit said other railroad companies to use the tracks of said Union Stock Yard and Transit Company for the delivery of such freight so consigned to your orators. Yet your orators charge the fact to be that notwithstanding the covenants of said Union Stock Yard and Transit Company hereinbefore receited and its duty to your orators thereunder, as well as its duty under its charter and the law [fol. 1493] affecting railroad corporations and common carriers, it has wrongfully refused and continues to refuse to receive from any and all railroads making such connections and any and all shipments of live stock or live freight consigned to your orators for delivery at said Central Yards, to the great damage and injury of your orators.

Your orators further state unto your Honors that on the 25th day of April, 1891, your orators delivered to the Chicago, Milwaukee and St. Paul Railway Company at Kansas City, Missouri, to be delivered to your orators on their said premises described as the Central Stock Yards, corner of Justine and 43rd Streets in the City of Chicago, ten cars containing 160 cattle; that said cars of cattle were transported by said Railroad Company from said Kansas City in the State of Missouri to the Junction of said Chicago, Milwaukee and St. Paul Railway Company, with the line of the Chicago St. Louis and Pittsburgh Railroad and over the tracks of the last named company to its junction with the railway tracks of the said Union Stock Yard and Transit Company in said Cook County; that at said last named junction of said railway tracks the parties in charge of said cars were met by the officers and servants of the Union Stock Yard and Transit Company, and were forbidden to move said cars onto the tracks of said Union Stock Yard and Transit Company, and the said Union Stock Yard and Transit Company refused to permit the said ten cars of the Chicago, Milwaukee and St. Paul Railway Company so loaded with cattle to enter upon the tracks of said Union Stock Yard and Transit Company or to pass over the same, or to use the same for the delivery of such freight so consigned as aforesaid to your orators upon their premises [fol. 1494] known as the Central Stock Yards.

Your orators further represent unto your Honors that in the prosecution of their business upon their said premises

large shipments of cattle and other live stock purchased outside of the City of Chicago and also at points beyond the State of Illinois are being consigned to your orators for delivery upon said premises known as the Central Stock Yards. That your orators are the owners of a large number of cattle at different points upon the lines of railroads leading to the City of Chicago and connecting with said tracks of said Union Stock Yard and Transit Company which your orators intend to have conveyed and transported to them and delivered upon said premises; but your orators charge that said Union Stock Yard and Transit Company wrongfully and wilfully refuses to receive any of said cattle or other live stock consigned to your orators to be delivered upon said premises as aforesaid, or to permit the same to be transported over its said tracks connecting with said premises, and has given notice to all connecting railroad companies that it will not hereafter receive any live stock consigned to any yards owned by your orators in Chicago, and that the stock so consigned will not be permitted to be hauled over the tracks of said company; and further charge that such stock cannot be delivered to your orators upon their said premises by any railway line or lines other than those controlled and operated by the said Union Stock Yard and Transit Company.

[fol. 1495] Your orators aver that they are ready and willing to pay all reasonable and lawful charges for the transportation of said freight or for its delivery to your orators upon their said premises, but as your orators are informed and believe the said Union Stock Yard and Transit Company has given out and notified all connecting railroads that no freight so consigned will be allowed to pass over its said tracks or be delivered to your orators upon their said premises, nor can any delivery be made of such freight except as heretofore made upon and through the premises and yards of the said Union Stock Yard and Transit Company, said last named company insisting that it has the legal right to force or compel your orators to cause all shipments of live stock so consigned to your orators for delivery upon their said premises to be delivered at the yards or upon the premises of the said Union Stock Yard and Transit Company, and also claim the right to make and compel the payment of so-called yardage charges

for all live stock so owned by or consigned to your orators for delivery upon its said premises, of 25 cents per head for cattle, 6 cents per head for sheep and 8 cents per head for hogs, and 15 cents per head for calves, which said charge is made as a charge in favor of said Union Stock Yard and Transit Company and in addition to the freights charged for the transportation of said live stock.

Your orators further show ~~unto~~ your Honors as before stated that there are no tracks over which deliveries can be [fol. 1496] made to their said premises, of cattle purchased outside of the City of Chicago and consigned to your orators at their said place of business, except the tracks of the said Union Stock Yard and Transit Company; that unless the cattle so purchased outside the City of Chicago can be shipped to your orators over the said tracks of the Union Stock Yard and Transit Company and delivered to your orators at their said Central Yards, their business will be irreparably injured; that there is no basis upon which the damages resulting to your orators from the acts and doings of said Union Stock Yard and Transit Company above recited, can be estimated, and that your orators' legal remedies in the premises are wholly inadequate.

[fol. 1497] Forasmuch therefore as your orators are without remedy in the premises except in a court of equity where such matters are properly cognizable and relievable, and to the end that the said Union Stock Yard and Transit Company of Chicago, which is made party defendant to this bill of complaint, may be required to make full and direct answer to the same (but not under oath, its answer under oath being hereby expressly waived), and that the said defendant, the Union Stock Yard and Transit Company of Chicago may be restrained by the order of this Honorable Court from interfering with any railroad or transportation company having made connections with the tracks of said Union Stock Yard and Transit Company, as hereinbefore charged, that desires to deliver live stock to your orator upon the premises above described, and known as the Central Stock Yards, and from refusing to permit the use of its track or tracks to any Railroad Company so desiring or attempting to deliver live stock to your orators at their said yards, and from refusing to permit the use of its railway tracks to any such railway company for the purpose

of delivering live stock to your orators at said Central Stock Yards, and that the said Union Stock Yard and Transit Company may be compelled by order of this Honorable Court to receive from any connecting railroad company desiring to make such delivery cars of live stock consigned to your orators at said Central Stock Yards, and to transport the same over its railway tracks to such Central Stock Yards, or in default thereof that it be compelled to permit [fol. 1498] the use of its said railway tracks to any connecting railroad over which to transport cars of live stock consigned to your orators at such Central Stock Yards from such connecting road, and that your orators may have such other, further and different relief as to your Honors may seem meet.

May it please your Honors to grant the writ of summons in Chancery, directed to the Sheriff of the County of Cook and State of Illinois, commanding him that he summon the defendant, the Union Stock Yard and Transit Company of Chicago to be and appear before said court on the first day of the next term thereof to be held at the Court House in the City of Chicago, County of Cook aforesaid, then and there to answer this bill, etc.

And may it please your Honors to grant unto your orators the People's Writ of Injunction to be directed to the said defendant the Union Stock Yard and Transit Company of Chicago, restraining and commanding it, its agents, employes and attorneys in manner and form as aforesaid.

And your orators will ever pray, etc.

Philip D. Armour, Jonathan O. Armour, Philip D. Armour, Jr., by Geo. H. Webster.

Campbell & Custer, Albert H. Feeder, E. Walker, Solicitors and of Counsel.

[fol. 1499] State of Illinois,
Cook County, ss:

Edward J. Martyn, being first duly sworn, doth depose and say that he is in the employment of and is agent for the firm of Armour & Co., the complainants in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof and that the

matters and things therein contained are true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to them he believes it to be true.

Affiant further says that he believes that serious and irreparable damage will result to the business of said Armour & Co. unless an injunction is speedily granted herein as prayed for in said bill.

Edward J. Martyn.

Subscribed and sworn to before me this 30th day of April A. D. 1891. John M. Cameron, Notary Public.

[fol. 1500] General Number 861. Term No. 4420

State of Illinois,
County of Cook, ss:

Circuit Court of Cook County

In Chancery

Nelson Morris, et al., Complainants,

vs.

The Union Stock Yard & Transit Company, Defendant

Answer

Herrick & Allen, Winston & Meagher, Defendant's Solicitors.
W. C. Goudy, of Counsel.

Filed May 22, 1891. Henry Best, Clerk

[fol. 1501] The Answer of the Defendant, Union Stock Yard & Transit Company, to the Bill of Complaint of the Above Named Complainant

This defendant, The Union Stock Yard and Transit Company, now and at all times hereafter, reserving to itself all benefit and advantage of exception or otherwise than can

or may be had, to the many errors and uncertainties in the said bill contained, for answer thereto, or to so much thereof as it is advised it is material for it to answer, answering says:

That it admits that this defendant is a corporation incorporated by special act of the General Assembly of the State of Illinois, approved and in force February 13, 1865. That section 1, of said charter conferred on said corporation the general powers of succession, the right to sue, etc. That section 2 provided as follows: "That said company shall [fol. 1502] have power to locate, construct and maintain, upon the land purchased for such purpose, in convenient proximity to the southerly limits of the city of Chicago, and west of Wallace street, as the same would be extended in a straight line south from said city limits, all the necessary yards, inclosures, buildings, structures, and railway lines, tracks, switches and turn-outs, aqueducts, for the reception, safe-keeping, feeding and watering, and for the weighing, delivery and transfer of cattle and live-stock of every description * * * and for the accommodation of the business of a general union stock yard for cattle and live-stock, including the erection and establishment of one or more hotel buildings, and the right to use the same, if deemed expedient, for the convenience of drovers, dealers and the public doing business at the said yards," etc. That by said section 2 this defendant was also authorized to make advances of money upon such cattle and live-stock, for freight and other purposes, and to make and require to be paid "such reasonable charges as may be deemed just and proper" for "such care, subsistence and handling," etc., and to lease the hotel building "so erected for the accommodation of those drawn together by the business of such yards," and "if the same shall be kept and managed by said company, shall have power to fix and require to be paid, such reasonable charges for the accommodation afforded by said house or houses, as shall be just and proper." Section 3 of said charter provided as follows: "The said company shall construct a railway, with one or more tracks, as may be expedient, from the grounds which may be [fol. 1503] selected for its said yards, so as to connect, outside of the city of Chicago, the same with the tracks of all the railroads which terminate in Chicago, the lines of

which enter the city on the south between the lake shore and the south-west corner of said city, and on the west between said last named point and the north line of section number nineteen (19), township number thirty-nine (39) north, range fourteen (14) east of third principal meridian, and shall have the right and power to make such connections with such suitable side-tracks, switches and connections as to enable all of the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards, and may make such arrangements or contracts with such railroad companies, or either of them, for the use of any part or portion of the track or tracks of such company or companies, which now is or hereafter may be constructed, for the purposes aforesaid, as may be agreed upon between the parties; and shall have power and authority to locate, and, from time to time, renovate, change, alter, construct and reconstruct, and fully to finish and maintain its said railroad or roads, side tracks and connections, and to transport and allow to be transported thereon between said railroads and cattle yards, all cattle and live-stock and persons accompanying the same, to and from said yards, and may also transport or allow to be transported between the railroads entering said city, and so connected by the road or roads hereby authorized, by steam or other power, freight and property of every kind, as well as stock and cattle, and may fix and establish, [fol. 1504] take and receive such rates of toll for all freight and property so transported between said several railroads as the directors shall, from time to time, establish." That, by its said charter, this defendant also had power and authority to receive, take and hold all such voluntary grants and donations of land and real estate as might be made to it for the purposes aforesaid, and all lands and easements necessary for its right of way, and also the right and power of acquiring all lands necessary for such right of way under the power of eminent domain in the manner provided in said act. And, for greater certainty as to the powers conferred by said charter and the several provisions thereof, this defendant refers to said act as printed and published and declared to be a public act.

This defendant, further answering, says that it admits that the corporators named in said act duly organized said

corporation by the election of a board of directors and other proper officers, and that from and after its said organization, and until the present time, this defendant has been and is a corporation duly organized under said act. But this defendant denies that it has been or is a corporation exercising the powers of railroad corporations, or that it has been or is a common carrier, or that it has been or is exercising any powers other than those conferred by its said charter, and in the manner hereinafter set forth.

This defendant, further answering, admits that, for the purpose of carrying out the objects for which it was organized, and in pursuance of the power conferred by said section 2 of its charter, this defendant, shortly after its incorporation, and in the year 1865 became the owner of [fol. 1505] the east half of section five, and the east twenty-five acres of the north-east quarter of the north-west quarter of said section five, in township thirty-eight north, range fourteen east of the third principal meridian, in said Cook county, and thereupon located, on the land so acquired, its stock-yards, including all the necessary inclosures, buildings, structures, tracks, switches and turnouts, for the reception, safe keeping, feeding and watering, and for the weighing, delivering and transfer of live-stock of every description, and for the accommodation of the business of a general union stock-yards for cattle and live-stock, and also erected thereon a hotel building for the convenience of drovers, dealers and the public doing business at said yards. That, after it had acquired said land and located said yards, this defendant, in pursuance of the power conferred by said section 3, constructed a railway, from the grounds so selected for its said yards, so as to connect (outside of the city of Chicago) the said yards with the tracks of all the railroads which terminated in Chicago, the lines of which entered the city within the territory designated by said section 3, and also made such connections, with such suitable side tracks and switches as to enable all of the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards.

This defendant, further answering, admits that, at the time this defendant established its said yards on said east half of said section *section* five and said east twenty-five

acres of said north-east quarter of the north-west quarter of said section five, John F. Tracy, Martin L. Sykes, Junior, [fol. 1506] and Henry H. Porter were the owners in fee of a large part of the south half of the north-west quarter of said section five, and the west fifteen acres of the north-east quarter of said northwest quarter of said section, and that said premises last described were then vacant and unoccupied and immediately adjoined on the west the said lands in said section five acquired by this defendant and on which said stock-yards had been so located and established.

This defendant further answering says, that the said land of the said Tracy, Sykes and Porter, by reason of the fact that it immediately adjoined this defendant's said yards, was specially adapted for the location thereon of slaughtering houses and packing establishments engaged in the business of slaughtering and packing the cattle, hogs and other live-stock received at this defendant's said yards. That, to promote the sale of said land for such slaughtering houses and packing establishments the said Tracy, Sykes and Porter, by a plat duly recorded on the 1st day of July, 1868, subdivided into blocks, lots, streets and alleys, that part of said land immediately west of and adjoining this defendant's said yards, being the east twenty-seven acres of said south half of said north-west quarter. That said subdivision was designated on said plat as "Packer's Addition to Chicago." That, for the purpose of affording convenient and adequate approaches to this defendant's said stock yards, and the necessary ingress and egress to and from said proposed slaughtering and packing establishments, certain streets and alleys, connecting all the blocks and lots in said subdivision [fol. 1507] with said stock-yards, and marked, respectively, "Private Street" and "Private Alley," were shown on said plat; that said subdivision consisted of six blocks; that there was also shown on said plat a strip of land thirty-two feet wide and running north and south between said blocks, with a red line marked thereon which was intended to represent a proposed railroad track. That it was the intention of said Porter, Sykes and Tracy that a railroad track should be laid, where said red line was shown on said plat, so as to connect with this defend-

ant's said railroad tracks, for the purpose of having the product of the slaughtering houses and packing establishments, which might be located on said Packer's Addition, and the other dead freight incident to the same, transported over this defendant's tracks, to and from the several connecting roads. That, thereafter, in the year 1868 or 1869, tracks were laid on said subdivision, as shown on said plat, and connected with this defendant's tracks, and, about the same time, certain *al*sughtering houses and packing establishments were located on said subdivision. That, from the time said tracks were laid and in use up to the present time, the course of business as to the use of this defendant's tracks and the said tracks connecting therewith, has been uniform. That this defendant has never owned or operated any cars or engines except one engine and six flat cars used exclusively for the construction and repair of its tracks. That, by mutual arrangements with the several connecting roads, this defendant has allowed to be hauled over its tracks cars loaded with live-stock to be delivered and unloaded at its said yards. That on all such live stock it has col- [fol. 1508] lected and received its customary charges for feeding and yardage, and has made no trackage charges to the railroad companies delivering the same. That this defendant, by like mutual arrangements, has allowed cars loaded with live-stock in transit and consigned to points beyond Chicago to be transferred over its tracks from one connecting road to another, charging and collecting from the several railroad companies a trackage charge per car for the use of its tracks. That the live-stock to be slaughtered at said slaughtering houses and packing establishments located on said subdivision and the other slaughtering houses and packing establishments in the vicinity of said yards, has been thus delivered by the connecting roads and unloaded at this defendant's said yards. That said slaughtering houses and packing establishments have been connected with said yards by runways and viaducts over which the said live stock, after having been unloaded into pens and fed and watered, has been driven from this defendant's yards to the several slaughtering houses and packing establishments. That, by like mutual arrangements with the connecting roads, this

defendant has allowed to be transported over its tracks cars loaded with the product of said slaughtering houses and packing establishments, and other dead freight, consigned to and from said slaughtering houses and packing establishments. That this defendant has charged to the several railroad companies for the use of its tracks by the cars of dead freight so allowed to be hauled over them a certain charge per car for the use of its tracks. And that this defendant has, at no time, transported, or allowed to be transported, over any of the tracks owned or controlled [fol. 1509] by it, any live-stock except the live-stock so to be delivered and unloaded at its yards, and said live-stock in transit, so transferred over its tracks from one connecting road to another. This defendant, further answering, says that said entire Packer's Addition has long since been occupied by slaughtering houses and packing establishments, and that, in like manner, the said Tracy, Sykes and Porter, and their grantees, have made other like subdivisions of said land owned by them. That said additional subdivisions are known respectively as Packer's Second, Packer's Third, Packer's Fourth and Packer's Fifth Additions, and, with said Packer's First Addition, cover said entire south half of the north-west quarter of said section five and said west fifteen acres of the north-east quarter of said north-west quarter. That on the plats of said several subdivisions like streets and alleys and railroad tracks have been shown, as on said plat of said Packer's Addition. That said streets, alleys and railroad tracks have been laid out so as to form continuations of the streets, alleys and railroad tracks shown on said Packer's Addition, and to connect, in like manner, with this defendant's said stock-yards and tracks; and that the greater part of all of said subdivisions is now occupied by slaughtering houses and packing establishments. That there are no other industries located on said subdivisions, except the Northwestern and Thompson & Edwards Fertilizing Works, which manufacture fertilizers from the refuse of said slaughtering houses and packing establishments; and that the uniform course of business as to all of said slaughtering houses and packing estab- [fol. 1510] lishments has been the same as that hereinbefore set forth.

This defendant, further answering, admits that prior to the fifth day of March 1869, Henry H. Walker, Briggs Swift, James D. Lehmer and Nathan Powell were the owners in fee of the south-west quarter of said section five, immediately adjoining on the south the lands of said Porter, Sykes and Tracy, and immediately adjoining on the west the yards of this defendant; and that, on said fifth day of March, 1869, said Walker, Swift, Lehmer and Powell, as parties of the second part, entered into a contract with said Tracy, Sykes and Porter, as parties of the first part, and that said contract is copied in part, but inaccurately, in said bill. And this defendant, for greater certainty as to the terms of said contract, refers to the original, or a copy thereof, to be produced on the hearing of this cause. This defendant denies that said contract was made for the purpose of obtaining the benefit of any contracts between said Porter, Sykes and Tracy and this defendant, or that there were any such contracts between said Porter, Sykes and Tracy and this defendant. This defendant further says that the purpose of said contract, as shown by the terms thereof, was to grant to said Walker, Swift, Lehmer and Powell, and their grantees, as an appurtenance to said south-west quarter of said section five, the right to use, in common with the said Porter, Sykes and Tracy, and their grantees, the said private streets and alleys on the plat of said Packer's Addition, and thereby obtain the benefit of any connections with the stock-yards and railroad tracks of this defendant afforded by said streets and alleys. And this defendant denies [fol. 151f] that by said contract said Walker and others acquired any right or interest in this defendant's railroad, or any right or interest material to the subject-matter of said bill.

This defendant, further answering, says that, after the making of said last mentioned contract by a plat recorded on the 20th day of September, 1870, Samuel J. Walker as the owner, platted and subdivided the north-east quarter of said south-west quarter of said section five, being the land immediately adjoining said Packer's Addition on the south and this defendant's yards on the west as "Packer's Subdivision." That, by a plat recorded on the first day of July, 1874, the said J. D. Lehmer, as the owner, platted

and subdivided the south-east quarter of said south-west quarter of said section five, being the land immediately adjoining said Packer's Subdivision on the south and this defendant's lands on the west as "J. D. Lehmer's Subdivision." That on said plats of said Packer's Subdivision and Lehmer's Subdivision were marked like private alleys and private streets as those shown on said plat of said Packer's Addition, and that the east and west streets and alleys were so laid out as to connect with this defendant's said yards on the east, and the north and south streets, so as to form continuations of the north and south streets in said Packer's Addition.

This defendant, further answering, says that said Packer's First, Second, Third, Fourth and Fifth Additions, Packer's Subdivision and Lehmer's Subdivision, in-
[fol. 1512] clude all of the west half of the south-west quarter, and all of the south half of the north-west quarter, and about fifteen acres of the north-east quarter of said north-west quarter of said section 5, and contain, in all, one hundred and seventy-five acres. That all but about twenty acres of said one hundred and seventy-five acres has been occupied and is now occupied by slaughtering houses and packing establishments and said Northwestern and Thompson & Edwards Fertilizing Works; and that the twenty acres not so occupied consists of certain lots and blocks, the most remote from this defendant's yards. And this defendant files herewith a map, showing this defendant's said yards and the several subdivisions, the slaughtering houses and packing establishments thereon and the said street and railroad connections marked "Exhibit A.," and prays that the same may be taken as part hereof.

This defendant, further answering, says that prior to the location and establishment of this defendant's said stock-yards, the land covered by said subdivisions was vacant and unoccupied prairie. That the occasion for the location of said slaughtering houses and packing establishments on said several subdivisions was the immediate proximity of said stock-yards. That there has been a continuous increase each year in the amount of live-stock received at this defendant's said yards over its said road.

That the total live-stock so received in the year 1866 (the first year said yards were in operation), was 393,007 cattle, 961,746 hogs, 207,987 sheep; that the total received in the year 1890 was 3,484,280 cattle, 175,025 calves, [fol. 1513] 7,663,820 hogs, and 2,182,667 sheep; and that the total so received in the twenty-five years (beginning with the year 1866 and ending with the year 1890) is 33,696,181 cattle, 726,217 calves, 115,038,471 hogs, and 16,243,867 sheep. That substantially all the said cattle, calves, hogs and sheep so received, except such as have been shipped to the east, have been slaughtered at said slaughtering houses and packing establishments in the immediate vicinity of said yards. That to connect said yards with said slaughtering houses and packing establishments, and to facilitate the delivery of the live-stock from the said yards to the said slaughtering houses and packing establishments, an extensive system of runways and viaducts leading from said yards to the several slaughtering houses and packing establishments has been constructed and enlarged from time to time with the growth of the business. That said runways and viaducts have been so constructed by mutual arrangements between this defendant and the owners of said several slaughtering houses and packing establishments—this defendant bearing part of the expense of constructing the same and said owners part. That, to promote said slaughtering and packing business, and, thereby, promote the growth of said yards, this defendant has cause- branch and switch tracks to be constructed from its main tracks so as to connect with the various slaughtering houses and packing establishments, for the purpose of allowing the immense product of such slaughtering houses and packing establishments, and the other dead freight occasioned by the [fol. 1514] business of said establishments, to be transported over its tracks to and from the various connecting roads under the mutual arrangements with other companies, hereinbefore set forth. That as the business has grown, this defendant has, from time to time, extended such branch and switch tracks acquiring the necessary additional rights of way for that purpose. That no live-stock has been transported or allowed to be transported over any of this defendant's tracks, except its main tracks

connecting the several roads with its said yards, and the side tracks in or immediately connected with said yards. That all of its other tracks, including the extensive system of branch and switch tracks connected with said slaughtering houses and packing establishments, have been used exclusively for the transportation of dead freight. That the tracks so laid down and used exclusively for dead freight are over fifty miles in length. And this defendant files herewith a map, showing the several tracks used exclusively for dead freight, and its main and other tracks, on which it has allowed live-stock to be transported as hereinbefore set forth, said runways and viaducts and slaughtering houses and packing establishments, and the yards of this defendant, marked "Exhibit B," and prays that the same may be taken as part hereof.

This defendant, further answering, admits that it owns or controls over one hundred and thirty miles of railroad track. And this defendant says that its main line of road, built to connect its said yards with the several connecting [fol. 1515] roads, is about eight miles in length; that the large part of said road consists of four main tracks, and that the total length of its said main tracks is about twenty-four miles. That, for the proper handling of the trains of live-stock delivered at its said yards and to afford standing room for empty cars, it has been necessary to construct a large number of sidings in and near said yards; that the total length of said sidings is about fifty-one miles. And that, in addition, this defendant has built the said branches and side tracks connected therewith, intended and used exclusively for dead freight, as hereinbefore set forth, and having a total length of about fifty miles, the location and extent of which are more particularly shown on said plat, marked "Exhibit B."

This defendant, further answering, says that, to meet the necessities and growth of the business of its said stock-yards, it has acquired additional lands and made extensive and valuable improvements from time to time, and, for that purpose, has expended large sums of money. That its said stock-yards and the premises used in connection therewith consist of four hundred and sixty acres of land. That it owns about one mile of river front, accessible to lake vessels, acquired for the purpose of its yards. That

on said land used for its stockyards are railway sidings, cattle yards and pens, to accommodate twenty-five thousand head of cattle, twelve thousand sheep and one hundred and sixty thousand hogs, brick stabling for two thousand [fol. 1516] horses, water-works, forty miles of water and drainage pipe, fifteen miles of macadamized streets, bank buildings, merchant's offices and a cattle exchange, a hotel with a capacity for five hundred guests, an extensive electric light plant which lights the yards, hotel, exchange, etc., a large warehouse, etc. That over one thousand persons are employed by this defendant in and about its said yards, and that, in addition, there are commission men and their employes, whose sole business is at said yards, to the number of over eight hundred and fifty.

This defendant, further answering, says that under mutual arrangements it has allowed the engines of the connecting railroads, to come upon its main tracks, with cars of live-stock for delivery therefrom at its yards, or for transfer to other roads, as hereinbefore set forth. That the dead freight business done over this defendant's tracks is of such a character, requiring the frequent switching and transfer of cars, and is so large in volume, that it became impracticable to permit the engines of all the different connecting roads to do the work, and that, for several years past, by mutual arrangements between this defendant and the connecting roads, the work of handling said dead freight has been done by particular engines employed exclusively in that work. That, on the 20th day of September, 1890, this defendant, as party of the first part, entered into an agreement in writing with the several connecting roads, as parties of the second part (a copy of which is attached hereto, marked "Exhibit C," and which this defendant [fol. 1517] prays may be taken as part hereof), whereby it was agreed that the said connecting roads should form an association for the sole purpose of receiving and delivering dead freight to and from the different industries located along this defendant's tracks; that this defendant should allow said connecting roads, acting through said association, its officers and servants, the right to enter upon and use its railway tracks and right of way for the purpose of receiving and delivering dead freight to and from all in-

dustries located along said tracks and rights of way, subject to such rules and regulations of this defendant as had been or might thereafter be made for the use of the tracks and rights of way of this defendant and the running of trains thereon. That, since the date of said agreement, all the dead freight transported over this defendant's tracks, has been so transported exclusively by the engines of said association, acting under the direction of its officers and agents, except through freight. That, with the growth of said slaughtering and packing business the volume of said dead-freight business has largely increased, particularly in the locality of said slaughtering houses and packing establishments. That the growth of said business has necessitated acquiring additional rights of way and laying additional tracks from time to time. That said grants to this defendant from said James D. Lehmer, dated respectively October 12, 1878, and September 13, 1889, and referred to in said bill, were procured for the purpose of additional right of way and furnishing increased facilities for the transaction of said dead-freight business. That, not- [fol. 1518] withstanding said additional rights of way and increased facilities, said tracks so used for said dead-freight business exclusively are even now inadequate for the same. That the said so-called Central Stock Yards mentioned in said bill can only be reached from the tracks of this defendant by passing over the said branch tracks, so used exclusively for dead freight, and, at a point where there are several switches, and where said tracks are in constant use, for the purpose of said dead-freight business. That if the volume of live-stock bought outside of Chicago by said three firms claiming the right of have their live-stock hauled over this defendant's tracks to said so-called Central Stock Yards, being said Armour Company and Swift & Company, and said complainants, or any considerable amount of live-stock, should be forced onto said tracks, so used for dead freight, the effect would be a blockade of the business done thereon and to practically destroy their use for the sole purpose for which they were intended and for which they have been heretofore used. That, in addition to this, the said contract between this defendant and said connecting roads being limited to dead freight, the switch-

ing association would not be authorized to handle the trains of live-stock, and the result would be that the engines of as many companies as there are connecting roads would come in over these tracks, and that this would necessarily result in so much confusion and delay as to render the successful use of the tracks by the switching association, for the pur-
[fol. 1519] pose for which they were intended, wholly impracticable.

This defendant, further answering, admits that on the 26th day of November, 1875, said Porter, Sykes and Tracy, and the then President and Secretary of this defendant, purporting to act in the name and on behalf of this defendant, executed a deed of that date, whereby the said Porter, Sykes and Tracy conveyed to this defendant certain lands and premises in said deed described and that portions of said deed are copied, with substantial correctness, in said bill. And this defendant, for greater certainty as to the land conveyed by and the terms and conditions of said deed, refers to the same, or a copy thereof, to be produced on the hearing of this cause. This defendant admits that, by the terms of said deed, the rights of way granted thereby, were conveyed to this defendant, subject to said prior grant from the said Porter, Sykes and Tracy to said Henry H. Walker and others, dated March 5, 1869, of the right to use in common said streets and alleys and the projected canal mentioned therein. But this defendant avers that the conditions and covenants of said deed of November 26, 1875, set out in said bill, are not material to the relief prayed therein: that neither said complainants nor those under whom they claim their alleged title to said premises, designated in their said bill as the Central Stock Yards, were parties to said deed, nor have any of the covenants of said deed inured to the benefit of said premises so described as the Central
[fol. 1520] Stock Yards, nor have said complainants, by reason of their alleged ownership in said so-called Central Stock Yards, any right or interest in any of the covenants of said deed. And this defendant denies that said complainants acquired or now have any right or interest under said deed of November 26, 1875, or that said deed is otherwise material to the subject matter of this suit, or the relief prayed in said complainants' bill.

This defendant, further answering, admits that on or about the 12th day of October, 1878, said James D. Lehmer and this defendant executed a certain deed of that date referred to in said bill. And this defendant says that by said deed said Lehmer conveyed to this defendant the right of way therein described through said Lehmer's subdivision of the south-east quarter of said south-west quarter of said section five, subject to and with the right of use, in common with and by the other owners and occupants of property in said Lehmer's Subdivision, of all streets and alleys, including the railroad street and track shown on the plat of said subdivision; and that by said deed this defendant agreed to extend a double track along said right of way in said Lehmer's Subdivision so granted, and also between blocks eleven and twelve in said Lehmer's Subdivison, and also to make no railroad connections with property on the south side of 47th Street until after said Lehmer should have sold all his property in said subdivision; and also that the owners and occupants of property in said Lehmer's Subdivision [fol. 1521] should severally have the right to make railroad connections with the tracks of this defendant over said Lehmer's Subdivision. And this defendant avers that it was expressly provided in said deed that "said right of way is hereby granted to said second party (this defendant) for the purpose of constructing and maintaining thereon by it, its successors and assigns, railroad tracks, which are to be maintained and operated so long as said second party, its successors and assigns, shall occupy its present grounds for stock-yard purposes. It is hereby mutually understood and agreed that whenever said second party (this defendant), its successors or assigns, shall abandon its said ground for stock-yard purposes, the use and rights hereby conveyed shall revert to said party of the first part, his heirs or assigns." And this defendant, for greater certainty as to the terms and conditions of said deed, refers to the same or a copy thereof, to be produced on the hearing of this cause. And this defendant denies that said complainants acquired or have any interest under said deed or the covenants thereof, or that, if they had any such interest, the said deed or any of its covenants have inured to the benefit of said premises in said north-west quarter of the south-west quar-

ter of said section five, designated in said bill as the Central Stock Yards, or are otherwise material to the subject-matter of this suit.

This defendant, further answering, admits that, on or about the 13th day of September, 1889, the said James D. [fol. 1522] Lehmer executed and delivered to this defendant a deed of conveyance, whereby said Lehmer conveyed to this defendant certain premises in said Lehmer's Subdivision, and also the right to use, for railway purposes, the west thirty feet of said subdivision and the east thirty feet of said north-west quarter of said south-west quarter of said section five, in common with and by the other owners and occupants of property in said subdivision and said north-west quarter, and subject to the right of the owners and occupants of property in said north-west quarter and said Lehmer's Subdivision, to make railroad connections, with any track or tracks situated on said thirty foot strip, owned or operated by this defendant, and which should include the right of said owners and occupants to have a switch at every block on each side of the track or tracks laid and operated on said thirty foot strip. And for greater certainty as to the terms and provisions of said deed, this defendant refers to the original, or a copy thereof, to be produced on the hearing of this cause. And this defendant denies that the said deed or any of the conditions thereof is or are material to the subject-matter of this suit, or to the relief prayed herein.

This defendant, further answering, admits that the complainants have located their business on the said west half of said section 5, and that, in the course of their business, they or their predecessors in business have constructed on said west half a large number of valuable buildings, for the [fol. 1523] purpose of slaughtering and preparing for market cattle, sheep and hogs, and for the several industries connected therewith; but whether said complainants have expended, in the construction of said buildings and machinery and appurtenances, the amount alleged in said bill this defendant is not informed, save from the allegations of said bill. And this defendant further says, that said buildings are located on the said Packer's First and Third Additions and said Packer's subdivision. That the first of

said buildings was built about the year 1871, and that additional buildings have been added from time to time, as the business has increased. That, at the time said first building was built a connection was made with said defendant's tracks, and that the buildings used in said business have been so connected with said tracks continuously since that date. That, at the time said connection was made with this defendant's tracks, said complainants well know this defendant's course of business as to the use of its tracks, and that this defendant had never transported or allowed to be transported over its tracks cars of live-stock, except cars for delivery at its yards and cars in transit transferred from one road to another, as hereinbefore set forth. That said complainants well knew that the said branch tracks with which their said buildings were connected were, and had always been, used exclusively for the transportation of dead freight, and not of live-stock. That, ever since said first building was built, until said 25th day of April, 1891, [fol. 1524] the course of business between said complainants and this defendant has been uniform. That, during all that period, said complainants have received no live-stock over this defendant's tracks, but have received all their live-stock from its said yards. And that said tracks connecting with said buildings have been used exclusively for dead freight.

This defendant, further answering, admits that said complainants, in the prosecution of their business, received at said Union Stock Yards at their said slaughter houses, during the year 1890, a large number of cattle, sheep and hogs, and this defendant believes the number stated in said bill as so received to be correct. And this defendant says that all of said cattle, sheep and hogs were received from the yards of this defendant in accordance with the previous uniform course of business.

This defendant, further answering, admits that up to the time of the filing of said bill, and ever since, all the live-stock required by said complainants in the carrying on of their business has been received by them in the said yards of this defendant. But this defendant denies that complainants' reason for so receiving said stock was that they had no other convenient place at which to receive the same,

and the several railroads had provided no convenient yard or place for the delivery thereof other than the yards of this defendant.

This defendant, further answering, admits that said Armour & Company, and said Swift and Company, doing [fol. 1525] business in said city, are engaged in similar business to said complainants, and that on the 28th day of January, 1891, the said James D. Lehmer and wife made a conveyance purporting to convey to said Nelson Morris the premises and rights described in said bill as purchased by said complainants in connection with said Swift & Company and Nelson Morris & Company, from said Lehmer, and that said deed was duly recorded. But this defendant says that the record of Cook County show no conveyance of said premises and rights by said Morris, and this defendant has no knowledge or information as to the alleged interest of said complainants therein, says from the allegations of said bill, and, therefore, neither admits nor denies said allegations, but leaves the complainants to make such proof thereof as they may be advised is material or necessary.

This defendant, further answering, admits that said premises described in said deed to said Morris are immediately south of and adjacent to Forty-third street and north of and adjacent to Forty-fourth street. This defendant denies that its main tracks pass said premises; but this defendant admits that one of its said branch tracks, used exclusively for dead freight, as hereinbefore set forth, passes said premises on the north side thereof, and another of said branch tracks, also used exclusively for dead freight, passes east of said premises on said thirty-foot strip along the east side of said north-west quarter of said south-west [fol. 1526] quarter, so conveyed to this defendant by said Lehmer; and that at the time of said conveyance to said Morris, said premises were connected by a side-track with both of said branch tracks. And this defendant says that said side-track was laid by this defendant prior to said conveyance to said Morris, and without any knowledge or information that it was intended to locate thereon the said so-called Central Stock Yards.

This defendant, further answering, admits that subse-

quent to said conveyance to said Morris, certain cattle-pens with unloading tracks and chutes, were built on said premises. But this defendant denies that said so-called stock-yards are as convenient for the delivery and unloading of cars of live-stock as this defendant's said yards; but, on the contrary, this defendant says that cars of live-stock cannot be delivered over this defendant's tracks at said so-called yards without destroying the use of said branch tracks for the purposes for which they were intended, and for which they have been heretofore used, as hereinbefore set forth, and without materially obstructing the transportation of live stock to this defendant's said yards.

This defendant, further answering, admits that said premises have been connected with the slaughtering establishments of said complainants by means of a viaduct. This defendant further says that a viaduct has also been constructed connecting said premises with the viaduct there-
[fol. 1527] tofore constructed and in use which connects said complainants' said slaughtering establishments with this defendant's yards, as hereinbefore set forth. And this defendant admits that if the live-stock of said complainants should be delivered and unloaded at said so-called Central Stock Yards, and not at this defendant's yards, said complainants would not pay yardage to this defendant; but, whether by the proposed use for said Central Stock Yards of the railroad tracks and connections built by this defendant in connection with and to promote its own yards, said complainants' business would be carried on with greater convenience and economy, this defendant has no knowledge or information, save from the allegations of said bill. And this defendant admits, on information and belief, that said complainants have no other yard or place, belonging to them or under their control, where their live-stock can be delivered. But this defendant says that all the live-stock of said complainants, transported over any of the railroads entering Chicago, can be delivered and unloaded for said complainants at this defendant's yards in the same manner and on the same conditions as all the live-stock heretofore slaughtered by said complainants has been delivered, as hereinbefore set forth.

This defendant, further answering, admits that said

premises have been designated by said complainants and said Swift & Company and Armour & Company, as the "Central Stock Yards," but whether said premises are [fol. 1528] designed for the sole and exclusive use of said complainants and said Swift and Company and Armour & Company for the receipt of their own cattle, bought by them at points outside of Chicago, this defendant has no knowledge or information, save from the allegations of said bill, and, therefore, leaves complainants to make such proof of their allegations in that behalf as they may be advised is material.

This defendant, further answering, says that it denies that it was or is the duty of this defendant, under said contracts recited in said bill, or under any statute of Illinois, or under this defendant's charter, or otherwise, to receive for transportation to said so-called Central Stock Yards, any live-stock consigned to said complainants for delivery at said Central Yards, or to permit other railroad companies to use its tracks for the transportation and delivery at said Central Yards of any live-stock. And this defendant avers that it is not a common carrier of live stock, and that it has never held itself out to said complainants or the public as a common carrier of live stock. And this defendant denies that it has in any way interfered with any of the rights of ingress or egress, or rights of user in common with others of any of the streets, or alleys, or rights of way particularly described in said several deeds and contracts, or that any of said deeds or contracts gave to any of the parties thereto any right or interest in this defendant's railroad, or any right to other companies to use this defendant's railroad, or that said complainants have acquired [fol. 1529] any rights under said contracts, or any conveyances or agreements by any of the parties thereto, material to the subject-matter of their bill, or to the relief prayed therein. And this defendant avers that it was not the intention of said deeds and contracts to give to the owners of the premises, entitled to the benefit of the same, the right to demand the transportation of live stock to said premises by this defendant or over this defendant's railroad, or the tracks referred to therein, as appears both by the terms thereof and the practical, contemporaneous construction

given to the same by the parties thereto and their grantees ever since said deeds and contracts were made, and that no such right was claimed by said complainants or the owners of any of said premises until about the time of the filing of said bill. And this defendant avers that said several deeds and contracts were made by this defendant; as was well known to the parties thereto, to promote this defendant's stock yards and the business done at said yards, and not to destroy and impair the same in the manner claimed by said complainants. And this defendant denies that this defendant's charter, or any provision thereof, or any statute of Illinois has imposed the duty on this defendant, having established its said stock-yards and built its said railroad in connection therewith and to promote the same, to turn over to said complainant or to any connecting railroad companies, the use of its railroad tracks and facilities for the benefit of other stock-yards, or that it was the intention of this defendant's charter, or of any statute of Illinois, to compel the use of its railroad tracks and facilities by other companies for the purpose of destroying or impairing the use and value of its said stock-yards.

[fol. 1530] This defendant, further answering, says that it admits that on the 27th day of April, 1891, the Atchison, Topeka and Santa Fé Railway Company, by its agents, was about to enter upon the railroad of this defendant with a train of cars loaded with live-stock, for the purpose of hauling the same over this defendant's railroad for delivery to said complainants at said premises described in said bill as the Central Stock Yards; that the persons in charge of said train were forbidden by the officers and agents of this defendant to enter upon or use its said railroad for the delivery of said cars of live-stock at said Central Stock Yards; that it has notified all connecting railroads that no cars of live-stock consigned for delivery at said so-called Central Stock Yards will be allowed to pass over its tracks for delivery at said Central Yards, and that no live-stock can be delivered over this defendant's said tracks, except upon and through this defendant's said yards. But this defendant denies that it insists or has insisted, that it has any legal right to compel the complainants to cause all shipments of live-stock consigned for delivery at said Central

Stock Yards to be delivered at this defendant's said stock-yards; or that this defendant claims any right in the premises, except the right to control the use of its own railroad tracks and not to permit the same to be used by other companies in the interest of the complainants or any other person or corporation for the establishment and maintenance of other stock-yards, or otherwise, to the injury of [fol. 1531] this defendant's said yards.

This defendant, further answering, admits that it claims the right to require the payment of a yardage charge for all live-stock received and unloaded at its said stock-yards. And this defendant says that by section 2 of its charter this defendant was expressly authorized to make and require to be paid such reasonable charges as might be deemed just and proper for the care, subsistence and handling of live-stock received and unloaded at its said yards. That it was also expressly provided by section 3 of said charter that all fees and charges for everything done by reason of the powers given by said charter should be subject to any general law that might be passed by the legislature of Illinois in reference to stock-yards or railroads, and that this defendant is advised that under said provision, all charges made by it must be reasonable, and that in the exercise of the power conferred by said charter it claims the right to charge for all live-stock delivered in its said yards reasonable yardage charges; and that this defendant has fixed as such charges for cattle, sheep, hogs and calves the several charges per head mentioned in said bill, and that said charges are reasonable.

This defendant further answering, admits that no deliveries can be made to the said so-called Central Stock Yards of live stock purchased outside the City of Chicago consigned to said Complainants direct to said yards over [fol. 1532] railroad tracks, except over the railroad tracks of this defendant, which are used by this defendant for the purposes of its own yards, but this defendant says that deliveries can be made of all live stock consigned to the said complainants over the several railroads running to the city of Chicago, at such places as may be provided for that purpose by the railroad companies operating the same, and that said complainants can transfer or convey such live

stock from the points at which the same may be delivered by such railroad companies in the city of Chicago, to said Central Stock Yards without using the tracks of this defendant.

And this defendant denies that unless the live stock so purchased outside of the city of Chicago can be shipped to the complainants over this defendant's tracks, and delivered to them at said Central Yards, the business of said complainants will be irreparably injured; but, on the contrary, this defendant says said complainants can continue to carry on their said business in the same manner and with the same profit as the same has heretofore been carried on by them. That the only advantage to said complainants' business in compelling this defendant to allow live-stock to be hauled over its tracks for delivery at said Central Yards would be to relieve said complainants of the payment of said yardage charge in place of which they would pay a charge for the use of this defendant's tracks, and their proportion of the cost of maintaining said Central Yards; and that since said demand by the complainants on said [fol. 1533] 25th day of April, said complainants have made certain payments of yardage to this defendant under protest, claiming the right to recover the same back if this defendant had no legal right thereto.

And this defendant submits to this Honorable Court that the several matters complained of in said complainants' bill are matters which may be tried and determined at law, and with respect to which the complainants are not entitled to any relief from a court of equity; and this defendant prays that it may have the same benefit of this defense as if it had demurred to the complainants' bill.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith it is by the said bill charged, without this that there is any matter, cause or thing in the complainants, said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall

direct; and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

The Union Stock Yard & Transit Company of Chicago, by John B. Sherman, Its Vice President and General Manager.

Herrick & Allen, Winston & Meagher, Defendant's Solicitors. W. C. Coudy, of Counsel.

[fol. 1534] State of Illinois,
County of Cook, ss:

John B. Sherman, being first duly sworn, on oath says that he is the vice-president, and general manager of the Union Stock Yard and Transit Company; that he was one of the original stockholders of said company and has been connected with said company as an officer since June 4, 1867; that he has read the foregoing answer of said company, and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge, except the matters stated on information and belief, and as to those matters he believes them to be true.

(Signed) John B. Sherman.

Subscribed and sworn to before me this 21st day of May, A.D. 1891. (Signed) Charles Jameson, Notary Public. (Notarial Seal). Charles Jameson, Cook County, Ill. Attached.

[fol. 1535] Articles of Agreement, made this twentieth day of September, A.D. 1890, between The Union Stock Yard and Transit Company of Chicago, party of the first part, and the

Baltimore & Ohio Railroad Co.,
Chicago & Alton Railroad Co.,
Chicago & Erie Railroad Co. (Late Chicago & Atlantic Ry.),
Chicago, Burlington & Quincy Railroad Co.,
Chicago & Eastern Illinois Railroad Co.,
Chicago & Grand Trunk Railway,

Chicago, Milwaukee & St. Paul Railway Co.,
Chicago & North-Western Railway Co.,
Chicago, Rock Island & Pacific Railway Co.,
Atchison, Topeka & Santa Fe Railroad Co.,
Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co.,
Chicago, St. Louis & Kansas City Railroad Co.,
Illinois Central Railroad Co.,
Lake Shore & Michigan Southern Railway Co.,
Louisville, New Albany & Chicago Railroad Co.,
Michigan Central Railroad Co.,
New York, Chicago & St. Louis Railroad Co.,
Pennsylvania Company, operating the
Pittsburgh, Ft. Wayne & Chicago Railroad Co.,
Wabash Railroad Co.,
Wisconsin Central Company,
[fol. 1536] The Chicago & Northern Pacific Railroad Co., and the
Belt Railway of Chicago,

constituting the Chicago Railway Transfer Association, parties of the second part.

Whereas, said party of the first part desires to afford the persons and corporations doing business along and over its railway tracks and right of way of the Chicago & Indiana State Line Railway Company with the best possible facilities and

Whereas, said parties of the second part have considered it for their mutual advantage to form an association for the purpose of receiving and delivering dead freight to and from the industries located along said tracks and rights of way, and for that purpose said second parties have entered into an agreement with each other and have formed a voluntary association, known as the Chicago Railway Transfer Association, which said railway transfer association has been made the agent of said second parties for the purpose aforesaid, and the officers, agents and employes of said association, now or hereafter employed, the agents and servants of the said second parties, and

Whereas, said second parties have severally requested said first party to recognize and deal with said Chicago Railway Transfer Association, its officers and employes,

as the representatives, officers and employes of said second [fol. 1537] parties, for the purposes aforesaid, and have agreed to become responsible for all acts and doings of said association, its officers, agents and employes:

Now, Therefore, in consideration of one dollar, the receipt whereof is hereby acknowledged, and in consideration of the premises and the agreements of said second parties hereinafter named,

These Presents Witnesseth: 1st. Said first party agrees to allow said second parties, acting by and through said association, its officers and servants, the right to enter upon and use its, said first party's railway tracks and right of way and the tracks and right of way of the Chicago and Indiana State Line Railway Company, for the purpose of receiving and delivering dead freight to and from all industries located along said tracks and rights of way, subject to such rules and regulations of said first party as have or hereafter may be made for the use of the tracks and right of way of said first party, and the tracks and right of way of the said Chicago & Indiana State Line Railway Company, and the running of trains thereon; and also subject to existing arrangements between said first party and the Illinois Steel Co. for the transportation of ore and other materials between said Illinois Steel Company's works at South Chicago and Archer Avenue.

2nd. Said first party agrees to assign to said railway transfer association, representing said second parties, grounds convenient for the use, by said association, for main outside office, round-house, coal-houses and water-[fol. 1538] tanks.

3rd. In consideration of the foregoing agreements on the part of said first party, and in consideration of one dollar, paid by said first party to each of said second parties, the receipt whereof is hereby acknowledged by said second parties, said second parties agree, during the existence of this contract, to keep and maintain engines and men sufficient for the proper receipt and delivery of all dead-freight shipped by, or consigned to, all persons and corporations located along the tracks and rights of way of said first party and said Chicago & Indiana State Line Railway Co., said engines and men to be under the direct

control of the officers of said Chicago Railway Transfer Association.

4th. Said second parties hereby jointly and severally agree to be responsible for all acts and doings of the officers, agents and employes of said association, and said parties of the second part further jointly and severally agree to indemnify and save harmless said first party against and from any and all damages, or claims for damages, judgments, decrees, costs and expenses of the same, including attorneys' and solicitor's fees, which said first party may suffer, or which may be recovered or obtained against said first party for, or by reason of, any act or acts of any officer, agent or servant of said Chicago Railway Transfer Association.

5th. This agreement may be terminated by either of the parties hereto giving thirty (30) days written notice, [fol. 1539] but should either or any of the said second parties withdraw from this agreement, such withdrawal shall not affect the validity or continuance of this agreement between the other parties hereto, and each and all of said parties of the second part shall continue liable for all damages, claims for damages, judgments, decrees, costs and expenses of the same, including attorney's and solicitor's fees, which said first party may thereafter suffer, or which may be recovered or obtained against said first party, from, by reason of, or growing out of, or resulting from, any act or acts of said transfer association, its officers, agents and servants, previous to such withdrawal.

In witness whereof the parties hereto have caused these presents to be executed by their respective general managers.

(Signed) The Union Stock Yard & Transit Company, of Chicago, by John B. Sherman, General Manager.

Attest:

Geo. T. Williams, Secretary, Baltimore & Ohio Railroad Co., by J. T. Odell, by E. Dickinson, Gen'l [fol. 1540] Supt.; Chicago & Alton Railroad Co., by C. H. Chappel, General Manager; Chicago & Erie Railroad Co. (late Chicago & Atlantic Ry.), by E. B. Thomas, General Manager; Chicago, Burling-

ton & Quincy Railroad Co., by W. F. Merrill, General Manager; Chicago & Eastern Illinois Railway Co., by Geo. W. Saul, General Manager; Chicago & Grand Trunk Railway, by J. W. Spicer, General Manager; Chicago, Milwaukee & St. Paul Railway Co., by A. J. Earling, General Manager; Chicago & Northwestern Railway Co., by J. M. Whitman, General Manager; Chicago, Rock Island & Pacific Railway Co., by W. G. Purdy, Vice-president; Atchison, Topeka & Santa Fe Railroad Co., by A. A. Robinson, General Manager; Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Co., by Joseph Wood, General Manager; [fol. 1541] Chicago, St. Paul & Kansas City Railroad Co., by John M. Egan, Prest. & Gen'l Mngr.; Illinois Central Railroad Company, by C. A. Beck, General Manager; Lake Shore & Michigan Southern Railway Co., by John Newell, General Manager; Louisville, New Albany & Chicago Railroad Co., by W. F. Black, General Manager; Michigan Central Railroad Co., by H. B. Ledyard, General Manager; New York, Chicago & St. Louis Railroad Co., by Lewis Williams, General Superintendent; Pennsylvania Company operating The Pittsburgh Ft. Wayne & Chicago Railroad, by Joseph Wood, General Manager; Wabash Railroad Co., by Chas. M. Hayes, General Manager; Wisconsin Central Co., The Chicago & Northern Pacific Railroad Co., by S. R. Ainslie, General Manager; The Belt Railway of Chicago, by B. Thomas, V. Prest. & Gen'l. Mngr.

[fol. 1542] STATE OF ILLINOIS,
County of Cook, ss:

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain answer filed in this office on the 22nd. Day of May A. D. 1891 in a certain cause lately pending in said Court, on the Chan-

cery side thereof, between Nelson Morris et al, Complainant and The Union Stock Yard & Transit Co., Defendant.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 18th day of June, 1938.

John E. Conroy, Clerk. (Seal.)

[fol. 1543] Copy

In the Circuit Court of Cook County. April Term, 1891

Swift and Company

vs.

The Union Stock Yard and Transit Company

State of Illinois,
County of Cook, ss.:

J. D. Besler being duly sworn says that he is the General Superintendent of the Chicago, Burlington & Quincy Railroad Company, said Company, in connection with the Hannibal & St. Joseph Railroad Company owning and operating a railroad between Kansas City in the State of Missouri and the City of Chicago in the State of Illinois.

Affiant further says that the road of said Company connects with the road and tracks of the Union Stock Yard and Transit Company North of Brighton in said County of Cook. That on the 25th day of April last past said Companies received at Kansas City aforesaid, six cars of livestock containing ninety-eight head of cattle billed to Swift and Company at Forty Third and Justine Streets, Chicago, Illinois, and issued to said Swift and Company a bill of lading which is hereto attached and made a part of this affidavit.

Affiant further says that he is advised and believes that said cars containing said stock were received at its connection with the tracks and road of the said Union Stock Yard and Transit Company at or North of Brighton afore- [fol. 1544] said at eleven o'clock P. M. on the night of April 26th, 1891.

Affiant further says that for several years prior to said 26th day of April it had been the custom of said Chicago, Burlington & Quincy Railroad Company to deliver all stock consigned over its road to said Swift and Company at the Union Stock Yards on the tracks of said Union Stock Yard and Transit Company at or North of Brighton aforesaid Chicago, Burlington & Quincy Company, and that such delivery was made by said Chicago, Burlington & Quincy Company running its own cars or trains of cars, and furnishing its own motive power over said tracks.

Affiant further says that the Central Yards of said Swift and Company were and are located upon tracks connected with the tracks of said Union Stock Yard and Transit Company.

Affiant further says that upon the arrival of said cars at said point of junction, the agents and employees in charge of said train of said Chicago, Burlington & Quincy Railroad Company containing the said six cars consigned to Swift and Company delivered the same at the Union Stock Yards in the usual manner as hereinbefore described.

That on or about the 25th day of April 1891, this affiant received a letter from the General Superintendent of said defendant, of which the following is a copy:

"Union Stock Yards,
Chicago, April 25th 1891.

J. D. Besler, General Supt. C. B. & Q. R. R. Co., City.

DEAR SIR:

By order of the Board of Directors of the Union Stock Yard and Transit Company of Chicago, I am instructed [fol. 1545] to notify your company, as well as all other companies using the tracks of this company, and delivering live stock at its yards that no cars containing live stock consigned to other yards owned by any individuals or other companies in Chicago will be permitted to be hauled over the tracks of this company or through its yards. This notice is not given on account of any apprehension that your company contemplates any violation of contract with this company or any act which may be contrary to our

charter, but simply to apprise your shippers through you what our rights and position are.

Respectfully, (Signed) James H. Ashby, General Superintendent."

Affiant further says that from and after said 25th day of April and the receipt of the letter above referred to said Union Stock Yard and Transit Company has refused and still continues to refuse to permit the Chicago, Burlington & Quincy Railroad Company to deliver any live stock consigned to the said complainant, or to any other party, at their private yards or premises located upon the tracks of said Union Stock Yard and Transit Company, although the said Chicago, Burlington & Quincy Railroad Company could deliver stock consigned to said complainant at the Central Stock Yards if it was allowed to use tracks of the Union Stock Yards and Transit Company for that purpose.

(Signed) J. D. Besler, Gen. Supt. C. B. & Q. R. R.

State of Illinois,
County of Cook, ss.:

Personally appeared before me a Notary Public in and for said County and State aforesaid, J. D. Besler, who [fol. 1546] being duly sworn on oath says that he has read the foregoing affidavit by him subscribed, and that the facts stated therein are true to the best of his knowledge, information and belief.

Witness my hand and Notarial seal this 5th day of June 1891. (Signed) Chester M. Dawes, Notary Public. (Seal.)

June 9th, 1891.

[fol. 1547] Hannibal & St. Joseph Railroad

Bill of Lading

K. CS. Yds Station, April 25, 1891.

Received from Swift and Company, in apparent good order, by the Hannibal & St. Joseph Railroad, the following described property (contents and value unknown), consigned as marked and numbered in the margin, upon the terms and conditions hereinafter contained, and which are hereby made a part of this agreement; also subject to the conditions and regulations of the published tariffs in use by said Railroad Company, to be transported over the line of this Road to Chicago Station, and there delivered in like good order to the consignee, or owner, at said station or to such Company or Carriers (if the same are to be forwarded beyond said station), whose line may be considered a part of the route to the place of destination of said party—it being distinctly understood and agreed that the responsibility of this Company as a common carrier shall cease at the station where delivered or tendered to such consignee or owner, or Company or carrier; but it guarantees that the rate of freight for the transportation of said property shall not exceed rates as specified below, and charges advanced by this Company, upon the following condition:

The consignee or owner is to pay freight or charges as per specified rates upon the property as it arrives.

Freight carried by the Company must be removed from the station during business hours, on the day of its arrival, or it will be stored at the consignee's or owner's risk and expense, and in the event of its destruction or damage from any cause, while in the depots of the Company, either in transit or at the terminal point, it is agreed that the Company shall not be liable except as warehousemen.

It is agreed, and is a part of the consideration of this agreement, that the Company shall not be responsible for the leakage of Liquors or liquids of any kinds; breakage of Glass or Queensware; Injury or breakage of Castings, Carriages, Furniture, Glass Show Cases, Hollow Ware, Looking Glasses, Machinery, Musical Instruments of any

kind, packages of Eggs, or Picture Frames; loss of weight of Coffee or Grain in bags, or Rice in tierces; nor for any decay of perishable articles; nor for damage arising from effects of heat or cold; nor for loss of Nuts in bags, or Lemons, or Oranges in boxes, unless covered with canvas; nor for loss or damage of Hay, Hemp, Cotton, or any article, the bulk of which renders it necessary to transport in open cars, unless it can be shown that such loss or damage occurred through the negligence or default of the agents of this Company.

Goods in Bond subject to Custom House Regulations and Expenses.

It is agreed that the Company shall not be responsible for accidents or delays from unavoidable causes. The responsibility, of this Company, as carriers is to terminate on the delivery or tender of the freight as per this Bill of Lading, to the Company whose line may be considered a part of the route to the place of destination of said property. In the event of the loss of any property for which the carriers may be responsible under this Bill of Lading, the value or cost of the same at the point and time of shipment is to govern in the settlement for the same, except the value of the property has been agreed upon with the shipper, or is determined by the classification upon which the rates are based. And in case of loss or damage of any of the property named in this Bill of Lading, for which this Company may be liable, it is agreed and understood that this Company may have the benefit of any Insurance effected by or on account of the owner of said property.

Erasures or Alterations Are Not to be Made on This Receipt

NOTE:—If Agents are required to issue more than one Bill of Lading for same property, they must endorse them Original or Duplicate, as the case may be.

Marks and Consignees	No. Pkgs.	Description of Property as Given by Consignor	Weight, subject to correction
Swift and Company Chicago, Ill.		6 Cars	8108 Q 8279 Q 4336 Q
		98 Cattle	12883 Q 3156 HAN 392 K&NW

[fol. 1548]

From.....
To.....
If 1st Class.....Cts. per 100 lbs.
If 2nd Class..... " " "
If 3rd Class..... " " "
If 4th Class..... " " "
If Special Class..... " " "
If Dbl. 1st Class..... " " "
If.....
If.....bbl. OK
If.....car.

Freight may be collected upon the weight by the Company's Scales, but no single shipment to be rated at less than 100 lbs.
Carload freight subject to the current rules as to minimum and maximum rates.
Charges Advanced (if any).....

J. T. Brown. Henry T. Higgins.

(Signed) W. L. Kindrick, Agent.

Subject to Classification, Rules and Regulations of Connecting Roads

June 9th, 1891.

[fol. 1549] [Endorsed:] 4419-90860, Circuit Court of Cook County, Philip D. Armour, et al. vs. Union Stock Yard & Transit Company. Swift and Company vs. Union Stock Yard & Transit Company. Nelson Morris, et al. vs. Union Stock Yard & Transit Company. Affidavit of J. D. Besler. Filed, June 9, 1891, (Signed) Henry Best, Clerk.

[fol. 1550] State of Illinois,
County of Cook, ss.:

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain affidavit of J. D. Besler filed in this office on the 9th day of June A. D. 1891 in a certain cause lately pending in said Court, on the Chancery side thereof, between Philip D. Armour,

et al., Complainant and Union Stock Yards & Transit Co. Defendant.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 13th day of June 1938. John E. Conroy, Clerk. (Seal.)

[fol. 1551] Copy

IN THE CIRCUIT COURT OF COOK COUNTY, APRIL TERM, A.D. 1891

In Chancery

PHILIP D. ARMOUR, ET AL.,

vs.

UNION STOCK YARD & TRANSIT CO.

STATE OF ILLINOIS,
County of Cook, ss:

A. J. Earling, being duly sworn, deposes and says that he is and has been for the year last past, General Manager of the Chicago, Milwaukee & St. Paul Railway Company; that said Railway Company owns and operates several lines extending westward from the City of Chicago through the State of Illinois, and to and across other States in the West and North-west; and also has a direct line from Chicago to Kansas City; that for several years past it has had and now has a connection with the railroad of said defendant in the City of Chicago at or near Brighton.

Deponent further states that on the twenty-fifth day of April, 1891, he was advised by reports of freight and live-stock in transit, that ten (10) cars of live-stock containing one hundred and sixty (160) head of cattle, were in transit between Kansas City and Chicago, consigned to Armour and Company.

Deponent further says that on the following day he

received, by due course of mail, a letter of which the following is a copy:

[fol. 1552] Union Stock Yard & Transit Company, of Chicago

Union Stock Yards, Chicago, 4-25-91.

A. J. Earling, Gen. Mngr. C.M. & St. P. R.R., City.

Dear Sir:

By order of the Board of Directors of the Union Stock Yard and Transit Company of Chicago, I am instructed to notify your Company, as well as all other Companies using the tracks of this Company and delivering live-stock at its yards, that no cars containing live-stock consigned to other yards owned by any individuals or other Companies in Chicago, will be permitted to be hauled over the tracks of this Company or through its yards.

This notice is not given on account of any apprehension that your Company contemplates any violation of the contract with this Company, or any act which may be contrary to our charter, but simply apprise our shippers through you what our rights and position are.

Respectfully, (Signed) James H. Ashley, General Superintendent.

Deponent further says that said ten (10) cars loaded with cattle as aforesaid, were received by the said Chicago, Milwaukee and St. Paul Railway Company at Kansas City on the 25th day of April 1891 from Armour & Company, and consigned to Armour & Company, Central Stock Yards, 43rd & Justine Streets, Chicago, Ill. and the deponent attaches hereto the Bill of Lading issued for said cattle, marked "Exhibit A."

[fol. 1553] Deponent further says that on the receipt of said notice from the General Superintendent of the defendant company he notified the agents of the said Chicago, Milwaukee & St. Paul Railway Company to deliver said cars as consigned to the said Armour & Company at said Central Stock Yards, if said defendant would permit them so to do; and if said defendant refused to permit such

delivery, then to deliver such cattle at the yards of said Union Stock Yard and Transit Company, for the reason that said Chicago, Milwaukee & St. Paul Railway Company had no yards of its own at which such cattle could be delivered, and that as said carrier was required to unload said cattle within a given time after their arrival, as this deponent is advised and believes.

Deponent further says that said Central Stock Yards are located upon the railroad tracks of the said defendant, and that said stock could and would have been delivered at said Central Stock Yards had not said defendant company peremptorily refused to permit such delivery, and further says that such delivery was refused and prohibited in accordance with said notice of said defendant of April 25th, and that thereupon said stock was delivered at the yards of the defendant.

Deponent further says that in answer to a letter written by said Armour & Company to the said Chicago, Milwaukee & St. Paul Railway Company relative to the shipment of said cattle and their non-delivery as consigned, Mr. E. P. Ripley, Third Vice-President of said Railway Company, wrote Messrs Armour & Company a letter explanatory thereof which is hereto attached and marked "Exhibit B." [fol. 1554] Deponent further states that said notice so served upon ~~him~~ as General Manager of said Railway Company has not been revoked, and as this deponent is advised, said defendant refuses to permit any cars or any live-stock to be transported over the lines of the defendant for delivery upon any premises or at any yards other than the yards of said defendant.

(Signed) A. J. Earling.

June 9th, 1891.

Subscribed and sworn to before me this 25 day of May, A. D. 1891. (Signed) J. R. Dickinson, Notary Public.

[fol. 1555]

Chicago, Milwaukee & St. Paul Railway Co.
All Rail
Through Fast Freight Line

Bonded

A. C. Bird,
Fr't Traffic Manager,
Chicago.

J. H. Hiland,
Gen'l Freight Agent,
Chicago.

D. W. Keyes,
1st Ass't Gen'l Fr't Ag't.
Milwaukee

N. J. Goll,
Ass't Gen'l Fr't Ag't.
Chicago

D. C. Jones,
Ass't Gen'l Fr't Ag't.
St. Paul.

J. R. Hixson, Gen'l Eastern Freight Agent, 381 Broadway, New York
Henry D. Corbett, New England Freight Agent, 210 Washington St., Boston
H. C. Dimock, Commercial Ag't, No. 505 Lewis Bldg., Smithfield St., Pittsburgh, Pa.
C. L. Rising, Commercial Ag't, Chicago, Ill.
J. A. Chandler, Gen'l Ag't, St. Paul, Minn.
E. D. Sewall, Comm. Ag't, St. Paul, Minn.
C. J. Eddy, Gen'l Ag't, Portland, Ore.

C. E. Mumford, Com. Ag't, Minneapolis
J. S. Talbot, Com. Ag't, Denver, Col.
A. Mitchell, Com. Ag't, Salt Lake City, U.
W. W. Winton, Com. Ag't, St. Joseph, Mo.
J. H. Veitch, Gen'l Ag't, Kansas City, Mo.
C. L. Canfield, Gen'l Ag't., San Francisco, Cal.
E. W. Jordan, Co. Ag't, Sioux City, Ia.
C. H. Porter, Co. Ag't, Cincinnati, Ohio
F. W. Boltz, Com. Ag't, Cleveland, Ohio
R. B. Wilson, Com. Ag't, Helena, Mont.
C. G. Lovell, Com. Ag't, Buffalo, N. Y.
F. A. Nash, Gen'l Ag't, Omaha, Neb.

No. .....

Kansas City 4/25 1891.

Received from Armour & Co. in apparent good order by the Chicago, Milwaukee & St. Paul Railway Company, the following described packages, marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this Railway to —— and delivered after Payment of freight in like good order to —— a company or carrier, (if the same are to be forwarded beyond the lines of the Company's road) to be carried to the place of destination; it being expressly agreed that the responsibility of this Company shall cease at this Company's depot, at which the same are to be delivered to such carrier; but this Company guarantees that the rate of freight for the transportation of said packages shall not exceed rates noted in margin of this Bill of Lading and charges advanced by this Company: Provided Contents of Packages Are Correctly Stated in Railroad Receipts (Original and Duplicate,) on Which This Bill of Lading Is Issued, subject to the following conditions:

This Company shall not be responsible for the loss of packages the contents of which are unknown; for the leak-

age of any kind of Liquids, breakage of any kind of Glass, carboys of Acid or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Carriages, Furniture, Musical Instruments of any kind, packages of Eggs, or for loss or damage on Hay, Hemp, Cotton, or any article whose bulk renders it necessary to transport on open cars, or for damage to perishable property of any kind, occasioned by delays from any cause, or change of weather, nor for any loss of weight of Grain, or Coffee in bags, or Rice in Tierces, nor for loss of Nuts in bags, or Lemons or Oranges in boxes, not covered by canvas, or for damage or loss by fire, or for loss or damage on the lakes and rivers unless it can be shown that such damage or loss occurred through the negligence or default of the Agents of the Company. It is further especially agreed that for all loss and damage occurring in the transit of said packages, the legal remedy shall be against the particular carrier or forwarder only in whose custody the said packages may actually be at the time of the happening thereof, it being understood that the said Chicago, Milwaukee & St. Paul Railway Company assumes no other responsibility for their safe carriage or safety than may be incurred on its own road. All packages subject to charge for Cooperage if necessary.

All car load freight shall be subject to a minimum charge for trackage and rental of $1.00 per car for each 24 hours detention or fractional part thereof, after the expiration of 48 hours from its arrival at destination.

[fol. 1556]

(Bill of Lading Continued)

Marks and Consignee	No. Pkgs.	Description of Property As Given By Consignor	Weight Subject to Correction
Armour & Co. Central Stock Yards 43rd & Justin St. Chicago, Ills.	160	Cattle	
Via	10	St. P. 30 fts Min 19000 at 23½	4465

All articles entered on this Bill of Lading shall be subject to, and governed by, the classification and rules as published by Railroads, and to the rates properly belonging to such classification, and the rate as written in below shall only apply to such goods as are included in the class opposite or against which the rate is so written in.

Rates

From.....
To.....
If 1st Class.....cts. per 100 lbs.
If 2nd Class.....cts. per 100 lbs.
If 3rd Class.....cts. per 100 lbs.
If 4th Class.....cts. per 100 lbs.
If 5th Class.....cts. per 100 lbs.
If 6th Class.....cts. per 100 lbs.
If Class.....cts. per 100 lbs.
Charges Advanced, $.....
Moyer

Original

(Signed) John Lemon
C

(Signed) H. E. Pierpont
Local Agent.

[fol. 1557] "EXHIBIT B"

Copy

Chicago, Milwaukee & St. Paul Railway

Office of the Third Vice-President

Chicago, April 28th, 1891.

Messrs. Armour & Co., City.

DEAR SIR:

Answering your letter of 26th, wherein you state that you ordered on Saturday 10 carloads cattle consigned to Central Stock Yards, 43rd and Justin streets,—that this consignment was accepted by us and receipt given for delivery accordingly,—that you are advised that the said cattle have been delivered to the Union Stock Yards chutes,—that you desire us to take notice that this entails

upon you a cost of 25 cents per head for yardage which would have been avoided had cars been delivered as consigned,—and asking us to explain why the cattle were not delivered as consigned I beg to attach copy of letter received on Saturday from the General Superintendent of the Union Stock Yards & Transit Co., notifying us that no cars containing livestock consigned to other yards owned by individuals or companies in Chicago will be permitted to be hauled over the tracks of the U.S.Y. & T. Co., or through its yards. I think this sufficiently answers the question contained in your letter. I may say, however, in addition, that the Superintendent and yardmaster of the U.S.Y. & T. Co., stopped the 10 cars referred to at Brighton Park Sunday night, and would not let them go over their tracks unless unloaded in the U.S.Y. chutes,—which was done in order that the stock might not be injured by being kept in the cars.

Yours truly, (Signed) E. P. Ripley, Third Vice-President.

June 9th, 1891.

[fol. 1558] [Endorsed:] 4419-90860. Circuit Court, Cook County. Philip D. Armour et al. vs. Union Stock Yard & Transit Co. Affidavit of A. J. Earling. Filed June 9, 1891. (Signed) Henry Best, Clerk. Walker & Eddy, Attorneys, 658, 668, 670 Rookery Bldg., La Salle St., Chicago.

[fol. 1559] STATE OF ILLINOIS,
County of Cook, ss:

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be true, perfect and complete copy of a certain affidavit filed in this office on the 9th day of June, A. D. 1891 in a certain cause lately pending in said Court, on the Chancery side thereof, between Philip D. Armour, Complainant, and Union Stock Yard & Transit Co., Defendant.

In witness whereof, I have hereunto set my hand and

affixed the Seal of said Court, at Chicago, in said County, this 13th day of June 1938.

John E. Conroy, Clerk.

(Seal Circuit Court, Cook County, Illinois.)

[fol. 1560] Copy

IN THE CIRCUIT COURT OF COOK COUNTY, APRIL TERM, 1891

NELSON MORRIS & Co.

vs.

THE UNION STOCK YARD AND TRANSIT COMPANY

STATE OF ILLINOIS,
County of Cook, ss:

J. D. Springer being first duly sworn deposes and says that he is the third Vice President of the Atchison, Topeka & Santa Fe Railroad Company, said company leasing and operating a railroad between Kansas City in the State of Missouri, and the City of Chicago in the State of Illinois.

Said deponent further says that the road of said company connects with the road and tracks of the Union Stock Yard and Transit Company at or near 47th Street in the said County of Cook; that on the 25th day of April last past said company received at Kansas City aforesaid five cars of cattle to be transported from Kansas City and delivered to Nelson Morris & Co. at the Central Stock Yards located at 43rd and Justine Streets, in the City of Chicago, and issued to said Nelson Morris & Co., stock contracts.

[fol. 1561] Affiant further says that he is advised and believes that said cars containing said stock were received at its connection with the tracks and road of said Union Stock Yard and Transit Company at or near 47th Street on the morning of April 28th, 1891.

Said affiant further says that for several years prior to said 28th day of April it had been the custom of said Atchison, Topeka & Santa Fe Railroad Company to deliver all stock consigned over its road to said Nelson Morris &

Co. on the tracks of the said Union Stock Yard & Transit Company connecting with the tracks of the Atchison, Topeka & Santa Fe Railroad Company in said County of Cook, and that such delivery was made by said Atchison, Topeka & Santa Fe Railroad Company running its own cars or trains of cars and furnishing its own motive power over said tracks under a running or traffic arrangement with said Union Stock Yard and Transit Company.

Affiant further says that said Central Yards of said Nelson Morris & Co. were and are located upon the tracks of said Union Stock Yard and Transit Company so connected with the tracks of the Atchison, Topeka & Santa Fe Railroad Company, and that delivery could have been made at said last named yards with the same facility as at any other point upon the tracks of said Union Stock Yard and Transit Company.

[fol. 1562] Affiant further says that upon the arrival of said cars at said point of junction, the agents and employees in charge of said train of said Atchison, Topeka & Santa Fe Railroad Company, containing said five cars consigned to Nelson, Morris & Co. were refused permission to run said cars or train upon said tracks, and were not permitted to use the tracks of said Union Stock Yard and Transit Company for the delivery of said cars to said Nelson Morris & Co., as directed in said bill of lading, although the Atchison, Topeka & Santa Fe Railroad Company was ready and willing to make such delivery as directed by said bill of lading.

That on the 25th day of April, 1891, this deponent received a letter from the General Superintendent of said defendant, of which the following is a copy:

"Union Stock Yards,
Chicago, April 25, 1891.

DEAR SIR:

By order of the Board of Directors of the Union Stock Yard and Transit Company of Chicago, I am instructed to notify your company, as well as all other companies using the tracks of this company, and delivering live stock at its yards that no cars containing live stock consigned to other yards owned by any individuals or other companies in [fol. 1563] Chicago will be permitted to be hauled over the

tracks of this company or through its yards. This notice is not given on account of any apprehension that your company contemplates any violation of contract with this company or any act which may be contrary to our charter, but simply to apprise your shippers through you what our rights and position are.

Respectfully, (Signed) James H. Ashby, General Superintendent."

Affiant further says that from and after said 25th day of April, and the receipt of the letter above referred to, said Union Stock Yard and Transit Company has refused and still continues to refuse to permit the said Atchison, Topeka & Santa Fe Railroad Company to deliver any live stock consigned to the said complainant or to any other party at their private yards or premises located upon the tracks of said Union Stock Yard and Transit Company, although the said Atchison, Topeka & Santa Fe Railroad Company is ready and willing to and could, except for such order and such refusal of said Stock Yard Company, deliver all stock consigned to the complainant at its private yards or premises known as the Central Stock Yards.

Affiant further says that the said Union Stock Yard and Transit Company also refuses to receive from said Atchison, Topeka & Santa Fe Railroad Company any stock con- [fol. 1564] signed to Nelson Morris & Co., Chicago, but insists and demands that all live stock consigned to said Nelson Morris & Co. at Chicago, shall be delivered at the yards of said Union Stock Yard and Transit Company and not at any other place located upon the tracks of said last named company, and refuses to recive any and all live stock upon any of its tracks in the City of Chicago, Illinois, unless the same is specially consigned to said Union Stock Yard and Transit Company's yards.

(Signed) J. D. Springer.

Subscribed and sworn to before me by J. D. Springer the 7th day of May A. D. 1891. (Signed) George B. Howard, Notary Public, Cook Co. Illinois, June 9th 1891.

[fol. 1565] [Endorsed:] 4419-90860. Circuit Court of Cook County. Philip D. Armour et al. vs. Union Stock Yard & Transit Company. Swift and Company vs. Union Stock Yard & Transit Company. Nelson Morris et al. vs. Union Stock Yard & Transit Company. Affidavit of J. D. Springer. Filed Jun. 9, 1891. (Signed) Henry Best, Clerk.

[fol. 1566] STATE OF ILLINOIS,
County of Cook, ss:

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of record and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain affidavit of J. D. Springer filed in this office on the 9th day of June A. D. 1891 in a certain cause lately pending in said Court, on the Chancery side thereof, between Philip D. Armour, et al., Complainant, and Union Stock Yards & Transit Co., Defendant.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 13th day of June, 1938.

John E. Conroy, Clerk. (Seal.)

[fol. 1567] Copy

In the Circuit Court of Cook County

In Chancery

Gen. No. 90859. Term No. 4418

Swift and Company

vs.

Union Stock Yards & Transit Company

It is hereby stipulated by and between the parties hereto that the above entitled cause be dismissed without judgment for costs against either party.

Albert H. Veeder, for Pltff.; Campbell & Custer, for Pltff.; Herrick & Allen, for Deft.; Winston & Meagher, for Deft.

Aug. 17th, 1892.

[fol. 1568] [Endorsed:] (On Cover.) Gen. No. 90859. Term No. 4418. Circuit Court. Swift and Company vs. Union Stock Yard and Transit Company. Stipulation. Filed Aug. 17/92. Henry Best, Clk. Albert H. Veeder, Attorney at Law, 240 La Salle Street, Chicago.

[fol. 1569] State of Illinois,
County of Cook, ss:

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain stipulation filed in this office on the 17th day of August A. D. 1892 in a certain cause lately pending in said Court, on the Chancery side thereof, between Swift and Company, Complainant, and Union Stock Yards & Transit Co., Defendant.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 13th day of June, 1938.

John E. Conroy, Clerk. (Seal.)

[fol. 1570] IN THE CIRCUIT COURT OF COOK COUNTY

In Chancery

Gen. No. 90860. Term No. 4419

PHILIP D. ARMOUR, et al.

vs.

UNION STOCK YARD and TRANSIT COMPANY

It is hereby stipulated by and between the parties hereto that the above entitled cause be dismissed without judgment for costs against either party.

Albert H. Veeder, Sol. for Pltf.; Campbell & Custer, for Pltffs.; Herrick & Allen, for Deft.; Winston & Meagher, for Deft.

August 17th, 1892.

[fol. 1571] [Endorsed:] Gen. No. 90860. Term No. 4419. Circuit Court. Philip D. Armour, et al. vs. Union Stock Yard and Transit Company. Stipulation. Filed Aug. 17/92. Henry Best, Clk. Albert H. Veeder, Attorney at Law, 240 La Salle Street, Chicago.

[fol. 1572] IN THE CIRCUIT COURT OF COOK COUNTY
IN CHANCERY

Gen. No. 90861

Term No. 4420

NELSON MORRIS ET AL.

vs.

UNION STOCK YARDS AND TRANSIT COMPANY

It is hereby stipulated by and between the parties hereto that the above entitled cause be dismissed without judgment for costs against either party.

Albert H. Veeder, Soltor. pltff. Campbell & Custer, for pltff. Herrick & Allen, for deft. Winston & Meagher, for deft.

August 17, 1892.

[fol. 1573] [Endorsed:] Gen. No. 90861, Term No. 4420. Circuit Court. Nelson Morris et al., vs. Union Stock Yard and Transit Company. Stipulation. Filed Aug 17/92. Henry Best, Clk. Albert H. Veeder, Attorney at Law, 240 La Salle Street, Chicago.

[fol. 1574] Food Investigation

Report of the Federal Trade Commission

On the Meat-Packing Industry

Part III

Methods of the Five Packers in Controlling

The Meat-Packing Industry

June 28, 1919

Washington
Government Printing Office
1919

[fol. 1575] The Chicago Stockyards

Section 14.—Conclusions.

Judging from the facts in the foregoing sections, there can be no doubt that in many sections of the country large

rendering concerns, either singly or in combination, have used trade practices which are not defensible. The chief offenders have been the concerns in which the large packing companies are interested, especially Swift & Co., Morris & Co., and Wilson & Co., Inc., and, in addition to the packers, the American Agricultural Chemical Co.

It has been shown that these companies have used certain methods mentioned in the introductory section of this chapter, two of which stand out more prominently than any of the others; namely, fixing the channels of trade by means of a division of customers, and bidding up prices of raw material, not on account of the market value, but with the obvious intent of forcing competitors out of business. The intent in such cases is made all the more palpable by the fact that as soon as the competitor was eliminated, prices were again depressed. Apparently with the same objective in view, it has been shown that combinations or individuals have practiced misrepresentation of competitors and enticement of their employees, have persuaded customers to break their contract with competitors, have practiced espionage, paid bonuses to take away competitors' trade, and have established bogus competitors.

With such practices as these brought to bear upon them, the small rendering concerns in many cases have found it impossible to continue in business and have failed or have been forced to sell to those who practiced these methods against them. In other cases the independent competitor has cast in his lot with his oppressors.

Chapter V.—The Chicago Stockyards

Section 1.—General Statement

When the Commision began the inquiry into the Chicago stockyards for the purpose of ascertaining, among other things, in whom the ownership and control of these yards was vested, it was found that while the operations of the yards were carried on by an Illinois corporation the ownership of the yards was vested in a New Jersey corporation. It was also developed that a Maine company, though owning less than one-fourth of the stock of the New Jersey company, nevertheless, by virtue of certain contractual rela-

tions, is entitled to receive all of the surplus earnings of the New Jersey company and of its subsidiary companies over a certain per cent. Although these contractual relations do not carry any ownership control of the properties of the New Jersey company, this Maine company exercises a practical control over the affairs of the New Jersey company, because of the fact that the stockholders of the Maine company attained at one time a majority representation in its management, which they have continued to maintain. [fol. 1576] The Commission's inquiry developed that the following companies were closely interrelated and subject to the control of the Chicago Stock Yards Co. of Maine (hereinafter designated the Maine company).

(1) The Chicago Junction Railways & Union Stock Yards Co. of New Jersey (hereinafter designated the New Jersey company).

(2) The Union Stock Yard & Transit Co. of Illinois (hereinafter designated the Yards company).

(3) The Chicago Junction Railway Co. of Illinois (hereinafter designated the Railway company).

(4) The Chicago Junction Railroad Co. of Illinois.

(5) The Central Manufacturing District of Illinois.

(6) The Chicago River & Indiana Railroad Co. of Illinois.

The Chicago Junction Railways & Union Stock Yards Co. of New Jersey was incorporated in 1890. It was formed as an investment company, for the purpose of acquiring the stock of the Union Stock Yard & Transit Co. of Illinois. Although it soon secured all but 2 per cent of this stock, it did not succeed in acquiring the entire issue till 1913.

The Union Stock Yard & Transit Co. of Illinois was incorporated in 1865. This corporation is actually an operating company, engaged in furnishing facilities for the marketing of live stock at the great central market in Chicago. In receipts of live stock and of earnings realized it ranks as the most important stock yards in this country.

The Chicago Junction Railway Co. was organized in 1898 for the purpose of acting as an operating company to furnish transportation and switching facilities in conjunction with the operations of the stockyards, and for the plants located in the vicinity of the stockyards. The facilities of

this company, however, have been continuously extended and, at the present time, the volume of the services which it performs in its daily operations have reached such a magnitude in the aggregate that the company is readily recognized as one of the most important links of the great railway systems centering in Chicago. The stock of this company is also owned by the New Jersey company.

The Chicago Junction Railroad Co. is the name given to the elevated railway line which provides for the transportation of passengers within the stock yards. The capital stock of this company is also entirely owned by the New Jersey Company.

The Central Manufacturing District, ownership of which is evidenced by certificates of beneficial interest held by the New Jersey company was organized (by that company) to take over investments which the New Jersey company had made in land adjacent to the Union Stock Yards of Chicago. It operates primarily as a land development company and owns about 375 acres of what is considered among the best land now available as sites for manufacturing enterprises in [fol. 1577] Chicago. There have already been located on land developed by this company some of Chicago's most important establishments. This investment is rated at a value far in excess of the value at which it is carried on the books of the New Jersey company, and there are already signs that in the future the annual income of the New Jersey company will be greatly increased by earnings from this source.

The Chicago River & Indiana Railroad Co., one-half of the stock of which is owned by the New Jersey company, the other half being owned by Richard Fitzgerald, president of the Chicago Junction Railway Co., is a small railway line operating in Chicago. The New Jersey company has materially assisted this company in obtaining funds in the past and at the present time is the guarantor of bonds which have been issued by the company.

In addition to the investments described above, the New Jersey company has other investments, of less importance, which will be referred to in the main body of this report. The control and surplus usufruct of all these properties, the value of which in 1913, it has been said, was in excess of $50,000,000, was acquired by the promoters of the Maine

company through the investment of $1,000,000. The conditions which made possible the acquisition of the control of these properties by the Maine company did not necessitate the actual investment of this $1,000,000, this sum having been provided, as one of the promoters of that company has stated, for its "moral effect."

A schedule was sent by the Commission to the Chicago Stock Yards Co. of Maine requesting information concerning the ownership of its stock. From the reply which was received it was learned that 79,990 of the 80,000 shares of stock issued and outstanding, were held in the name of F. R. Pegram, the treasurer of the company, as trustee. The other 10 shares were held in the names of the directors of the company, who were found to be employees of the Corporation Trust Co., of Portland, Me.

F. R. Pegram, who was later found to be an employee in the office of F. H. Prince & Co. of Boston, Mass., in reply to the Commission's inquiry, asserted that his books did not show the names of the real owners of the stock for whom he was acting as trustee.

Further inquiry by the Commission showed that Pegram was acting as trustee under a provision of the by-laws whereby "bearer warrants" had been issued in exchange for certificates of stock deposited with him. These certificates of stock upon deposit ceased to be a necessary instrumentality for the exercise of voting privileges and the securing of dividends declared by the company.

The bearer warrants were an ingenious device for the concealment of the names of the real owners of the Chicago Stock Yards Co. of Maine, and the Commission therefore conducted an intensive study of this company and the conditions which had brought about its formation. From the information obtained in the course of this study it appears: [fol. 1578] That the formation of the Chicago Stock Yards Co. of Maine in 1911, by F. H. Prince, of Boston, Mass., and J. O. Armour, of Chicago, Ill., marked the successful execution of the plan of these men to acquire the control of the Union Stock Yards of Chicago, which since 1890 had been held by the New Jersey company, and to secure for themselves the large surpluses of the various companies—surpluses then accrued but partly undisclosed, and anticipated surpluses of the future.

That Prince and Armour were enabled successfully to gain advantages at the expense of the stockholders of the New Jersey company because of favorable conditions created by demands for a share in the earnings of the stockyards of Chicago which were made upon the New Jersey company after 1906 by the three big packers, Armour, Swift, and Morris. Demands of a similar character had been advanced and only temporarily satisfied in 1891. At that time the directors of the New Jersey company, after threats which these three big packers made of removing their plants from the yards at Chicago, gave them $3,000,000 as an inducement to remain, and by so doing immediately subjected the company to legal attacks from dissenting stockholders and other packers who had not shared in the payment of the bonus. The renewed demand of the three big packers for participation in the earnings of the Chicago stockyards in 1906 caused an uncertainty in the minds of the stockholders as to the future earnings of the company, and thus brought about the conditions which inured to the benefit of those seeking control.

That in addition to Armour's share in the stock of the Maine company, there are indications that the demands of the packers for a share in the earnings of the stockyards have been, at least partly, satisfied by the receipt of certain bonds which had formerly been held in the treasury of the Maine company.

That the New Jersey company and the Maine company both represent financial superstructures which absorb the large earnings of the underlying operating companies. The income thus absorbed is distributed in the form of interest and dividends to the holders of bonds and stocks of the two holding companies aggregating $37,110,000 which when issued did not increase the working capital of the operating companies from whom this income is derived.

That $1,853,000 of the earnings of the operating companies is taken up annually by the holding companies in the form of dividends paid by those operating companies on their present capitalization of $18,700,000, which capitalization it appears has grown out of an original cash investment by the stockholders of only $1,000,000 and which capitalization represents in part therefore the capitalization of an increment in property values and in part the capitali-

zation of surplus earnings. By the erection of financial superstructures and the practice of increasing the capitalization of the operating companies an effective method has been provided for concealing the extent to which excessive charges have been levied on the public for services rendered by the operating companies. To this policy of [fol. 1579] concealing the magnitude of the profits derived from the operation of the Chicago stockyards has also been added the practice of carrying unrevealed assets on the books of the various companies.

The facts brought out by this inquiry supporting the conclusions expressed above are presented in the text of this report in the form of an historical account. The subject matter is arranged in the following order:

A brief sketch is first given of the history of the formation of the Union Stock Yard & Transit Co. in 1865, including such facts relating to the financial history of the Yards company down to 1890 as have been obtainable. This is followed by a description of the formation of the New Jersey company; the facts connected with the attempts of that company to satisfy the demands of the three big packers and the legal difficulties encountered by so doing.

Following this is a sketch of the financial activities of the New Jersey company in relation to the Yards company and other associated enterprises from the time of its attempts to satisfy the demands of the packers in 1891 until the renewal of their demands in 1906. The next subject matter treated relates to the reluctance of the New Jersey company to grant the packers a bonus while the legality of such an act was in question. Mention is then made of the test case (the Pfaelzer case) started in the Commerce Court for the purpose of establishing the legality of the bonus which the New Jersey company proposed to pay to a certain party named Pfaelzer.

This is followed by a description of the plan of Prince and Armour for the formation of the Maine company and the methods employed in accomplishing its formation. This description also deals with the absorption of part of the surpluses of the New Jersey company and its subsidiary

companies by the Maine company, that is, by Prince and Armour.

The report thereafter gives evidence showing that Swift and Morris expected to benefit as a result of the formation of the Maine company. It is this evidence, coupled with the fact that the records of the Maine company disclosed lack of regularity in the handling of certain treasury bonds of the company, which gives rise to the surmise that the demands of these packers may have been partly satisfied by the receipt of these bonds.

The report closes with a description of the financial conditions of the companies connected with the Chicago stockyards and controlled by Prince and Armour.

[fol. 1580] UNION STOCK YARD AND TRANSIT CO., OF ILLINOIS

Section 2.—Consolidation of Chicago Local Live Stock Markets

The Union Stock Yard & Transit Co. was incorporated under the laws of the State of Illinois by virtue of a special act approved by the legislature of that State on February 13, 1865, which granted to the company a perpetual charter permitting it to acquire land on which to construct and operate a stock yards in the city of Chicago and to build tracks to connect with all railroads centering in that city over which live stock and other freight consigned to or from the yards might be transported.

Prior to the formation of the Union Stock Yard & Transit Co. the railroads centering in Chicago over which shipments of live stock were made, had individually maintained small yards or receiving stations at which live stock were unloaded and sold. The Union Stock Yard & Transit Co. represented an attempt to consolidate all the then existing facilities for shipment and sale of all live stock entering or leaving the city of Chicago.

The plan was made possible through an agreement reached by nine railroads handling shipments of live stock to and from Chicago by which it was agreed that they would give up the yards they were then maintaining in widely separated sections of the city and that in the future such

live stock business would be handled through the Union Stock Yard & Transit Co. These nine railroads were as follows:

The Pittsburgh, Fort Wayne & Chicago Railway Co.; the Michigan Southern & Northern Indiana Railroad Co.; the Michigan Central Railroad Co.; the Chicago & Great Eastern Railroad Co.; the Chicago, Burlington & Quincy Railroad Co.; the Chicago & North Western Railway Co.; the Chicago, Rock Island & Pacific Railroad Co.; the Chicago & Alton Railroad Co.; and the Illinois Central Railroad Co.

Section 3.—Capitalization and Dividends

The Yards Company commenced business with a paid in capital of $1,000,000. The nine railroads mentioned above contributed $925,000 of this amount, some other outside interests having been permitted to contribute $75,000. Early in 1867 the capital stock was increased to $1,100,000 by a 10 per cent stock dividend on its original capital. The next increase in the capital stock of the company was made in 1873 at which time $1,100,000 of new stock was issued thus making the total outstanding capital stock of the company $2,200,000. Three years later, in 1876, the capital stock was again increased 100 per cent by the issue of $2,200,000 of new stock. The capital stock of the company remained at $4,400,000 until 1881. In that year the stockholders voted to increase the capital stock of the company to $13,200,000. Since 1881, a period of nearly 40 years, no further increases have been made in the capital stock of the company. [fol. 1581] The Yards company proved to be a very successful undertaking from the first year of operation, a 10 per cent dividend having been declared out of the first year's earnings. This dividend rate was maintained until the end of 1873. The following year the company paid 15 per cent dividends on an increased capital of $2,200,000. In 1875, 20 per cent dividends were paid. In 1876, when a 100 per cent increase in the capital stock again took place, the dividend rate was lowered to 10 per cent thus causing no actual change in the amount of money paid to the stockholders in the form of dividends. This rate was maintained each year until 1881, at which time the capital

was increased to $13,200,000, except during 1879 when an extra dividend of 5 per cent was paid.

Section 4.—Difficulties Encountered in Obtaining Detailed Financial Data

The minutes of the directors and stockholders meetings from which the above facts were obtained failed to record for a number of years all of the dividends paid subsequent to 1881. It has been ascertained, however, that the Yards company paid regular dividends at the rate of 13 per cent on its $13,200,000 of capital stock continuously from 1891 to 1918.

The Commission endeavored to secure more detailed information which would show whether the periodical increases in the capitalization of the company from $1,100,000 to $13,200,000 were brought about by cash subscriptions on the part of the stockholders, or merely represented the distribution of the surplus in the form of stock dividends, but owing to the fact that all of the accounting records of the company prior to 1905 have been destroyed, no definite data on this point could be obtained.

The wording of the resolutions authorizing the increases of capital stock from $1,100,000 to $13,200,000 points to the fact that these increases were always preceded by appraisals of the properties owned by the company, the values thus established serving as a basis for the increase in the capitalization which followed. This would be an unusual course to pursue where the capital increases to represent the investment of new funds supplied by the stockholders, and it indicates that all of the present capital of the Yards company amounting to $13,200,000 with the exception of the $1,000,000 originally paid in by the stockholders in 1865, represents the distribution of the surplus of the company in the form of stock dividends. This indication is supported by the fact that in the case of those other stockyards companies whose early financial history could be studied from the accounting records, numerous instances of capital stock increases were found to have been made as a result of dividing the surplus among the stockholders of the company in the form of stock dividends.

It must be noted that the large surpluses of stockyards

companies out of which stock dividends have arisen did not always represent accumulated earnings from opera- [fol. 1582] tions but were to a very large extent due to enhanced market values of the properties established by periodical appraisals. While the resolutions authorizing the increases of the capital stock of the Chicago stockyards, referred to above, leave no doubt that the capital stock increases were based upon stock dividends, they do not yield any definite information as to the extent to which accumulated earnings were retained by the company and included in the surplus distributions.

It was difficult to obtain authentic information from the management of the company concerning its early financial history. The only statement elicited by the Commission in reply to its inquiries on this point is contained in the following letter written by J. A. Spoor, chairman of the board of directors of the company, who for more than 20 years has had a most active part in the management of the yards:

The Chicago Junction Railway Company. The Union Stock Yard and Transit Company. J. A. Spoor, Chairman of the Board.

Chicago, May 21, 1919.

Mr. S. W. Tator, Examiner, Federal Trade Commission, Washington, D. C.

DEAR SIR:

I have received from Mr. Wooden a memorandum of certain information you desire to have from our books and from me.

I might say that in a recent decision it has been held that the Union Stock Yard & Transit Company of Chicago is a common carrier and this decision would seem to take the Company from under the jurisdiction of the Federal Trade Commission and relieve us from the obligation of making reports to it. Nevertheless I am glad to hand you herewith copies of the Minutes of special meetings of the stockholders designated in your inquiry.

As the examiners of the Commission know, there are in existence no books or records of the Union Stock Yard

& Transit Company of Chicago prior to the year 1905. This is a source of great regret to me because I, personally, did not become connected with the Company in any capacity until the year 1898 and the absence of such books and records makes it impossible for me to verify the legend of the Company and I believe to be the fact, to wit: that all increases in capitalization made in the earlier years of its existence represented either actual cash invested or its equivalent in property or earnings.

I am, however, able to state with assurance that the Union Stock Yard & Transit Company of Chicago is very conservatively capitalized and that the value of its tangible property far exceeds the par value of its outstanding stock and obligations.

[fol. 1583] I regret that I am unable to furnish you copies of financial statements made between the years 1865 and 1891 inclusive. There are no such statements in existence and no books from which copies could be drawn. Indeed, I do not know whether any such statements were furnished the stockholders during the years in question.

Referring to your inquiry touching donations of land and money made by the Company. I append hereto a statement giving the information you request so far as I have any personal knowledge of the same.

Very truly yours,

(Signed) J. A. Spoor.

While this letter does not furnish any additional information of a positive character on this subject, it is apparent that Mr. Spoor, the author of the letter, is aware that some of the present capital stock of the company represents the capitalization of increased property values or earnings.

Section 5.—Early Management Exercised by Railroads.

From 1865 to 1892 the majority of the directors who managed the Yards company were officials of the railroads which had originally organized the company. The earnings of the company were almost entirely derived from yardage, feeding, loading, unloading, and trackage charges. The trackage charges until 1894 had only been made for dead freight passing over the tracks owned by the com-

pany, as the railroads had not permitted the Yards company to collect trackage on shipments of live stock. The yardage and feeding charges were paid by the shippers who used the facilities of the yards for the sale of their live stock. The loading and unloading charges as well as the trackage charges were collected by the Yards company from the railroads, these charges having been absorbed by the railroads and made a part of the freight rate charged to the shippers.

The loading and unloading charges had been established in 1867 by agreement with the railroads who owned the yards for the specific purpose of furnishing the Yards company with an additional source of income. In 1894, a few years after the control of the Yards company had been acquired by new financial interests, a controversy arose, over the imposition of a trackage charge on live stock, between the railroad interests represented by four members of the board of directors and the new interests who had now acquired control of the management of the yards. The seven members of the board of directors representing the new interests voted in favor of the imposition of the trackage charge, whereupon the four directors representing the railroads resigned after filing a protest that the railroads could not absorb the charge. A copy of the records of the directors' meeting in which the written protest of the railroad officials is embodied is presented as Exhibit 7 on page 314 of this report. Since the withdrawal of these officials the railroads have had no representation on the board of directors.

[fol. 1584] As already noted, no increases were made in the capital stock of the Yards company after 1881, a new policy having been inaugurated in 1890 by the financial interests that had acquired control of the yards at that time, by which policy the surplus earnings of the yards were absorbed by new companies formed for that purpose. The Chicago Junction Railways & Union Stock Yards Co. of New Jersey, formed in 1890 for the purpose of securing the control of the Yards company, represents the first instance of this kind, and a detailed account of its financial history follows.

The Chicago Junction Railways & Union Stock Yards Co. of New Jersey

Section 6.—The Formation of the New Jersey Company

In 1890 a holding company, known as the Chicago Junction Railways & Union Stock Yards Co., was organized under the laws of New Jersey for the purpose of acquiring the stock ownership of the Union Stock Yard & Transit Co. of Chicago, Ill. The history of the formation of the New Jersey company, based upon data obtained from the records of that company, can be summarized as follows: Nathaniel Thayer and Richard Olney, of Boston, Mass., the former at that time president of the Union Stock Yard & Transit Co., made an arrangement early in 1890 with the stockholders of that company whereby at least 98 per cent of the outstanding stock of the company was to be deposited with them as trustees. This trust agreement had been made preparatory to the consummation of another agreement these gentlemen made with F. H. Prince, of Boston, Mass., and H. Osborne O'Hagan, an Englishman, dated June 21, 1890. The latter agreement provided that all the stock deposited with Thayer and Olney was to be sold to the newly organized New Jersey company through the agency of Prince and O'Hagan.

The New Jersey company contracted to pay $150 a share for the stock, of which price $100 was to be paid in cash and $50 in bonds of the new company. In order, therefore, to provide the necessary funds to carry out this arrangement the New Jersey company issued $10,000,000 of 5 per cent bonds and $13,000,00 of stock. The bonds were secured by depositing with a trustee, as collateral, 120,000 shares of the Yards company stock acquired under the above arrangements. The new stock which was now issued was equally divided between common and preferred, the latter class having full voting privileges but limited to a 6 per cent dividend.

The records of the New Jersey company show that 129,770 shares of the Yards company stock were secured from Prince and O'Hagan in July, 1890. This represented slightly over 98 per cent of the $13,200,000 of Yards company stock outstanding. Under the terms of the agreement the amount to be paid in cash and bonds for the stock ac-

quired would be $19,465,500. The stock, however, was entered on the books of the New Jersey company at a value [fol. 1585] of $22,587,283.90. After making allowance for $421,783.90, representing dividends on this stock, which was included in the above amount, it is evident that $2,700,000 was added to the contract price to cover the promoters' fees and other expenses connected with the organization of the new company.

While under examination by a representative of the Commission, F. H. Prince admitted that he and O'Hagan received $1,500,000 as a commission for acting as promoters. What happened to the balance of $1,200,000 the Commission is unable to determine, as the records available did not contain sufficient details of the transaction to make this clear.

It is obvious from this sketch that from a financial viewpoint the formation of the New Jersey company meant only the capitalization of the accumulated and potential earnings of the stockyards in Chicago, introducing a new group of financial interests and an imposition of capital obligations amounting to $23,000,000 without augmenting the working funds of the Yards company.

Section 7.—Demands of Armour, Swift, and Morris for a Share in the Earnings of the Company

In the course of his examination by the Commission's representative, F. H. Prince also made statements tending to show that the New Jersey company owes its existence partly to the inability of Nathaniel Thayer as president of the Yards company to satisfy the demands of the three big packers, Armour, Swift, and Morris, for a share in the earnings of the company and a voice in its management. In view of the fact that in the first meetings of the board of directors of the New Jersey company plans were considered whereby the packers would become managerial and profit-sharing factors in the stockyards of Chicago, credence may be given to the assertion that the three big packers had made concerted demands of this nature before the holding company was formed. Furthermore, a review of the wide range of schemes thus considered shows that none of them would have been possible of consummation by the Yards

company operating under the restricted charter granted by the State of Illinois in 1865.

A study of the Annual Review of the Chicago Economist of January, 1891, furnishes evidence that the New Jersey company had been formed at a time when a state of uncertainty existed as to the continuance of the large earnings of the Chicago stockyards. In the above publication mention*ed* is also made of the fact that the public was reluctant to purchase the stock of the new company; there being a possibility of a break between the three big packers and the stockyards' interests which would result in a considerable reduction of the large earnings of the yards.

This agrees with Mr. Prince's assertion that the New Jersey company was confronted immediately after its formation with the necessity of satisfying the three big packers by granting them liberal concessions. The exist-
[fol. 1586] ence of such a condition of affairs may also explain why the stockholders of the old company had been willing to relinquish their holdings in a company which had always yielded a large income on its investment.

Section 8.—The Tolleston Land Purchase by the Three Big Packers

It appears from the records of the New Jersey company, as well as from other sources, that the three big packers, Armour, Swift, and Morris, jointly purchased about 4,000 acres of land in Indiana in 1890, within 25 miles of Chicago and familiarly referred to as "the Tolleston land purchase." They announced their intention of constructing a stockyards on part of this land and of moving their plants and other establishments from Chicago to the new location. The packers let it appear to the public at large that they were induced to purchase the Tolleston land because of crowded conditions and lack of available sites for future expansion at the Chicago stockyards. They also announced that inducements would be offered to persuade other packers to remove their plants and establishments and to locate them at Tolleston.

In order to provide temporary facilities for their immediate use, the packers also purchased a small tract of land near their plants in Chicago, erected platforms, pens,

and sidetracks for handling live stock shipped to them. These new yards they called the Central stockyards. They then demanded that cars of live stock consigned to them be delivered over the tracks owned by the Yards company free from the yardage and charges collected by that company on all stock handled through its yards. Upon refusal by the Yards company to comply with their demands, a suit was instituted by the three packers in the Chicago courts to force the company to do so.

In order that the situation created by the purchase of the Tolleston land may be properly understood it should be noted at this point that charges have been made at various times that the announcement by the three big packers of their intention of dismantling their plants at Chicago and of establishing stockyards and plants at Tolleston, Ind., was not made in good faith. It has been asserted that the tract of land at Tolleston was wholly unimproved and barren; to a considerable extent swamp land and under water; that it had no special adaptability for a stockyards business; that the land had originally been purchased at an average price of $30 an acre, or a total cost of about $120,000 for the whole tract, and that the purchase of this land was merely a move made to forestall any unwillingness on the part of the stockholders of the New Jersey company to acquiesce in any arrangements which the directors of the company might make in order to meet the demands of the packers for a share in the earnings of the Chicago stockyards and a representation in its management.

The sincerity of the intentions expressed and the reasons advanced by the three big packers as the motive by which [fol. 1587] they were actuated in purchasing the Tolleston land have been justly questioned. It would appear that had these packers been prompted solely by their need for more building space for future expansions and by the crowded conditions in the Chicago stockyards, they would have demanded in their negotiations with the New Jersey company which subsequently took place, that greater facilities be put at their disposal in the Chicago yards. Instead, these negotiations dealt solely with the question of securing for the packers the largest possible share in the earnings from the Yards, and a voice in the management.

Section 9.—Tentative Bonus Agreement of July 3, 1891, with the Three Big Packers

Official announcement was made to the directors of the New Jersey company at a meeting held May 11, 1891, of the steps taken by the packers in instituting the suits against the Yards company and of their announced intentions to remove their plants to the Tolleston land, and a committee was immediately appointed to negotiate with them. The personnel of this committee changed subsequently, but when its report was submitted to the directors of the company, on July 8, 1891, it consisted of Chauncey Depew, of New York; Nathaniel Thayer, of Boston; and F. H. Winston, of Chicago.

Before the terms of the agreement which was subsequently consummated between the New Jersey company and the three big packers are taken up, it is well to have clearly in mind the general principles which had to be considered by the directors of the New Jersey company in arriving at their decision on the terms.

First. The terms of the payments to be made to the packers had to be so arranged as to reduce to a minimum the possibility of the stockholders withholding their approval.

Second. The agreement had to be so framed as to generally convey the idea that it grew out of the ordinary necessities of the stockyards business and was not a bonus pure and simple.

The above committee after negotiations with the packers submitted an outline of a tentative agreement, which had been drafted on July 3, 1891. It contained provisions whereby the New Jersey company would give to the three big packers $3,000,000, of which amount $1,000,000 was to be common stock of the company, and P. D. Armour was to be made a director. The packers obligated themselves in turn to convey to the Yards company the property known as the Central stockyards and 1,000 acres of the Tolleston land. They agreed also to dismiss the suits that had been pending in the Chicago courts and pledged themselves to continue their business at the yards for 10 years. This tentative agreement was never carried out because the concessions granted to the packers were found to be too liberal. The common stock of the New Jersey company

had become more attractive to investors since the stock had been first offered for subscription, due to the fact that the packers had shown signs of their willingness to remain in the Chicago yards and the company, therefore, could not easily carry out the agreement to give the packers $1,000,000 [fol. 1588] of its common stock. The terms under which the remaining $2,000,000 were to be paid were also found to be too exacting for the New Jersey company. On the other hand the obligation of the packers to do business at the Chicago stockyards for a period of 10 years only was not considered commensurate with the remuneration to be given them by the New Jersey company.

Section 10.—The London Agreement of July 27, 1891.

On July 27, 1891, an agreement was drawn up in London by a committee composed of representatives of the New Jersey company and of the packers. In this agreement while the principle of paying the packers $3,000,000 was maintained, the provision whereby the New Jersey company obligated itself to give the packers $1,000,000 in common stock was eliminated. The packers in turn agreed to continue doing business at the yards for a period of 15 years.

It appears that the three big packers had organized a company known as the Tolleston Stock Yards Co. with a capital of $1,000,000. This company proposed to build a stockyard on the 1,000 acres of land, which, according to the tentative agreement of July 3, 1891, were to be conveyed to the New Jersey company. An issue of $2,000,000 of bonds was authorized for this purpose.

The London agreement in giving the packers $3,000,000 as originally contemplated aimed to clothe this bonds with the appearance of having accomplished the acquisition of a going stock yards concern. It therefore provided that the New Jersey company would purchase from the packers the $1,000,000 of stock issued by the Tolleston Stock Yards Co. and would guarantee the payment of the principal and interest on the Tolleston Co.'s $2,000,000 of bonds. These bonds were to be retained by the packers.

Following the announcement that an agreement between the packers and the directors of the New Jersey company

had been signed in London several suits were started in the courts of New Jersey by stockholders of the New Jersey company contesting the legitimacy of the directors' acts. These suits had a retarding effect on the consummation of the agreement. A decision rendered by the vice chancellor of New Jersey in one of these suits known as the Ellerman case, which was instituted as a test case by the directors of the New Jersey company, upheld the validity of the London agreement. The directors of the company, however, discouraged by the determined opposition of the stockholders, deemed it advisable to draw up a new contract containing terms more liberal for their company than those incorporated in the London agreement. Furthermore, the directors by taking over the Tolleston stockyards as a going concern, while having no intention of immediately extending the business of the Chicago stockyards to Tolleston would have laid themselves open to possible attacks of having misrepresented the use to which the company's funds had been put.

[fol. 1589] Section 11.—Final Bonus Agreement of January 15, 1892

These considerations led to the drawing of a new agreement on January 15, 1892, which marked the final consummation of the negotiations which had been in progress since May 1891. The new agreement provided for the issuance of $3,000,000 of 5 per cent 15-year noncumulative income bonds by the New Jersey company, the interest on these bonds to be payable only after (and if) the income of any year was sufficient to pay interest on the $10,000,000 of bonds already issued by the New Jersey company, and after 6 per cent dividends had been paid on the preferred stock. The preferred stock, it will be recalled, carries full voting rights, and, therefore, by giving the preferred stockholders a prior claim on the profits of the company over the holders of the income bonds, the possibility of meeting with opposition from the preferred stockholders was reduced to a minimum if not entirely removed. The directors also reserved the option of delivering to the packers shares of common stock of the New Jersey company at par in lieu of the whole or any part of the $3,000,-

000 of income bonds, and afforded the dissatisfied common stockholder, who might see his income jeopardized by the issuance of income bonds that had a prior claim on the profits of the company, an opportunity to exchange his stock for income bonds.

The provision of the London agreement by which the New Jersey company was to acquire the 1,000 acres of Tolleston land through the purchase by it of the capital stock of the Tolleston Stock Yards Co. was eliminated. Instead, the 1,000 acres of land were conveyed to the New Jersey company, not in the guise of a going concern, but directly as a valuable piece of property. A clause was inserted in the preamble to the agreement to the effect that the 1,000 acres of land was acquired for the purpose of providing suitable premises for the business of stockyards in case the New Jersey company should thereafter find it necessary to remove the Chicago yards by reason of the growth of the city of Chicago, or municipal ordinances or legislation or other causes.

No steps were taken by the directors of the New Jersey company to execute the agreement of January 15, 1892, until it had been ratified at a special meeting of the stockholders on March 1, 1892. At the same time an appeal was made to the common stockholders to exchange their holdings for 5 per cent income bonds to the amount of $3,000,000 in accordance with a clause of the agreement of January 15, 1892. The appeal met with no response owing to the fact that the New Jersey company had already begun to pay dividends on the common stock at the rate of 8 per cent per annum. The harmonious relations which had now been established between the company and the three big packers was also a contributing factor in adding to the attractiveness of the common stock as an investment. The agreement was finally consummated by the delivery to the three big packers of $3,000,000 of 5 per cent noncumulative income bonds in July, 1892.[1] The same year the packers

[1] These bonds were retired in 1900, at which time the New Jersey Company issued its 40-year 4 per cent collateral trust gold bonds, and used part of the proceeds from the sale of these bonds to pay off the principal of the income bonds then outstanding.

were given a representation in the management of the [fol. 1590] Chicago stockyards through the election of two of their representatives, A. H. Veeder and E. J. Martyn, to the board of directors of both the New Jersey company and the Yards company.

Section 12.—The Bonus Agreement with the Small Nonassociate Packers and Other Bonus Agreements

Before the agreement between the three big packers and the New Jersey company was finally consummated, 12 small Chicago packers doing business at the yards instituted suits against the company in the Chicago courts charging that discrimination had been practiced against them in favor of the three big packers. These small packers had been restive for some time past, having threatened to remove their plants and establishments from their locations in and adjacent to the Chicago stockyards and to locate them at a new site known as the Stickney tract. The three big packers had originally stirred up the small packers by offering them inducements to join them at the Tolleston tract in order to strengthen their own position in dealing with the officials responsible for the management of the yards, but differences subsequently arose between the two groups of packers, and the small packers decided on the Stickney tract. The following letter found in the files of the New Jersey company and written in February, 1892, by F. H. Prince, one of the promoters of the New Jersey company and a director of the company at this time, throws an interesting light on the turn which the relations between the three big packers and the 12 nonassociate packers took when the latter had learned that the former were to receive $3,000,000 from the directors of the New Jersey company:

F. H. Prince & Co., Bankers & Brokers, 288 State Street

Boston, February 6, 1892.

William C. Lane, Esq., Secretary, Chicago Junction Railways & Union Stock Yards Co., New York, N. Y.

Dear Sir: Will you kindly obtain for me through the attorney, a printed copy of all the evidence in the different

suits against the Company, that have been entered to date? What I want especially is the evidence of the small packers and their witnesses against the three big packers, and also the answer of the three big packers, wherein they both state that each other were attempting blackmail. Please send me copy of the new agreement that has been made with packers.

Very truly yours,

Confronted with the possibility of coming into conflict with the Interstate Commerce Act and with the Sherman Antitrust Act the directors of the New Jersey company hastened to reach an understanding with the small packers. By the terms of an agreement dated June 3, 1892, the New Jersey company contracted to pay the small packers [fol. 1591] $100,000 in cash and $300,000 in 5 per cent 15-year noncumulative income bonds and the small packers in turn obligated themselves not to remove their plants to the Stickney tract. Funds to the extent of $300,000 for the bonus paid to the small packers were supplied by the three big packers, by repurchasing the Central stockyards for $100,000 in cash and by giving back to the New Jersey company, in exchange for 300 acres of the Tolleston land, $200,000 of the $3,000,000 income bonds, which the three big packers had received from that company.

The records of the New Jersey company do not show that any further payments were made to packers until 1900 other than those necessary in settlement of the $3,000,000 given to the three big packers and the $400,000 given to the 12 small packers in 1892. These payments, it should be noted, were made for the purpose of inducing the packers already established at the yards to continue doing business there. Beginning with 1900, the New Jersey company adopted a policy of granting cash bonuses for the purpose of securing the establishment of new packing plants at the Chicago yards. As a result three packing companies were induced to establish plants at the Chicago yards, Schwarzchild & Sulzberger Co. receiving $540,000 in 1900; Anglo-American Provision Co. $200,000 in 1901; and Hammond & Co. $500,000 in 1902.

Section 13.—Renewed Demands of Armour, Swift, and Morris for a Bonus, and the Pfaelzer Case

The contract between the New Jersey company and the three big packers expired in 1906. The records of the New Jersey company show that about that time negotiations were in progress between a committee composed of representatives of the packers and of the New Jersey company with a view of renewing the contract which was about to expire. Serious obstacles seem to have been found in reaching a settlement that would not be in contravention of the law.

The contention was raised that through the ownership and control of the Chicago Junction Railway Co. the New Jersey company was restrained from giving to the packers a bonus by virtue of the Interstate Commerce Act. In 1910, the negotiations reached a point where it was decided to arrange for a test case with a view of getting a decision from the courts in passing upon the right of the New Jersey company to grant bonuses.

With this end in view, the company agreed to give $50,000 to Louis Pfaelzer & Sons, a small packing concern then located at the Chicago yards, for the purpose of rebuilding its plant which had been condemned by the Bureau of Animal Industry of the Department of Agriculture. The Interstate Commerce Commission thereafter asked the Commerce Court to enjoin the company from paying the $50,000. The Commerce Court held that the bonus could be paid. The case was then taken to the Supreme Court of [fol. 1592] the United States, which handed down a decision in 1912 overruling the decision of the Commerce Court and declared that the bonus, if paid, would be in violation of the law.

Section 14.—Significance of Certain Events Following the Pfaelzer Case

It is of interest to note that most of the data embodied in the preceding pages of this report, especially that relating to the negotiations between the New Jersey company and the packers, was obtained from the records of the New Jersey company. A study of the same records beginning with 1910 shows that after the Pfaelzer case was

brought before the courts no further efforts were made on the part of the New Jersey company to solve the recurring problem resulting from the demands of the packers for a share in the earnings of the company.

It would, however, be erroneous to conclude from this circumstance that the bringing of the Pfaelzer case marked the end of the packers' attempts to obtain some financial interest in the company's earnings. Evidence at hand, shows that while the New Jersey company as a corporate entity ceased to appear after that time as a party to any negotiations of this kind, one of the directors of the company whose official duties brought him into close contact with the packers continued to negotiate with them for the purpose of devising a plan that would constitute a permanent settlement of the packers' claims.

It has been found that without waiting for the final decision of the court, steps were taken in 1910 by F. H. Prince, vice president and director of the New Jersey company and J. O. Armour one of the three big packers who had made the demands upon the New Jersey company, to consummate a plan of their own for securing control of the surplus earnings of the New Jersey company through the formation of a new company to be known as the Chicago Stock Yards Co. of Maine. By acquiring this control, apparently, they thought they would put themselves in a position ultimately to satisfy the packers' demands regardless of any decision which the courts might render.

The history of the events relating to the activities of Prince and Armour and of their agents in consummating their plan opens up a new chapter in the history of the New Jersey company. This new chapter is replete with obscure elements, and great difficulty has been experienced in interpreting the great mass of evidence obtained in the form of testimony, letters, and other documents as well as accounting records, and in arriving at a final conclusion as to whether or not the demands of the packers were satisfied by the consummation of the plan.

Some of this evidence indicates that the plan of Prince and Armour was conceived and set in motion without the knowledge of the other directors of the New Jersey company and of Swift and Morris. It also shows that Swift and

Morris were not identified either as promoters or as stockholders, when the new company was formed. And yet, it is [fol. 1593] an established fact that as the plan was developing both the directors of the New Jersey company and Swift and Morris came to look upon the new company as an agency which would redound, somehow or other, to the financial benefit of the packers. Other evidence pointed to Swift and Morris not only as beneficiaries of the Maine company plan, but as promoters and stockholders along with Prince and Armour.

Confronted with the task of harmonizing the conflicting evidence at hand the Commission did not rely solely upon testimony given by the packers concerning their relationship with the Chicago stockyards. For one thing, Armour & Co. failed to report the fact of its interest in the Chicago Stock Yards Co. in reply to the schedule sent Armour & Co. by the Commission on September 25, 1917, at the outset of the meat investigation. Furthermore, Arthur Meeker, vice president of Armour & Co. stated before the Committee on the Judiciary of the House of Representatives on July 6, 1916, in answer to questions of Representative Gard of Ohio, that the Armour people had no interest in the Chicago stockyards.

In the succeeding pages of this report conclusions as to the events that followed the institution of the Pfaelzer case in 1910 are given.

The Chicago Stockyards Co. of Maine

Section 15.—The Syndicate Agreement between F. H. Prince and J. O. Armour

In 1910 while the Pfaelzer case was under consideration by the Commerce Court, F. H. Prince, vice president at that time of the New Jersey company and who had been instrumental in bringing about the formation of the company in 1890, entered into a syndicate agreement with J. O. Armour, of Chicago, for the purchase of 13,000 shares of the common stock of the New Jersey company at the rate of $150 per share. This stock was to be purchased for their joint account by the brokerage firm of F. S. Moseley & Co., of Boston, Mass.

The following is a copy of a letter from the files of F. H. Prince. The original copy of this letter, which was signed by F. H. Prince, was delivered to J. O. Armour and retained by him, while the duplicate, of which this is a copy, was returned to Prince with the O.K. of J. O. Armour attached to it. This letter was written on October 31, 1910, one month after the syndicate agreement was entered into and indicates the methods by which that transaction was to be financed.

[fol. 1594] F. H. Prince & Co., Cor. State and Devonshire Sts.

Boston, October 31, 1910.

J. Ogden Armour, Esq.,
Chicago, Ill.

Dear Sir:

This is to certify and confirm that there have been arranged to be purchased for joint account of yourself and this firm thirteen thousand shares of the Common Stock of The Chicago Junction Railways and Union Stock Yards Company at and for the aggregate price of $2,080,000, and that your interest in said purchase is six thousand five hundred shares. It is the arrangement between us that said purchased stock shall be transferred into our names upon the books of said company and to the extent of six thousand five hundred shares is to be held by us for your account and in trust for you. You are to pay us $300,000 to apply on account of the purchase price of said stock. We are to borrow on our notes, but for your account, the remainder of said purchase price, namely $740,000, as per list of notes to be handed to and approved by you. On payment of the said notes or any renewals or extensions thereof by you, or if no such notes shall be outstanding, then on payment to us of said sum of $740,000 and any interest due us, we will deliver to you or order duly endorsed in blank for transfer, certificates for said six thousand five hundred shares of said stock. The fact that we hold these shares for account and in trust for another will be properly indi-

cated by entries upon our books. The account will be known on our books as "Trust Account A."

Very truly yours,

OK
J. O. A.

F. H. Prince, who for several years had been a large holder of the common stock of the New Jersey company, also undertook in 1910, to purchase additional stock for his own account. He was successful in acquiring enough stock to increase his holdings of the common stock to about 20,000 shares. This stock, together with the 13,000 shares acquired under the syndicate agreement gave to Prince and Armour the ownership of about 33,000 shares of the 65,000 shares of common stock of the New Jersey company. This, however, was not a controlling amount since the 65,000 shares of preferred stock also has voting rights.

Section 16.—The Plan for the Formation of the Maine Company

The syndicate agreement between Prince and Armour was only part of a comprehensive plan which had been devised whereby a new company was to be organized under the laws of Maine to be known as the Chicago Stock Yards Co. of Maine.

It is evident that Prince and Armour carefully planned to surround the stock ownership of the Maine company with [fol. 1595] an impenetrable veil of secrecy from the fact that dummies were used as promoters, officers, and directors of the company. They also devised "bearer warrants" to circulate in lieu of stock certificates with no apparent object in view other than more effectively to conceal the real ownership of the company. It was planned that this company, which was to have a paid in capital of $1,000,000 to be subsequently increased to $8,000,000 would ultimately become the sole controlling factor in the management of the New Jersey company which control carried with it the control of the stockyards at Chicago and the several affiliated enterprises. This control was not to be established through the acquistion of the entire common stock then outstanding, but through an entirely novel device.

It was planned that the Maine company would offer to the common stockholders of the New Jersey company, through the agency of a committee composed largely of prominent bankers of Boston, Mass., three of whom were also directors of the New Jersey company, a guarantee of 9 per cent dividends on their stock. In return for this guarantee, the stockholders were to surrender their right to participate in the accumulated surplus of the New Jersey company, of the underlying subsidiary companies and in the future earnings of all of these companies in excess of the 9 per cent guaranteed to them. The New Jersey company stockholders were also given the option of exchanging their stock for 5 per cent bonds of the Maine company at the ratio of 2 to 1, that is, $200 in 5 per cent bonds would be given in exchange for each share (par value $100) of common stock. This would net them 10 per cent on the par value of their stock.

On June 30, 1911, the committee selected by Prince, consisting of Richard Olney, chairman, Samuel Carr, Guy Norman, S. L. Schoonmaker, E. V. R. Thayer, and F. R. Hart, secretary, submitted to the common stockholders of the New Jersey company the Plan given below. They submitted this Plan on behalf of the Maine company, which at that time had not as yet been formed, and advised its acceptance. It had been arranged that the Old Colony Trust Co. of Boston would act as trustee for the stockholders who were now asked to signify their assent to the Plan by affixing their signature to a form prepared for this purpose which was to be sent by the stockholders to the Old Colony Trust Co. of Boston to be held by the latter as trustee until such time as the committee, deciding that a sufficient number of assents had been deposited, would declare the Plan operative. The stockholders pledged themselves to present their stock certificates to the trustees immediately after the committee had taken such action and to permit the trustee to stamp their certificates with the guarantee of the Maine company as outlined in the Plan of June 30, 1911.

[fol. 1596] Chicago Stock Yards Company Plan

Dated June 30th, 1911

Richard Olney, Chairman; Samuel Carr, Guy Norman, S. L. Schoonmaker, E. V. R. Thayer, F. R. Hart, Secretary, 17 Court St., Boston, Mass., Committee

Old Colony Trust Company, Trustee

Storey, Thorndike, Palmer & Dodge, Counsel

Chicago Stock Yards Company Plan, dated June 30th, 1911

On behalf of the Chicago Stock Yards Company, if and when formed (hereinafter called the New Company), it is proposed to the holders of common stock of The Chicago Junction Railways and Union Stock Yards Company, subject to the terms and conditions hereinafter set forth, as follows:

To enter into a Trust Agreement, with such of said stockholders as may elect to become parties hereto, whereby (among other things) said assenting stockholders will receive the guaranty and agreement of the New Company (by way of a stamp thereof on their respective stock certificates) to pay such stockholders, annually, the fixed sum of Nine Dollars in respect of each share of said stock, in quarterly instalments of $2.25 each. There is also extended to the holders of such stamped certificates the privilege of exchanging the same for Collateral Trust Bonds on the basis of $200 face amount of Fifty-year Five Per Cent. Collateral Trust Gold Bonds of the New Company, in such form and secured as the Committee may prescribe or approve for each share; which privilege shall remain in force until the New Company shall give or cause to be given in such manner, and for such period as the New Company, with the written approval of the Committee, may fix and determine, notice of the withdrawal and termination thereof.

The Old Colony Trust Company is hereby designated and authorized to receive from stockholders electing to become parties to this Plan stock certificates for the purpose of being subjected to the Trust Agreement and stamped as in the above Paragraph provided, and, pending

the declaration by the Committee that this Plan has become and is operative, assents and agreements of stockholders, manifesting their election to accept this Plan and to become parties thereto.

[fol. 1597] This Plan and the said Trust Agreement shall become operative if and when in the opinion of the Committee it has become advisable to carry the same into effect.

Upon such declaration being filed with the Old Colony Trust Company, the New Company shall deliver to the Trust Company the Collateral Trust Bonds (or interim certificates temporarily representative thereof) which are deliverable to stockholders who shall at that time have elected to avail themselves of the provisions hereof.

The Trust Agreement shall be deposited with the Old Colony Trust Company.

Each and every holder of such common stock who shall deliver the certificate therefor or who shall deliver to the said Trust Company his assent to said Plan, as above authorized and provided for, shall thereby become a party to this Plan and the agreements herein contained with the same force and effect as if he had subscribed and affixed his seal to this Plan and the agreements herein contained.

Each such depositing or assenting stockholder agrees that, upon demand of the Committee or of the Old Colony Trust Company, he will from time to time execute such assignments, powers of attorney, and other instruments as the Committee shall deem necessary or proper to more fully effectuate the transfer of such stock certificates, the stamping of said guaranty thereon, the making of such stockholder a party to the Trust Agreement, and the accomplishment of the provisions thereof.

The Committee undertakes in good faith to promote the consummation of this Plan; but it is expressly understood that no member of the Committee assumes any responsibility for its success. No member of the Committee shall be in anywise liable because of the aforesaid offers or the promulgation of this Plan.

The Committee shall have power, in its discretion, from time to time, to extend the time within which the holders of any of the aforementioned common stock may deposit the same and become parties to the Trust Agreement, and in

connection therewith to impose such terms and conditions as it shall see fit, including the making of a cash payment as a condition of becoming a party or parties; to provide that any member thereof may, with the approval of the other members, act and vote by proxy; to prescribe the form and terms of any securities for the issue of which provision is made in the said Plan and Agreement; to declare the aforesaid offers and this Plan operative if and when the Committee shall, in its discretion, deem that the amount of the deposited and assenting stock is sufficient to warrant such declaration, and the declaration of the Committee shall be final and conclusive upon all parties hereto; to provide, after the making of said declaration, if and when the Committee sees fit and upon such terms as it shall prescribe, for the acceptance of the said offer by holder of any of the aforementioned stock not deposited prior to such declaration; to carry out and effectuate this Plan in whatever manner the Committee shall at the time deem [fol. 1598] most expedient, and, generally, to make and determine all arrangements and things which in its judgment are necessary or expedient to carry out this Plan; to construe this Plan and the appended Trust Agreement. Any such construction by the Committee, or any action under any such construction made or taken in good faith, shall be final and conclusive. Also to supply any defect or omission of or in this Plan or said Agreement or to reconcile inconsistencies in it in such manner and to such extent as shall, in the opinion of the Committee, be necessary or expedient to carry out the same properly and effectively, and the Committee shall be the sole judge of such necessity or expediency; and from time to time to make such modification of said Agreement as it shall consider necessary or expedient, provided it is consistent with its general purpose and does not change the price which the common stockholders shall receive for their shares or the terms of the guaranty thereon in case of election to accept the guaranty. The New Company shall have power to make any and all adjustments of interest and dividends by it deemed fair and equitable in case of the exchange of any such stock or stamped certificate for bonds, and such adjustment shall be final and conclusive.

In the event of the resignation, death, or inability to act of any member of the Committee, the vacancy so caused shall be filled by the remaining members of the Committee.

All action of the Committee may be had and taken by a majority of its members.

In no event is any claim to be made against any depositing or assenting stockholder, or enforced by way of lien, or otherwise, against any of the deposited or assenting stock for which such certificates shall have been issued, for or on account of the charges or expenses of the Committee. The compensation of the Committee and of the Trustee and all expenses of the Committee and of the Trustee, in connection with the carrying out of this Plan and said Trust Agreement, shall be paid by the New Company.

No assenting stockholder shall have any interest in any of the shares of stock of the New Company or of the disposition thereof.

The provisions and benefits of this Plan and said Trust Agreement shall be confined strictly to the parties thereto in accordance with the terms and provisions thereof.

This Plan and said Trust Agreement shall be deemed, according to its terms, to bind and benefit the several parties thereto, their and each of their survivors, executors, administrators, and assigns.

Richard Olney, Chairman; Samuel Carr, Guy Norman, S. L. Schoonmaker E. V. R. Thayer, F. R. Hart, Secretary, 17 Court St., Boston, Mass., Committee.

Boston, June 30th, 1911.

[fol. 1599] Chicago Stock Yards Company

To the Old Colony Trust Company:

The undersigned hereby assents and becomes a party to the Plan dated June 30, 1911, and promulgated by Richard Olney, Samuel Carr, Guy Norman, S. L. Schoonmaker, E. V. R. Thayer, F. R. Hart, Committee, and the agreements therein contained and the Trust Agreement which may be formulated pursuant thereto; and elects to receive, in respect of each share of the Common Stock of The Chicago Junction Railways and Union Stock Yards Company

standing in his name on the date hereof, the guaranty of the New Company to pay annually the fixed sum of Nine dollars on each such share of Common Stock in quarterly installments of $2.25 each, in accordance with said Plan and said Trust Agreement, with the privilege of exchanging said guaranteed shares for collateral trust bonds as in said Plan and Agreement provided and subject to the conditions thereof, and agrees, on demand of the Old Colony Trust Company or of the Committee in said Plan mentioned to present to said Trust Company the Certificates for said shares of Common Stock for indorsement thereon of the guaranty and agreement in said Plan and Agreement specified.

The said right to exchange for collateral trust bonds may be cancelled upon thirty days' notice by the Directors of the New Company.

On presentation of such certificates the undersigned will receive in cash a sum equal to dividends accrued at the rate of 8 per cent per annum, up to the date fixed by the Committee for adjustment.

Dated June 1911

Name	Address	Number of Shares
.....	.....	.....
.....	.....	.....

Section 17.—Financial Condition of the Chicago Stockyards in 1911

In order that the significance of the above plan may be fully understood, it is necessary to present an outline of the financial condition in 1911 of the New Jersey company and of its subsidiary companies. The New Jersey company, as has been shown on previous pages of this report, was organized in 1890 for the purpose of acquiring the stock of the Union Stock Yard & Transit Co. of Illinois. In the first year of its existence it acquired 129,770 of the 132,000 shares issued by the Yards company. Up to 1911 the New Jersey company had increased its holdings by 4,086 shares, leaving, at this time, 1,144 shares in the hands of outside stockholders.

[fol. 1600] This Yards company stock had yielded dividends each year at the rate of 13 per cent, this rate having been established and maintained after the New Jersey company acquired control of the yards. Up to 1898 the dividends received from the Yards company constituted practically all of the income of the New Jersey company.

In 1898 the New Jersey company formed the Chicago Junction Railway Co. by consolidating two small railway corporations, the stock of which had been acquired by the New Jersey company for $500,000. The new company issued capital stock to the amount of $2,200,000, representing the par value of the capital stock of the two companies thus merged. The Railway company took over the operation of the railway way property owned by the Yards company under the terms of a lease whereby the Yards company was to be given, in lieu of a fixed rental, two-thirds of the net earnings of the Railway company. In 1910 the New Jersey company was receiving 6 per cent dividends on the $2,200,000 of capital stock of the Railway company, which it owned, this rate having been established by the Railway company one year after its formation and maintained each year.

Both the Yards company and the Railway company had been accumulating a surplus from their earnings in addition to the annual dividends paid on their capital stock, and during 1909 and 1910 the combined earnings of these two companies in excess of dividends paid amounted to over $600,000 each year. On December 31, 1910, the surplus of the Yards company amounted to $2,014,692.14, while on June 30, 1911, the Railway company showed a surplus of $1,204,533.70. The surplus of both of these companies, however, was actually very much in excess of the amounts shown by the reports of the company, owing to the fact that considerable sums had been expended annually for a number of years in additions to and improvements of their properties, which were charged to operating expenses.

The New Jersey company had several other investments in addition to its holdings in the Yards company and the Railway company, but they were of minor importance at that time from the standpoint of income received. The income of the New Jersey company in 1910 amounted to about $2,000,000, and of this amount more than $1,800,000

was received in the form of dividends from the Yards company and the Railway company.

The income of the New Jersey company had been sufficient to pay interest on its bonded indebtedness, 6 per cent dividends on its preferred stock, and 8 per cent dividends on its common stock. The company had begun paying 8 per cent dividends to its common stockholders in 1891 and had maintained the same rate each year in spite of the large bonuses which it had given to the packers in 1892 and the subsequent bonuses of 1900-1903.

In 1910 the New Jersey company showed a surplus of $2,449,673.71. For several years prior to that date the company had been adding about $300,000 to its surplus account each year. This $300,000, if distributed in the form [fol. 1601] of dividends, would have enabled the New Jersey company to pay dividends to the common stockholders at the rate of 12½ per cent instead of 8 per cent.

It was shown above that the New Jersey company had several other investments, the income from which was not an important factor at that time in the total income received. Two of these investments are worth mentioning, however, at this point, in view of the fact that they were not carried on the books of the New Jersey company at their full value, thereby constituting hidden assets which, if carried at their actual value, would have materially increased the surplus of the New Jersey company. One of these investments consisted of bonds of the Indiana Harbor Belt Railroad, having a face value of $2,500,000, while the other was represented by manufacturing sites adjacent to the Yards company of Chicago, which were being developed by the Central Manufacturing District.

The $2,500,000 of Indiana Harbor Belt Railroad bonds were carried on the books of the New Jersey company at $50,000, this being the price at which the company had acquired them in 1907 from its subsidiary company, the Chicago Junction Railway Co. The latter company had received these bonds as part consideration for the sale to the Vanderbilt lines of a piece of its railroad property in 1907, known as the Outer Belt. The bonds which mature in 1957 are guaranteed as to principal and interest by the Lake Shore & Michigan Southern Railway and by the Michigan Central Railroad Co. The New Jersey company

received interest each year amounting to $50,000 at the rate of 2 per cent on the face value of the bonds for five years after 1907. The rate was increased in 1912 to 3 per cent and in 1917 to 4 per cent, which rate will be maintained until the bonds mature and are paid in 1957.

The Central Manufacturing District was managed by trustees appointed by the New Jersey company, and had been formed for the purpose of developing extensive land purchases which the New Jersey company had been making for a number of years prior to 1911. The earnings of the Central Manufacturing District, however, had not been included, prior to 1911, in the income of the New Jersey Company, these earnings having been retained by the trustees for further reinvestment in improvements to the property.

As a result of the above policy, the books of the New Jersey company did not reflect the true value of the company's investment in the Central Manufacturing District, but merely represented the cost of that piece of property to the New Jersey company as measured by the money which had been taken out of the treasury of the company for this particular purpose. In 1911, the value of the Central Man-facturing District was carried on the books of the New Jersey company at a little over $3,000,000. Of this amount, $1,455,000 represented funds secured through the sale of real estate improvement bonds, the liability for which was assumed by the New Jersey company.

[fol. 1602] The additional value of the property that grew out of the reinvestment of the annual profits of the Central Manufacturing District was not included in the amount at which the investment was carried on the books of the New Jersey company, nor was the enhanced value of the property due to the location of numerous large enterprises on the property of the Central Manufacturing District shown.

The data obtained by the Commission on these points was not in sufficient detail to estimate the value of the Central Manufacturing District property in 1911 in excess of the amount recorded on the books of the New Jersey company. An interesting side light on this point may be gleaned, however, from the balance sheet of the Central Manufacturing District for December 31, 1918, which places a value on the assets of the company of $12,967,898.17. Part of this

amount was offset by $3,680,000 of bonds, $6,399,863.45 represented accumulated earnings, and $2,550,605.59 represented increment in land values.

In calling attention to the fact that the New Jersey company was not carrying its investment in the Central Manufacturing District at the full market value of the property in 1911, it is not to be understood that a policy is favored of recording enhanced values of this nature on the books of a company. It is desired to point out merely that the stockholders of the company who were asked to give their assents to the Plan of Prince and Armour were not told of the real value of the property and its actual and potential earning power, but other methods were employed which did not disclose the value of their properties.

In order to summarize the important points brought out in the preceding pages, relating to the financial condition of the New Jersey company, and of its subsidiary companies in 1911, it should be noted that the combined surplus of the New Jersey company, the Yards company and the Railway company, each of which has been stated individually, aggregated $5,668,899.82. It was also pointed out that certain investments of the New Jersey company were carried on the books of the company at less than their real value, and that both the Yards company and the Railway company had, for several years, pursued a policy of charging additions to, and improvements of their properties to operating expenses which might well have been charged to capital accounts. In spite of this policy and the further fact that the profits from the Central Manufacturing District had not been included in the income of the New Jersey company, it has just been shown that the combined income of the three companies, the New Jersey company, the Yards company, and the Railway company, in excess of requirements for fixed expenditures and regular dividends, had amounted to over $900,000 for at least two years prior to 1911. This sum, if distributed, would have made possible the payment of dividends to the common stockholders of the New Jersey company at the rate of 2½ per cent instead of the 8 per cent they were then receiving.

[fol. 1603] Section 18.—Analysis and Specimens of the Committee's Circular Letters and of the Moseley Letters

The Plan submitted to the stockholders of the New Jersey company through the committee, a detailed statement of which has been given in the preceding pages, had as its primary effect the acquisition for the benefit of the Maine company and its promoters, Prince and Armour, of the accumulated surplus of the New Jersey company and of its subsidiary companies, and the annual earnings in excess of the stipulated payments.

The efforts exerted by these promoters for the accomplishment of this task were marked with complete success, and the Plan was declared operative by the committee in September, 1911. The committee did not deem it necessary to secure the assents of the entire 65,000 shares before taking their action, but provided for later acceptance by the few thousand shares, the assents of which could not be immediately obtained.

The successful outcome of the campaign initiated by Prince and Armour to acquire for the Maine company the surplus earnings of the New Jersey company was assisted through the agitation among the common stockholders of the company, as a result of the renewed demands of the big packers for a share in the earnings of the company. These demands were made about the time the contract between the New Jersey company and the three big packers, Armour, Swift, and Morris, expired in 1906. The negotiations begun at that time culminated in the test case brought before the Commerce Court for the purpose of definitely ascertaining whether the New Jersey company could legally give the packers a bonus.

The case was brought in 1910, and the decision of the Commerce Court was not rendered until December, 1911. During this period disquieting rumors were afloat to the effect that the packers contemplated the removal of their plants from the yards at Chicago. Prince and Armour had letters sent broadcast, through their agents, to stockholders of the New Jersey company, which said that in order to successfully solve the legal problems connected with the necessity of satisfying the demands of the packers for a

share in the earnings of the yards, the directors of the New Jersey company had decided to form a new company, of which the packers were to be the majority owners, or, if need, be the sole owners. The stockholders of the New Jersey company were also led to believe that the income of the new company would only equal the bonus that the New Jersey company would otherwise have to give to the packers.

Through the medium of these letters the common stockholders of the New Jersey company were given to understand that the formation of the new company was predicated upon the assent of the stockholders to the Plan, and that the new company would come into possession of sufficient funds to satisfy the packers as a result of the additional income that could be derived through the continuance of the pack- [fol. 1604] ers' business with the Chicago stockyards. It was asserted in these letters that the income of the New Jersey company was to be increased through the arrangement by which the Maine company took over the control of its properties, and the common stockholders would be assured, under the terms of this arrangement, of full participation in the earnings of their company, which, they were informed by the circular letters, were up to 1911 never in excess of 10 per cent. The common stockholders were also given to understand that in case they withheld their assents to the Plan the packers would undoubtedly discontinue their slaughtering establishments at Chicago and the yards property would cease to yield an income. It was thus that the stockholders of the New Jersey company were induced to accept the proposal outlined in the Plan of June, 1911.

These letters were sent out by the committee and by F. S. Moseley & Co., a Boston brokerage firm, who, it will be recalled, had been successful in purchasing the 13,000 shares of common stock in 1910 for the syndicate composed of Prince and Armour. Moseley & Co. had been engaged to assist the committee in obtaining the assents of the stockholders to the Plan.

The Commission secured copies of letters written by the committee, as well as a number of copies of letters written by F. S. Moseley & Co., to the stockholders. Specimens of the committee's letters are presented at this point.

The Chicago Junction Railways and
Union Stock Yards Company,
Boston, July 31, 1911.

To the Holders of the Common Stock of The Chicago Junction Railways and Union Stock Yards Company:

The earnings of the Stock Yards Company, and its connecting Railways, depend largely upon a single industry, and the continued profitable working of that industry in its present location. The situation at the present time is such that the income of the Railways and Stock Yards Company is in effect limited to 8 per cent., and furthermore, it is not certain that the present business will be permanent. Holders of a large majority of the common stock of the company have devised a plan which, if accepted by the remaining holders of the common shares, will have the effect of materially increasing the income to all of the common share holders as well as more definitely assuring the permanency of the company's business. This Plan, a copy of which is appended hereto, has been carefully examined by the undersigned Committee, has received its approval, and is to be carried out under its supervision. The Plan includes the following offers:

An offer to the holders of the common shares of a fixes income equal to 9 per cent on their present stock, guaranteed by a company to be organized under the laws of Maine, with [fol. 1605] a capital stock of $1,000,000 and called The Chicago Stock Yards Company.

The holders of the assenting shares, whether such shares have been guaranteed or not as above mentioned, are to have the right or option to exchange their shares for 5 per cent. 50-year collateral trust bonds of the new company, on a basis of 200 per cent. when the said bonds are ready for issue. The said right is to remain in force as long as the Committee shall approve.

In order that the proposed Plan may be carried into effect, it is important that each holder of the common stock shall promptly sign the stockholder's assent herewith enclosed, thereby manifesting his assent to the Plan and becoming a party thereto. Such assent should be signed and delivered

to the Old Colony Trust Company, Boston, Massachusetts, on or before August 31, 1911.

As in said Plan provided, the said Plan and Trust Agreement shall become operative if and when, in the opinion of the Committee, it has become advisable to carry the same into effect. In case the Committee determines not to declare said Plan and Trust Agreement to be operative and effective, the offers therein contained and all assents and actions pursuant thereto, and likewise the said Trust Agreement shall become null and of no effect.

Copies of the Trust Agreement and additional copies of the proposed Plan, if desired, may be obtained at the Old Colony Trust Company.

Richard Olney, Chairman, Samuel Carr, Guy Norman, S. L. Schoonmaker, E. V. R. Thayer, F. R. Hart, Secretary, 17 Court Street, Boston.

August 23, 1911

Samuel S. Sloan, Esq.:

Vice President Farmers Loan & Trust Company, New York City

Dear Sir: As I am one of the Committee which has made the recommendation in regard to the Chicago Junction plan, I want to call your attention to the necessity of sending the assent of your stock in as early as possible as we are anxious to carry out our arrangement on the first of September which we deem so important to the shareholders.

The Situation is as follows: The Company's business in Chicago depends very largely upon certain definite industries. When these industries were established at Chicago it was the natural centre for the businesses done, but Chicago is now less conveniently situated than many Western cities. To insure the continuance of profitable business for the company, it is necessary to work with close and harmonious relations with those upon whom the company is [fol. 1606] dependent for the continuance of its business. It is the belief of the Committee that the new Company can give much more definite assurances as to the continued prosperity of the company than a company such as the present, practically wholly owned far away from the scene of the company's operations. The shareholders of the new com-

pany are to pay in $1,000,000 in cash, which is in effect a guaranty fund of forfeit, that their promises can be fulfilled.

The Committee has endeavored to weigh every advantage and disadvantage fairly, and is very definitely of the opinion that the plan is for the best interest of all shareholders, and the fact that some 45,000 shares out of the 65,000 have already, at this date, assented, encourages the Committee to believe that the assent to the proposed plan will be substantially unanimous.

Very truly yours, F. R. Hart, Secy., Chicago Stock Yards Committee.

Dictated by Mr. Hart who was unable to sign it.

Boston Mass., September 2, 1911

To the Shareholders of the Chicago Junction Railways and Union Stock Yards Company:

Referring to the circular of the undersigned Committee dated July 31st, 1911, the time fixed therein for the filing of the assents to the plan expired September 1st. As a convenience to distant shareholders and those who have been on vacations, and to enable all shareholders to participate in the advantages of the plan, the Committee has extended the time within which assents may be deposited with the Old Colony Trust Company, Boston, to Saturday, September 17th, 1911, on or before which date your assent should be filed, after which date it will be optional with the guaranteeing company whether they will accept stock or not. The Committee are forwarding these notices by registered mail.

Application will be made to list the nine percent. assented stock on the New York and Boston Exchanges, striking off from the list the present common stock of the Chicago Junction Railways and Union Stock Yards Company.

The guaranty will become operative on October first or as soon as the proper proceedings can be taken.

The Committee believe it for the best interest of every shareholder to become a party to the plan and to participate in its benefits and believe they have fully protected the minority interests by extending to you the same opportunity that a large majority have accepted. A copy of the circular

[fol. 1607] of July 31, 1911, and form of assent are enclosed herewith.

Richard Olney, Chairman, Samuel Carr, Guy Norman, S. L. Schoonmaker, E. V. R. Thayer, F. R. Hart, Secretary, 17 Court Street, Boston, Mass.

Storey, Thorndike, Palmer & Dodge, Counsel.

In pages 220 to 225 are presented copies of letters which were obtained from the files of F. S. Moseley & Co. These are duplicate copies of letters which were sent by this firm to the stockholders to whom they are addressed.

Sept. 12, 1911

W. S. Clough, Esq., % F. S. Moseley & Co., New York, N.Y.

Dear Clough: The points to bring out forcibly to these Chicago Junction stockholders, are as follows:

All the Directors have signed and recommend the plan on the ground that they will lose their tenant; that the earnings have averaged 9¾% per annum for the last four years, and with this plan they get 9% or 10% if they desire. None of them have any interest in the Maine Corporation. It is practically legalizing the rebate that they have paid to the packers in the past, which they are sure that they can pay in the future.

For a non-assenting stockholder the packers can reduce the Yard charges and consequently the dividends.

After obtaining the amount of stock that is necessary the Maine Corporation will not care for any more stock and consequently it will not have the value that ordinary minority shares of a railroad have where it is the desire to absorb all of the shares.

Application will be made to have stricken off from the Stock Exchange the non-assenting shares, and, in the opinion of those who seem to know, the value will be materially reduced.

If this tenant leaves the Stock Yards, they cannot get another. It will come down to a real estate proposition or a railroad terminus of great value but of greatly reduced earning power.

55,000 of the 65,000 shares have assented, or signified their intention of so doing.

Very truly yours, —— ——.

August 16, 1911

Miss Carrie W. Andrews, Newbury, Vt.

Dear Madam: We have been asked to get the assent of the stockholders of the Chicago Junction Railways & Union Stock Yards to the new plan, regarding which you [fol. 1608] have had circulars. The story is that for some years the Western Railroads have exerted considerable pressure on the packers to move West. The Directors of the Chicago Junction Railways and Union Stock Yards Company have gotten around this in past years by giving rebates to the packers. There is now a suit in the Courts on account of this, and it is necessary to find some other way to keep the packers in Chicago. The large stockholders thought the only way to do this was to get the packers financially interested in the Stock Yards Company, and so got the packers to say that they would take over the Chicago Junction Company, provided they could get a sufficient number of shares and run it themselves. In this plan the packers have formed a million dollar corporation, in which they guarantee for the present stockholders of the Chicago, Junction Railway & Union Stock Yards to pay you 9% a year instead of the 8%. Your stock remains the same, except that it is guaranteed by this new corporation for the additional 1% dividend. You also have the privilege of changing your stock at the rate of $100. per value into Collateral Trust Bonds at the rate of $200. for your present share.

We have looked into this plan very carefully, and advise your acceptance. We trust you will consider the matter and send your assent to the Old Colony Trust Company.

Very truly yours, —— ——.

August 17, 1911.

Messrs. H. T. Carey & Co., 66 Broadway, New York, N. Y.

Dear Sir:

Your letter addressed to the Old Colony Trust Co. in regard to the Chicago Junction Railways & Union Stock Yards Co. has been referred to us as we are acting in this matter for them.

In answer to your question, we would say the new Maine Corporation will be simply a holding company but, on account of its holdings of the Stock Yards stock, either through guarantee or in exchange for its bonds, it will be the controlling interest in the operating company.

The advantage of the formation of this company is that the majority of the stock will be controlled by the packers, which will insure their permanency in Chicago, of which periodically there is some question. It is only through large bonuses being paid to them in the past that they have stayed in Chicago and not moved nearer to the cattle industry. Without their business your company would have little earning power and would become merely a real estate proposition with the railroad adjoining, but without any special earning power.

The guarantee, of course, is limited to the $1,000,000, but you have the strength of the stockholders of this concern back of it and the inducement for them to stay proportioned to what they can make out of the situation. It is a question of these new interests taking a little out each year or a large amount every eight or ten years. This very question of rebate has been argued before the Court of Justice in Illinois and an opinion is expected on October 1st. The [fol. 1609] Directors of the Company feel that it will be adverse as, through their ownership in the railroad, it is in the nature of a rebate. They are anxious to have the plan consummated before that date.

An unassenting stockholder will be in the position of any minority stockholder and he must receive the same dividends that are declared by the company, and of course, might be in a position to receive more than the 9% as it is fair to assume the new interest expect to make m ney out

of the situation, although it would be easy for them to reduce the charge against them. The danger of staying out is that this new interest have told us they would not take it up without the total 65,000 shares assenting. They will doubtless, however, accept a smaller amount but just what that amount may be it is impossible for us to tell and if many of the stockholders stay out it will jeopardize the plan.

All of the old Directors, none of whom have any interest in this new corporation, and many of the large Trustees here have assented to the plan. In fact, there must be nearly 50,000 shares who have assented or agreed to assent.

Very truly yours, —— ——.

August 23, 1911.

Albert O. Brown, Esq., 1008 Elm St., Manchester, N. H.

Dear Sir:

You have 50 shares of Chicago Junction Common. You doubtless received the circulars from the Committee and our previous letter. We have received the assent of about 50,000 shares, out of 65,000, to the plan, and simply want to tell you that it is a plan that all the Directors have recommended and have assented to; and that none of them have any interest in the Maine Corporation.

If you are coming to Boston in the near future, we should be pleased to talk with you about this, as we feel that we can convince you that it is the only thing to be done. The situation of a minority stockholder can be made very unpleasant for, with the packing interest in control of the Stock Yards, they can make the yard charges to satisfy themselves as long as they pay the dividend on the guaranteed stock. This process of course, would minimize the earnings of the Stock Yards.

Very truly yours, —— ——.

August 18th, 1911.

Mrs. Annie S. Churchill, No. 131 Magazine St., Cambridge, Mass.

Dear Madam:

Our representative called at your house today and found you were away, so we are taking this method of giving you [fol. 1610] more information regarding the proposed indorsement of Chicago Junction Railways & Union Stock Yards Stock by the new Company, Chicago Stock Yards Company, which Company agrees to pay 9% on the Common Stock.

We are enclosing herewith a copy of the Trust Agreement. The situation is as follows: The Western Railroads have been trying for many years to draw out your Company's business to other parts of the West, such as St. Louis, Kansas City and Omaha, which are more centrally located in the cattle district and, therefore, more advantageous to the packing business. The business of the packers amounts to about three-quarters of the total business done by your Company. Owing to the Sherman Anti-Trust Law, your Company will be unable, as formerly to pay the packing interests a certain amount of money for their business, as this is ruled out as a rebate. The packers have, therefore, agreed to form a new Company called the Chicago Stock Yards Company, which shall be capitalized for $1,000,000 paid in. This new Company to guarantee dividends as in the plan. The packing interests feel that by co-operation with one another and local management, they will be able to make your Company earn larger profits than ever before, and, therefore, can afford to pay 9% interest.

It seems to us that the strongest argument in favor of this is the fact that those men forming the Committee, who are the largest stockholders in your Company and most deeply interested in it, have all of them signed the agreement. These men, although in this case acting as private individuals, are many of them Directors of the Company and in a position to know the condition of affairs there better than any one else. It is needless to add that these gentlemen are considered of the highest integrity.

No stockholder in your Company is interested in any

way in the new Company, and so any change which they may make would not be of any monetary advantage to them except as stockholders, or trustees of estates holding this stock.

We shall be very glad to furnish you any additional information and would say in closing that we are receiving daily many signed agreements.

Hoping this matter will have your favorable consideration, and assuring you that in our opinion, it is for your best interest to sign, we remain

Very truly yours, —— ——.

August 26th, 1911.

Frank Grant, Esq., Westfield, Mass.

Dear Sir:

We are in receipt of your favor of August 25th.

The Chicago Junction situation is as follows:—

[fol. 161] The Chicago Junction Company has been almost exclusively an Eastern Company, while its customers are the packers of Chicago and have no direct interest in its affairs. This has led to considerable friction in the past and it has been necessary on several occasions when contracts with packers were expiring, to make it worth their while to extend them. The contracts with the packers have either expired or are expiring in 1913, and it is to obviate this difficulty that this plan has been formulated. It amounts to a lease of the property to the packers, who are the only ones interested in the Maine corporation. The million dollar capital of this company is to be paid in cash and it is to be held either in cash or good securities as a guarantee of payment of the dividends, but as the packers will have every incentive to turn business toward the Stock Yards Company, there can be no question as to the payment of the 9% dividend or the 10% bond interest. Both Kansas City and Omaha are endeavoring to divert the packing business from Chicago and if this plan does not go through it is possible they will be successful.

The amount of bonds issued by the new Company will be determined by the number of stockholders of the Chi-

cago Junction Railways & Union Stock Yards Company who elect to receive bonds in exchange for their stock, as $200 in bonds will be issued for $100 par value of stock, and the stock held in trust as security against the bonds.

Very truly yours, —— ——.

August 18, 1911.

W. B. Hale, Esq., c/o McMillan & Hale, Rondout, N. Y.

Dear Sir: Your letter to the Old Colony Trust Co. in regard to the Chicago Junction Railways & Union Stock Yards Co. has been referred to us as we are acting in this matter for them.

This Maine Corporation which is to guarantee the stock will be controlled by the packers, who now furnish 75% of the business of the Stock Yards and have always demanded something in return for it. This something has been given in the past in large blocks, in either bonds or cash, periodically. Up to date something like $6,000,000, has been given to them as an inducement for them to remain in Chicago. In giving them the control, in our opinion, it will insure the permanency of the packers in Chicago, in any event, for a much longer time than they would ordinarily find it for their best interest to stay.

The Company has earned about 10% for the last four or five years and distributed 8%. In this way you can take the 9%, or the 10% if you so elect to take the bonds, which is in all probability more than the company could afford to give you on account of the demands made by the packers for their share of the profits.

About 45,000 to 50,000 shares of stock have assented to the plan but the interests controlling the Maine Corporation insist that they obtain all the Common Stock, 65,600 shares. Of course, there may be some shares stay out but exactly how much they will allow to stay out and declare the plan operative we do not know.

[fol. 1612]. We understand that a minority stockholder, while he would have the same dividend paid to him that was paid to the stock controlled by the Maine Corporation, yet it would be perfectly possible for the packers to reduce the yard charges so that the earnings of the Stock Yards

Company would be much reduced. We simply state this to show that it is safer to come along with the plan which has had the careful consideration of all the Directors of the Company and who have no interest whatever in the Maine Corporation.

Very truly yours, —— ——.

August 15, 1911.

James H. Pinchon, Esq., 10 Chestnut St., Springfield, Mass.

Dear Sir: We have your letter of the 14th and you are right in your assumption as to who the holders of the Maine Corporation will be. As far as we know none of the stockholders of the Stock Yards Co. have any interests in this concern.

It is most important, in our opinion, to hook the packers permanently into this situation as there has always been fear of their leaving for a different locality. Furthermore, you understand that every time there is a question of renewing their leases the packers have demanded large bonuses. Your Company has not earned over 9 or 10% in the past years and has paid out 8%. It has been necessary to accumulate a surplus for the very purpose of treating with the packers. There is a new lease coming up in the near future and the question of paying a bonus has been referred to the Courts and the opinion will be rendered on October 1st. This plan should be settled before that date.

All of the old Directors, such as the Thayers and Gardners and the large Trustees have deposited their stock. You do not lose the equity in the property if you take the 9% guaranteed stock. There is no question but that the people taking the lease of this stock expect to make money out of the situation but you can afford to let them make money in this way just as well as to pay them a bonus periodically.

Very truly yours, —— ——.

August 18, 1911

B. A. Jackson, Esq.,
Treasurer, Providence Banking Co., Providence, R. I.

Dear Sir:

In regard to the Common stock of the Chicago Junction Railways & Union Stock Yards Co. which Mr. Wellington asked you yesterday to obtain the assent to plan proposed by the Olney Committe, we would say that all the Directors and large stockholders have carefully gone into the situation, have recommended and assented to the plan, and there is no stockholder in the Chicago Junction stock, as we are advised, who has any interest in the Maine Corporation.

Between ourselves, it is simply a case of legalizing the rebate which the packers have insisted on obtaining as they state they contribute 75% of the earnings of the company and are entitled to a portion of the plunder. In the past this has been paid by giving them large blocks of stock or [fol. 1613] payments in cash; hereafter they will take whatever pickings may seem proper to them. The property, however, must not be wasted and must be kept intact, so the lawyers who are handling this matter advise us.

The Company has been earning about 10% and paying 8%. But it was necessary for them to save a certain surplus to distribute back to the packers periodically.

This question of rebate has been argued before a Court of Justice and a decision is expected on October 1st to see if these rebates are legal in view of their holding and operating a railroad property. The Directors fear an adverse decision and are, therefore, anxious to have this plan become operative before that date.

A minority holder may have in mind that by staying out he can get these extra dividends that the Maine Corporation expect to get on the stock which they control through guarantee or by deposit as collateral against the bonds in case the stockholder takes them. The fact of the matter is, it would be well within the power of those who control the Maine Corporation to reduce the yard charges so that the earnings of the Stock Yards Company would make a much poorer showing than they do now. We feel it is very important to retain this earning power of the packers,

otherwise, this valuable tract of land would have to be cut up for manufacturing or terminal purposes, and, while the stockholders would eventually get back a handsome return on their money, it would take a number of years to do so. In the meantime, there would be the payment of taxes and interest on the bonds with no income.

We should be pleased to allow you ⅛ on any assents that you send to this office. We understand that Mr. Matteson has the controlling interest in about 1,000 shares of stock and that you will take this matter up with him.

Very truly yours,——,——.

The following is a letter written by Arthur C. Graves, an attorney to F. S. Moseley & Co., in August, 1911. It was written in reply to a letter sent by F. S. Moseley & Co. to a stockholder of the New Jersey company of whose affairs Mr. Graves had charge, and was obtained from the files of F. S. Moseley & Co.

Law Offices of Arthur C. Graves, 48 Church Street, New Haven, Conn.

August 15th, 1911

Messrs. F. S. Moseley & Co.,
50 Congress Street, Boston, Mass.

Gentlemen:—Your letter of recent date to Mrs. Sarah K. Graves in reference to the proposed re-organization of the Chicago Junction Railways and Union Stock Yards has been handed to me for attention, and in view of what the re-organization offers to the present common stockholders, and in reply to your letter, I desire to make the following observations:

[fol. 1614] There are a few stockholders in this company of whose affairs I have charge. Thus far, none of them have indicated their assent to the proposed plan, and I have carefully refrained from advising them to do it. In the first place, it is very apparent to all, except perhaps to those who devised the plan and who are on the inside and know all about it, that the proposed reorganization is very indefinite, and the common stockholders really do no know what is offered to them. Passing by this, however, which I think after all is of minor importance, the real criticism

of the intelligent stockholders of the Chicago Junction Railways would be this—that the present stockholders are not receiving under the proposed plan a return commensurate with the present actual assets and cash surplus of its company. It is true that the earnings of the stock yards and its connecting railway depend almost wholly on a single industry and that its profitable operation depends upon its present location, and it is also true that possibly the stock yards business may be carried further and further to the West thereby injuring to a considerable degree the Chicago market. But on the contrary, the present actual assets and cash surplus of the company belongs to the present stockholders, and not legitimately to those who, through some skillful devise of reorganization, succeed in getting the old company and its assets entirely into their possession. The parent company of which we are common stockholders is virtually scarcely more than a holding company, and derives all its income from dividends paid on the stock of the Chicago Junction Railways Company and the Union Stock Yards Company. While it is true that the earnings have not increased to any marked degree in this business, at the same time it is also true that each of these subsidiary concerns has earned with a very comfortable surplus the dividends which have been paid over into the treasury of the parent company, and for a large number of years such surplus has remained untouched in the treasury of the subsidiary companies. Such surplus has been earned, too, after very liberal appropriations for improvements and betterments, a portion of which might have been charged to new capital. Furthermore, the parent company has received from the dividends thus paid by its subsidiaries a surplus over and above its dividend requirements; viz: 6% on the preferred and 8% on the common. The public and the casual observer, therefore, do not often realize that the surplus and assets of the present company lie still in the treasury of three corporations, and assuming that future improvements or exigencies would warrant our leaving untouched the surplus now resting in the treasury of the subsidiary companies, nevertheless the surplus in the treasury of the parent company has now reached a very considerable sum.

I have not before me the reports of the last two or three years of the Chicago Junction Railways and Union Stock Yards Company, and I cannot in this letter give the exact figures of the earning power and surplus of the different concerns; I want to say, however, that some seven years ago, when advising a client to invest in the common stock of this corporation, I had occasion to make a very careful investigation of the earning power of the company and [fol. 1615] the surplus which it had virtually at its disposal, either in its own treasury or that of its subsidiary concerns. At that time the cash surplus amounted to something like three millions of dollars, as I discovered by investigation. My calculations on this score were also corroborated by those of some Boston brokers who were acquainted with the company. A cash surplus of three millions of dollars on an outstanding issue of common stock of only $6,500,000 was a very large surplus. This was some seven years ago, and in the meantime this surplus has slowly grown from year to year.

A few years ago, about the time the company discontinued making a report of the separate earnings of the subsidiary companies I wrote to the treasurer of the parent company, and at my request he sent me the figures, at the same time explaining the reason why the company had discontinued giving these separate earnings was because it was deemed wise not to reveal the company's true earning power and its resources to some of our state legislatures and thereby open itself to insidious legislation. It was upon this explanation that I refrained at that time from writing an article for some prominent financial paper, revealing for the information of investors in general the real financial strength of the Chicago Junction Railways and Union Stock Yards Company.

In conclusion I have only to say, that the present plan of reorganization by no means gives to the present common stock holders full return for the value of their property, with which they are asked to part. It is true that the proposed new securities, offered to the stockholders with an increased dividend of 9 or 10% assured, seems better at first blush than the present security which they hold. At the same time it is also true that the present 8% on the

common stock of the parent company is absolutely assured, and in the future the common stock holders must and ought to reap the advantage of the results of all these past years of provident and skillful management. Instead of that, the reorganization committee themselves, representing a group of inside stockholders, offer something which is sufficiently attractive to induce the present holders to part with their stock, and after they have parted with it, the rich surplus to which I have referred and the accumulation of all the past years will redound to the benefit of the inside few perhaps followed by the "cutting of a rich melon." Frankly, gentlemen, do you think this is treating the stockholders squarely? Does it not bear in some respects a slight resemblance to the old Chicago and Alton deal?

Were I in a position to secure names of all the common stockholders of the company and had the time and means to devote to it, I could easily put so many of the stockholders in possession of facts that would make the present plan impossible of fulfillment. However, I think it would be better if the committee, or yourselves did this.

Very truly yours, (Signed) Arthur C. Graves.

[fol. 1616] Section 19.—The Misrepresentations in the Moseley Letters

Before taking up for discussion the salient points contained in the foregoing letters, it should be said that simultaneously with the finding of these letters a memorandum was found in the files of F. H. Prince which stated that Prince contemplated the formation of a new company with $8,000,000 of capital stock of which $4,400,000 was to be given to the three big packers in consideration of their agreement to continue their business at the Chicago stockyards. This memorandum was drawn in November, 1910. It is obvious that the new company spoken of in this memorandum had reference to the Maine company which was subsequently organized by Prince and Armour in September, 1911. The capital stock of this company when formed was $1,000,000, but this amount was increased to $8,000,000 almost immediately.

In view of this circumstance, it was believed for a time

during this inquiry that Armour's close association with Prince in the deal that culminated in the formation of the Maine company was a direct outgrowth of the plan outlined in the memorandum which aimed to give the control of the new company to the three big packers and that Armour acted as their representative. The Moseley letters which gave so much prominence to the contention that the Maine company was to be controlled by the packers tended to substantiate this view of the memorandum.

However, in consulting the Moseley letters as a source of information in connection with its attempts to correctly interpret the trend of events that followed the bringing of the Pfaelzer case, the Commission has at no time been oblivious to the fact that these letters were replete with gross inaccuracies. An instance of this kind is to be noted in the statements made as to the financial condition of the New Jersey company. The impression was given that less than 10 per cent had actually been earned by the New Jersey company on its common stock, whereas the report has already disclosed that the earnings of the New Jersey company actually amounted to over 12½ per cent on the common stock without taking into consideration the surplus earnings retained by its subsidiary companies, the Yards company and the Railway company. If the surplus earnings of these two companies had been taken up by the New Jersey company the actual amount available for distribution in the form of annual dividends to its common stockholders would have permitted that company to pay dividends at the rate of 21 per cent. The letters also contained inaccuracies concerning the amount of the bonuses paid to the packers. According to these letters these bonuses had amounted to $6,000,000, whereas it has already been shown that the three big packers to whom the control of the new company was to be given had actually received $3,000,000, from which amount must be deducted the proceeds received by the New Jersey company from the sale of the Tollesfon land and the Central Stockyards.

The letters also made it appear that the packers were merely tenants using properties of the New Jersey company [fol. 1617] under terms of a lease about to expire in 1913. The actual facts were that the packers owned the properties

used by them and their investment in land, buildings, and equipment represented many millions of dollars.

These inaccuracies, though serious enough in themselves, did not at first detract from the value of the letters as evidence that the Maine company had been formed for the purpose of permitting the packers to share in the earnings of the New Jersey company through stock ownership in the Maine company. Additional data which was subsequently considered, however, made it impossible for the Commission to continue to regard these letters as worthy documentary evidence to substantiate its first impression that all of the packers were represented in the ownership of the Maine company.

The evidence of the unreliability of the Moseley letters in this and other respects is now given.

Section 20.—The Prince and Armour Deal and the Directors of the New Jersey Company

The Moseley letters were so constructed as to convey to the stockholders to whom they were addressed the idea that the new company was conceived by the directors of the New Jersey company, acting in an official capacity as a means of permanently solving the bonus problem to the satisfaction of the packers; that every one of the packers was assisting in the formation of the new company, and that no directors or stockholders of the New Jersey company were to be financially interested as stockholders of the new company or in any other way.

From letters secured in this inquiry it would appear that the initial step leading to the formation of the Maine company, namely, the purchase of 13,000 shares of common stock of the New Jersey company, was undertaken by Prince and Armour without having previously submitted the matter to the board of directors of the New Jersey company for their official sanction.

About one week after Prince and Armour had concluded their syndicate agreement to purchase 13,000 shares of the common stock of the New Jersey company through Moseley & Co., the following letter was written by Eugene V. R. Thayer, a director of the New Jersey company, to J. A.

Spoor, of Chicago, also a director of the New Jersey company:

50 State Street,
Boston, October 8, 1910

J. A. Spoor, Esq., Pittsfield, Mass.

Dear Mr. Spoor:

It may be of interest to you to know that our friend (meaning Prince) here in Boston has secured an option which I understand runs for sixty days on 16,500 shares of stock at $160 a share, and has deposited $50,000, which he forfeits if the option is not taken up. Just what his object is in securing this stock of course I do not know. He told the parties who were working for him that he was buying the stock for an outside interest who would [fol. 1618] want representation on the Board. The Normans, (relatives of Prince, by marriage) I believe, have sold all their stock which rather surprises me.

Before starting to gather this stock, he agreed with the house that was doing the work for him to come up and tell me what he was doing and his object in doing so, but of course, I have heard nothing from him.

Mr. Thayer continues about the same.

Very truly yours, (Signed) Eugene V. R. Thayer.

The sentence of this letter reading: "Just what his object is in securing this stock of course I do not know," is significant, in so far as it shows that Prince undertook the purchase of the New Jersey company's stock without having taken into his confidence Mr. E. V. R. Thayer, a member of the family which had been most actively connected with the financial affairs of the Chicago stockyards from the earliest years of its existence.

In a letter from Wm. C. Lane, for many years director and treasurer of the New Jersey company, dated October 10, 1910, and written to J. A. Spoor, the following significant passage appears:

I had a telephone call from Mr. Eugene Thayer on Friday. He told me that somebody was endeavoring to obtain options on the Jersey Company's common stock in Boston at 160, the market price at present being about 140. He

mentioned no names but one can imagine who is doing it and the purpose of it.

The words "one can imagine who is doing it and the purpose of it" indicate that Lane had no authentic knowledge of the deal.

To further illustrate that the purchase of the 13,000 shares was undertaken by Prince and Armour without the official sanction of the directors of the New Jersey company, the following letter is presented:

Chicago, Illinois, October 10, 1910

Dear Mr. Thayer:

A reporter called here this P.M. and stated that Moseley & Co. of Boston had offered $160.00 per share for the common stock of the Jersey Company, provided that a sufficient amount was turned in to give control of the company.

If this report is true, I presume you have heard about it. Let me know what information you have.

Very truly yours, (Signed) J. A. Spoor.

Mr. Eugene V. R. Thayer,
50 State Street, Boston, Mass.

This letter of October 10, written by J. A. Spoor, of Chicago, apparently before receiving Thayer's letter of [fol. 1619] October 8, is particularly worthy of attention, owing to the fact that Spoor was one of the most prominent figures in the management of the stockyard affairs. In addition to being a director of the New Jersey Company, he was chairman of the board of directors of both the Yards company and the Railway company, and was one of the trustees appointed by the New Jersey company to manage the Central Manufacturing District.

That Prince not only undertook the initial steps toward the formation of the Maine company without the sanction of the directors of the New Jersey company, as shown in the above letters, but that at a certain stage of the campaign he met with decided opposition on the part of W. D. Guthrie, one of the most influential directors of the company, is evident from certain letters secured by the Commission. Guthrie had been connected with the New Jersey company since its formation in 1890, having been a member

of the law firm which acted as general counsel for the company, and in this capacity he had been consulted in all of the negotiations between the New Jersey company and the packers. He had been a director of the company since 1898, and had served as a member of the committee representing the New Jersey company in its negotiations with the packers following the expiration of the contract with the packers in 1906. There negotiations had resulted in the agreement to bring the Pfaelzer case, and Guthrie was at this time (in 1910) representing the New Jersey company as their chief counsel in that case.

The opposition on the part of Guthrie, referred to above, arose from the fact that soon after the announcement was made of the purchase of the New Jersey company's common stock by the syndicate, Prince divulged to Guthrie his intentions of bringing about a radical change in the membership of the board of directors of the company; this change he sought to effect by declaring himself a candidate for the office of president in lieu of Nathaniel Thayer, who had been inactive for some time owing to ill health, and of forcing some of the directors to resign in order to create the necessary vacancies for the men Prince was anxious to have as his associates on the board of directors.

It is significant to note that during his controversy with Guthrie Prince never disclosed the reasons that prompted him in his efforts to strengthen his position in the New Jersey company, both as a stockholder and as a director of its affairs, apparently letting the merits of the issue he took up with Guthrie be decided on his contention that the membership of the directorate of the company, as then constituted, was not fair to the large stockholders and detrimental to the interests of the company. Later events indicated that such a change in the personnel of the board of directors made it possible for Prince to form the Maine company.

October 18, 1910.

DEAR MR. GUTHRIE:

As you are doubtless aware, a sydicate has purchased a large amount of the stock of the Chicago Junction Rys. and Union Stock Yards Co. I am the representa-
[Vol. 1620] tive of the syndicate and have undertaken cer-

tain obligations with them. The stock of the syndicate together with my own holdings, amount to a substantial control of the common stock and I have agreed with my associates that I will supply three vacancies on the present Board of Directors, to be filled by nominees of the syndicate, whom I will name later. I desire to go abroad immediately, not to return before the annual meeting, and therefore even at this early date I should like to have an understanding regarding this matter. I have considered the several members of the Board and it seems to me that the following vacancies are the ones most available. You yourself have already indicated your desire not to remain a director, for purely personal reasons. Therefore your position would be available. Mr. Foss has likewise desired to resign. Mr. Lane occupies the position of Treasurer and his services can doubtless be retained for the Company without his being a member of the Board. Therefore, it has occurred to me in studying the mater that the above changes would accomplish what is necessary for me and would make practically no change in the present organization. I ought to add that in view of Mr. Thayer's serious illness, this may cause a vacancy. In that case the syndicate intends to name me as his successor as President, in which event the vacancy on the Board would be open for Mr. Lane.

With regard to the proxies for the coming annual meeting I should like to have them made out in the names of Nathaniel Thayer (or Eugene V. R. Thayer), Guy Norman[1] and myself. I assume that such a proxy would be so expressed as to be exerciseable by a majority of the persons named or their substitutes present at the meeting.

Very truly yours,

———.

[1] Brother-in-law of Prince, who had sold his stock to Prince and Armour, Federal Trade Commission.

Guthrie, Bangs & Van Sinderen,
Victor Morawetz
44 Wall Street, New York

October 18, 1910.

DEAR MR. PRINCE:

I desire to answer your letter of today which you handed me at our interview in reference to the Chicago Junction Railways and Union Stock Yards Company and also to confirm what I then stated to you. I understand from you that the new syndicate has actually acquired 18,000 shares of the common stock of the company; in other words has acquired out of the total of 130,000 shares of preferred and common stock approximately 13 per cent. So far as I am personally concerned or called upon to advise other directors, I think that if the new interests have acquired such a holding over common stock, it will be quite proper to give them a representation on the Board, and I do not doubt that the election of Mr. Schoonmaker whose name you mentioned, will be entirely agreeable to all the directors. I do not think, however, that the syndicate is entitled to demand the election of three nominees out of a board of only ten directors; nor do I think that you were warranted in [fol. 1621] undertaking or agreeing with such syndicate, as you state in your letter to supply three vacancies in the present board of directors, and thus practically secure to you and your associates in the new syndicate the control of the company. In my opinion, no arrangement on the part of a board of directors which would thus turn over control of the company to the holders of a minority of its stock, would be either proper or justifiable particularly when the annual election is shortly to be held, at which time the wishes of the majority can be consulted.

I want, also to confirm what I stated in regard to the suggestion of a vacancy in the office of President in case anything should happen to Mr. Nathaniel Thayer. I do not think that the directors should be called upon now to state what they will do in that case—a contingency which we all hope will be long deferred. Nor in any event, do I think that the new syndicate which has just bought into the property and owns only 13 per cent. of the stock is en-

titled to name Mr. Thayer's successor. That, surely, is a matter to be determined, not by the syndicate, but by the board of directors representing all the stockholders.

As to your suggestion in regard to the proxies at the coming annual meeting, I will submit it to the board of directors, but under the circumstances, and in view of what you have said to me as to your determination to secure control of the company, I deem it proper to say candidly that I cannot advise the directors to agree to your suggestion that you and your nominees shall constitute a majority of the proxies, and thereby control the exercise of the voting power on behalf of the stockholders.

Yours faithfully,
(Signed) Wm. D. Guthrie.

F. H. Prince, Esq.,
28 State Street, Boston, Mass.

The following letter was drafted by Prince in answer to Guthrie's letter, and although it was not sent to him this fact does not detract from its value as a document showing the manner in which Prince was prepared to defend his attempt to gain the control of the management of the New Jersey company.

Dear Mr. Guthrie:

Replying to yours of the 18th, I believe you entirely misapprehend my position. The number of shares of stock acquired by myself and a Syndicate is independent of my previous holdings and the holdings of members of my family in the Chicago Junction Railway & Union Stockyards Company.

I disclaim any desire to secure an arrangement with the Board of Directors intended to turn over the control of the Company to the holders of the minority of its stock, but you will agree with me that it is exactly the situation of the Board at the present time. I believe you will concede that the Board as at present constituted, and in control of the Company, are the holders of the decided minority of its capital stock and is in no way representative in (of) sub- [fol. 1622] stantial individual interests, and I and my immediate associates have the largest concentrated holdings of the stock. Exclusive of these as I understand it, the

Directors at the last annual meeting, and I believe without any material change since, are holders of stock as follows:

(Here insert Directors holdings.)

With these unimportant individual interests the affairs of the Company have been conducted in a way to provoke just criticism both from a business, moral and political standpoint, and I felt that I must either dispose of my stock or increase my interest and bring others into its management to correct these abuses of management. After consulting with my friends, the latter course seemed to me to be the more feasible and practical.

No intention to obtain control of the Company was involved except so far as we deemed it to our interests and to the interests of the shareholders, that its affairs should be conducted by parties that have the most substantial interest in the property, rather than by a Board of Directors whose personal stock holdings are insignificant. That Directors with insignificant stock interest should persist in perpetuating their control of this important property through proxy committees or otherwise naturally subjects their motives to just suspicion. I believe it will be better for the property and better for the shareholders that the Directors should take warning of the present state of the public mind to clean house and that new and substantial interests brought into the property who are sure to give added value to the Company's securities are given an adequate representation and that no Director be elected who is not also an important stockholder.

Very truly yours,

———

That the controversy with Guthrie was finally decided in favor of Prince is evidenced from the fact that Lothrop Ames, Bradley W. Palmer, and S. L. Schoonmaker, all of whom were Prince's choice, were subsequently elected as directors of the company, and Prince became president in place of Nathaniel Thayer. These vacancies were made possible through the resignation of W. D. Guthrie, Gordon Abbott, and Nathaniel Thayer, the latter resigning because of ill health.

It is not possible to submit a detailed account of all that transpired at the directors' meeting when the issue between Guthrie and Prince was being threshed out, but the following letter written by E. V. R. Thayer to J. A. Spoor indicates that the expediency of yielding to Prince's demands apparently loomed prominently in the discussion, and that an affirmative decision was arrived at, largely because of the aversion, on the part of some of the directors, to have an open fight with "an interest which has acquired such a large amount of stock." The letter just referred to follows:

[fol. 1623]

50 State Street,
Boston, October 28, 1910.

My Dear Mr. Spoor:

I saw Gardner, and as I have already telegraphed you, he is intirely in accord with what was done in New York last week and quite agrees that it would not only be useless but unwise to oppose an interest which had acquired such a large amount of stock. While he is still not an ardent admirer of Prince, he appreciates that the situation has materially changed since the Syndicate has bought the property. He promised me that he would stay with us and remain as a Director.

He was very glad that you are going to remain as the active head of the local companies for he appreciates the fact, as I do, that you are the man behind the gun in this whole business.

I am indeed very glad that the matter has been finally settled for I am sure it would have been a bad thing for the Company to have had an open figlft and in the end we would not have gained anything. I know you will agree with me on this point.

I shall hope to see you in New York in the near future, and in the meantime, believe me,

Very truly yours,
(Signed) Eugene V. R. Thayer.

J. A. Spoor, Esq.,
First National Bank Building, Chicago, Illinois.

By way of a summary of what has been suggested by the above letters, the attitude shown by such prominent directors as Spoor, Thayer, and Lane upon learning of the fact that the brokerage firm of Moseley & Co. had been endeavoring to purchase 13,000 shares of common stock of the New Jersey company for the syndicate headed by Prince, furnishes evidence that these gentlemen did not in any way assist in the formation of the syndicate agreement between Prince and Armour. In view of the contents of some of these letters and of what subsequently transpired; it is perhaps unnecessary to say that neither Guthrie nor Gardner gave to Price and Armour any assistance of this kind.

It is, therefore, clear that the letters written by Moseley & Co. to the common stockholders of the New Jersey company, in which they were informed that the Maine company had been conceived by the directors of their company as a final and permanent solution of the bonus problem was not true, inasmuch as it has been shown that the directors of the New Jersey company had not taken any official action in initiating the purchase of the 13,000 shares of common stock of the company—this purchase constituting as it did such an essential part of the Plan for the formation of the Maine company.

[fol. 1624] It is not meant to say here that Prince accomplished his object of forming the Maine company without the cooperation of any of the directors of the New Jersey company. The fact that three directors of the New Jersey company were members of the committee which submitted the Plan of June 30, 1911, to the stockholders of the New Jersey company would militate against such an assertion. Furthermore, the importance that Prince attached to the personnel of the board of directors of the New Jersey company at the outset of his campaign, as evidenced from his efforts to have men of his choice as directors of the

company, shows that Prince himself realized that without enlisting the good will of the directors of the New Jersey company it would be impossible for him to attain the object he had in view, which was to form the Maine company.

But the facts refute the statements in the Moseley letters bearing upon the relation of the directors to the formation of the new company, which imply that the directors of the New Jersey company, acting as officers and representatives of the company, conceived, helped to conceive, or even sanctioned the Plan, the object of which was, as stated, to devise the final solution of the ever-recurring bonus problem of the packers. Such an assertion is not in harmony with the actual facts, the truth being that Prince had maintained secrecy about the deal until he had secured the 13,000 shares of stock for his syndicate with Mr. Armour, and had strengthened his position in the company by changing the membership of its directorate in accordance with his designs.

Furthermore, after this was accomplished the matter of sanctioning the Plan for the formation of the Maine company was never submitted to the directors of the New Jersey company for their official consideration and approval. The fact that the names of three directors of the New Jersey company appear as members of the committee selected by Prince to represent the Maine company did indeed lend credibility to the assertion in the Moseley letters, that the directors of the New Jersey company had helped to formulate the Plan. The truth of the matter is that the selection of these three men by Prince was not the result of official action taken by the company, these three directors having acted in a strictly private capacity.

Section 21.—The Prince and Armour Deal, and Swift and Morris

The Moseley letters indicated that Swift and Morris, as well as Armour, were to be interested in the Maine company and that these packers were to have the controlling interest in that company. Evidence at hand shows that these statements, like others which have already been examined, were not in accord with the facts. Three letters, written by different persons at different dates, are presented below.

These letters, if read together, tend to show that Swift and Morris were not associated with Prince and Armour at any stage of their campaign which culminated in the formation of the Maine company.

The following letter was written by Albert H. Veeder to [fol. 1625] F. S. Moseley in October, 1910, at the time Moseley & Co. was endeavoring to purchase the 13,000 shares of the New Jersey company's common stock for the Prince and Armour syndicate. It evidently grew out of a newspaper announcement, which had come to the notice of Albert H. Veeder, who had acted as confidential adviser for Swift & Co. in all of its negotiations with the New Jersey company relating to the payment of bonuses to his company ever since 1891, and who was at this time a director of the Chicago Junction Railway Co. It indicates that Swift was not a party to the transaction.

Law Offices Albert H. & Henry Veeder,
125 Monroe Street, Chicago.

October 12, 1910.

F. S. Moseley, Esq., Boston, Massachusetts

Dear Sir:

Please send me one of your circulars, according to the papers, you recently issued, in reference to the stock of the Chicago Junction Railways and Union Stock Yards Company, and oblige.

Your truly,
(Signed) Albert H. Veeder.

AHV/NA.

In July, 1911, about nine months after the above letter was written by Veeder, F. H. Prince wrote a letter to J. O. Armour in which he outlined the progress he had made in the campaign which had been quietly initiated to obtain the assets of the largest stockholders of the New Jersey company to the Plan of June 30, 1911. The letter also discussed the steps that were to be taken in securing sufficient assents to make possible the formation of the Maine company at an early date, and how this was to be accom-

plished. The following passage, bearing on the relation of Swift and Morris to the deal, appeared in this letter:

In the meantime, if Mr. Spoor thinks it advisable, I can meet the packers and explain to them what the advantage in the formation of the Company is; namely, that the large holders have bought up the small holders in order to permit them to carry out the present arrangement if possible, or to be in a position to make some other arrangement for the mutual benefit of both parties.

For a better understanding of the above passage it should be noted that the Pfaelzer case was still pending in the Commerce Court, and the packers, especially Swift and Morris, were still looking forward to the possibility of securing a bonus from the New Jersey company in the event that the decision of the court was favorable to them. This bonus, they expected, would be paid to them out of the accumulated surpluses of the New Jersey company, and of its subsidiary companies. This is no doubt what is meant by "the present arrangement."

If additional evidence were needed to indicate that Swift and Morris had not participated in the formation of the [fol. 1626] Maine company, it would seem that the following passage, quoted from a letter written by J. A. Spoor to Prince on August 8, 1911, would supply it. This letter was written a few days after the committee selected by Prince to represent the Maine company had sent out its circular letter of July 31, 1911, to the stockholders of the New Jersey company announcing that the Maine company was to be formed, and would offer them a guaranty of 9 per cent on their stock.

Swift and Veeder came to see me yesterday on my arrival in regard to the "Chicago Stock Yards Company," and Mr. Morris asked me about it today. I think they are all entirely satisfied with the explanation I have given them.

It is evident that Swift and Morris would not have shown the curiosity which Spoor's words indicate they displayed upon learning that the Maine company was to be formed had they been parties to the formation of that company. Until reassured by Spoor, they had evidently looked upon the new company with suspicion, representing as it did

the creation of an agency expecting to derive its income from the same source they had counted on to supply them with a bonus.

It is not necessary at this stage to inquire into the nature of the assurances given by Spoor to Swift and Morris to allay the concern which had been aroused in them by the announcement concerning the formation of the Maine company, as the main point at issue is to dispose of the assertion made by the Moseley letters that all of the packers had participated in the formation of the Maine company. That Swift and Morris did not participate in the formation of the Maine company with Prince and Armour seems to be clear from the evidence just given.

It still remains to present the data from which it appears that, although not associated with the formation of the Maine company, certain financial benefits accrued to Swift and Morris some time after the Maine company was called into existence. But before taking up this aspect of the Prince and Armour deal, there is given a detailed account of all the noteworthy circumstances that marked the gradual progress of the Maine company from its formative stage to that of a full-fledged, functioning corporate entity.

Section 22.—Methods considered by Prince and Armour for the Successful Accomplishment of the Deal

While the committee and F. S. Moseley & Co. were engaged in securing the assents of the New Jersey company's common stockholders, an extensive correspondence was carried on between F. H. Prince and J. O. Armour. Both Prince and Armour had delegated the execution of many details of the deal to confidential men in their employ. Some of this correspondence passed between F. W. Croll, treasurer of Armour & Co. and confidential man of J. O. Armour, and W. M. Wadden, who held a position similar to that of Croll with F. H. Prince.

Prince was aware that the small stockholders would be [fol. 1627] more readily induced to assent to the plan by the fact that the large stockholders had recorded their willingness to accept it. He therefore deferred the submission of the Plan to the small stockholders until he had succeeded in obtaining the assents of the large stockholders. This

task was greatly facilitated, since Armour and Prince controlled between them over 33,000 shares of the 65,000 shares of common stock issued by the New Jersey company. Prince utilized his influence with some of the large stockholders by personally interviewing and persuading them to accept the Plan. He also received considerable assistance from the members of the committee, composed of Olney, Carr, Norman, Schoonmaker, Thayer and Hart. The assents of several thousand shares of stock controlled directly and indirectly by these men were immediately made available when they were persuaded by Prince to serve on the committee. The result was that when Moseley & Co. launched its soliciting campaign among the smaller stockholders in August, following the circular letter of July 31, sent out by the committee, they were in a position to state, without seriously exaggerating the real situation, that from 45,000 to 50,000 shares had already assented.

Following are two letters, bearing on the facts stated above, which passed between Prince and Armour in July, 1911:

July 17, 1911.

Dear Mr. Armour:

I am glad to hear that you are home. I am working along the lines of the plan decided upon. It is hard work and requires my seeing personally each shareholder, therefore taking much time. I am getting all the large shareholders in and when that is accomplished I think all the smaller ones will follow. As soon as I get the matter along so that my presence is not necessary I will come out and see you.

Sincerely yours, —— ——.

J. Ogden Armour, Esq., Chicago, Ill.

J. Ogden Armour, Chicago

July 19, 1911

Mr. F. H. Prince,
c/o F. H. Prince & Co., Cor. State & Devonshire Sts.,
Boston, Mass.

Dear Mr. Prince:

I am glad to get your note and to know you are getting along satisfactorily. Do you think that you will be able to put the matter through as you started and is it possible at the present time for you to know about when it will be accomplished?

Hoping you are well, I am,

Sincerely yours,

(Signed) J. Ogden Armour

[fol. 1628] The question of devising an effective method to supplement the Moseley letters, and by which the common stockholders could be induced to give their assent to the Plan of June 30, 1911, received a great deal of attention in the correspondence between Price and Armour. Not being satisfied with the slow progress they were experiencing in getting the assents of the stockholders, Prince considered the adoption of coercive measures which would spur them to quicker action and force the adoption of the Plan. The feasibility of having the committee declare the Plan operative after a certain majority of the stockholders had expressed their assent, and without waiting until all the stockholders had agreed, came under the consideration of Prince. He and Armour also had under consideration a plan to have the stock acquired under the syndicate agreement converted into 5 per cent bonds of the Maine company, which exchange, it will be remembered, could be effected at the ratio of $200 in bonds for one share (par value $100) of the common stock of the New Jersey company. It was in contemplation to have the assenting stock listed on the stock exchange and the non-assenting stock stricken from the list. Prince and Armour were then to manipulate the market in order to depreciate the value of the outstanding stock, and thus to force the small stockholders to assent to the Plan. The profitableness of this scheme, as well as the

other points mentioned above, were the subject matter of the following two letters:

Dear Mr. A:

My program is as follows:

We now have all the large stockholders signed, actually	40,589
With 2,500 shares in New York whom I have been unable to see but whom I know will come in	2,511
Making a total of	43,000

There are 20,000 shares held in small lots which the Old Colony Trust Company and the Committee feel will certainly come in and it is proposed to give them until the first of September, so that on that date we should have between 62,000 and 63,000 shares in. I suppose there will probably be about 2,000 shares that it will take some time to bring in, the parties being away, etc. If these are the conditions on that date my idea is to have the Committee declare the plan operative on the first of September and then F. H. P. & Co. will pay in $1,000,000 to the Old Colony Trust Co., of which your proportion will be as 6,500 shares is to 33,000 shares. My idea is to immediately dispose of our bonds including yours with ours. We can sell the same in the Boston market at about 90 but if the Morocco situation is out of the way in Paris, I believe from proposals I have had from there that we should be able to get about par in France. At 90 for the bonds the stock will show you about 18 per cent. profit, so that on marketing the bonds you would have your $300,000 returned and about $117,000 profit on your shares, while your (the) proportion you would have invested would be a little less than $200,000.

[fol. 1629] I would then await the decision of the U. S. Commerce Court. This will give our office time to pick up the remaining 2,000 shares. In the meantime, if Mr. Spoor thinks it advisable, I can meet the packers and explain to them what the advantage in the formation of the Company is; namely, that the large holders have bought up the small holders in order to permit them to carry out the present

arrangement if possible, or to be in a position to make some other arrangement for the mutual benefit of both parties.

Very truly yours, —— ——.

Dear Mr.:

My idea is that we shall have a committee meeting on Monday when we shall have over 60,000 shares assented. I then propose to declare the plan operative and ask the stockholders to deposit their stock immediately. Then we will form the Maine Company with a capital of say $8,000,000 and we will pay in $1,000,000 of which your proportion will be ———— I then propose to form a syndicate to purchase $1,500,000 of the 5 per cent. bonds and I would like to have your Bank take $500,000 and we will get the Standard Trust Co. to take $500,000, you and I to take $250,000 each. You and I will sell to the syndicate $1,000,000 at 90 less two percent., of which you will sell $350,000 and we will sell $650,000, and we will give the syndicate an option on the balance of our bonds at 90, 91 and 92. I propose to have the guarantee stock listed on the stock exchanges and the present stock will be stricken from the list. We shall do our best then to depreciate the value of the outstanding stock so as to get the small holders to come in. The guarantee stock will commence, to draw dividends at the rate of nine percent. commencing with November 1st. My idea would be that perhaps for the first six months to have the New Jersey Company only pay 8 percent as at present and the other two percent to be paid out of the treasury of the Maine company, which would amount to but $65,000. Then during the next two or three months our office will busy itself with getting the outstanding stock in, which in time we should get down to a minimum. In the meantime we will have the decision some time in January in the Commerce Court case, which, according to agreement, we are to carry to the Supreme Court. As soon as we have all the stock in, and it seems advisable, we can declare the surplus by a dividend on the old stock.

Both of these letters presented above were found in the files of F. H. Prince. The first letter bore a pencil memorandum in the upper left-hand corner to the effect that the

original had been delivered to J. O. Armour on August 1, 1911. The second letter, though apparently never completed and mailed to Armour by Prince, is of value, inasmuch as it reveals the plans he had under consideration at the time.

[fol. 1630] Section 23.—The Consummation of the Plan.

Although it had been contemplated, as evidenced by reference to Prince's letter to Armour on page 238, that the Plan would be declared operative on September 1st, official action of this nature was not taken by the committee until September 25th. A memorandum representing a copy of the minutes of the meeting at which the committee declared the Plan operative, together with the announcement of the action taken, which was sent to the common stockholders of the New Jersey company, is as follows:

A meeting of the Committee was held at Room 710, Sears Building, Boston, on Monday the 25th day of September, at twelve o'clock noon.

There were present Messrs. Olney, Carr, Thayer, and Hart of the Committee, Mr. Palmer of counsel, and during part of the meeting, by invitation, Messrs. Prince and Wadden of the firm of F. H. Prince & Company. Absent, Messrs. Schoonmaker and Norman, of the Committee.

The records of the meeting of 28th July, and the record of the informal action of the Committee relating to the circular dated September 2, 1911, were read and approved.

The Secretary reported that the Old Colony Trust Company, Depositary, advised him that the company had on file assents from the holders of 59,823 shares, and in transit 373 shares, making the total definite assents to date 60,196.

Mr. Prince submitted the names of the holders of about 1,500 shares, assents from whom were delayed from one cause or another, but assents from whom were definitely expected.

On motion duly made and seconded it was voted:

(Plan declared operative. Mr. Palmer will prepare vote.)

Mr. Palmer submitted the following form of circular:

(Insert circular.)

Upon motion duly made and seconded it was voted:

(Mr. Palmer will prepare vote.)

Upon motion duly made and seconded it was Voted: That the Old Colony Trust Company, Depositary, be and hereby is authorized to receive assents from shareholders, such assents to be accepted subject to the approval of this Committee.

Upon motion duly made and seconded, it was

Voted: That the Secretary be and he hereby is authorized in his discretion to approve on behalf of this Committee the acceptance of assents by the depositary.

There being no further business, it was voted to adjourn subject to the call of the Chairman.

Chicago Stock Yards Company,
Boston, September 27, 1911

To the Holders of the Common Stock of the Chicago Junction Railways and Union Stock Yards Company.

[fol. 1631] The undersigned committee under the Plan dated June 30, 1911, announced that the holders of more than 60,000 shares of the common stock of the Chicago Junction Railways and Union Stock Yards Company have assented to the said Plan, and that the Chicago Stock Yards Company has been organized under the laws of Maine with a capital stock of $1,000,000 paid in cash.

The committee has declared the said Plan to be operative.

Assenting shareholders are notified to present their certificates forthwith to the Old Colony Trust Company, 17 Court Street, Boston, for endorsement of the guaranty thereon as provided in the said Plan. Shareholders desiring to exchange their shares immediately for the 5 per cent bonds of the Chicago Stock Yards Company, on the basis of $200 in par value of bonds for each share as provided in the said Plan, should sign the enclosed form and file the same with their certificates properly endorsed in blank with the trust company, receiving therefor receipts of the said trust company exchangeable for bonds when ready.

The bonds will be dated 1st October, 1911, but any shareholders failing to file their election to take bonds on or before 15th October, 1911, will be charged with accrued interest up to date of filing same with the said trust company.

The fixed income on guaranteed shares (not exchanged for bonds) will begin as of 1st October, 1911, for all shareholders who present their certificates for endorsement on or before 15th October, 1911. For shareholders who do not present their certificates on or before 15th October, 1911, the fixed income will begin as of the date of actual presentation.

The right of exchange for bonds will remain open until 30 days after notice of withdrawal shall be given to the trust company by the Stock Yards Company.

As a dividend is to be paid on the present common shares on the 1st October, 1911, and the interest on the bonds as well as the fixed income on the assenting shares are to begin as of the same date, no interest or dividend adjustment in cash is necessary.

Arrangements will be made to buy or sell fractions of bonds for amounts less than $500 at a price to be fixed later.

Richard Olney, Chairman; Samuel Carr; Guy Norman; S. L. Schoonmaker; E. V. R. Thayer; F. R. Hart, Secretary. 17 Court St., Boston.

[fol. 1632] As noted in the above circular, the holders of the 60,000 and odd shares of the common stock of the New Jersey company who up to that time had assented to the Plan of June 30 by affixing their signatures to the special form prepared for this purpose and deposited by them with the Old Colony Trust Co. were given the option of either turning in their certificates of stock for endorsement of the 9 per cent guarantee of the Maine company thereon or of exchanging their stock certificates for 5 per cent bonds of the Maine company on the basis of $200 in par value of bonds for each share as provided in the Plan of June 30, 1911.

On September 27, 1911, when the Plan was declared operative, a trust agreement provided for by the Plan of June 30, 1911, became effective. Under the terms of this trust agreement the Old Colony Trust Co. was appointed trustee for those stockholders who elected to have the 9 per cent guarantee endorsed on their stock certificates. The trustee was authorized to accept on behalf of the guaranteed stockholders, such dividends as might be declared

by the New Jersey company on the stock thus endorsed, as well as any funds contributed by the Maine company to make up the guaranteed 9 per cent. It was provided that in the event of a declaration of dividends in excess of 9 per cent on its common stock the residue thereof should be paid by the trustee to the Maine company. Provision was also made that in case of default on the part of the Maine company to provide funds to cover the 9 per cent guaranteed dividends and such default continuing for a period of one year the guaranteed shareholder was given the right to withdraw from the agreement.

It is to be noted that although the guaranteed shareholders assigned their right to receive dividends declared by the New Jersey company on its common stock in excess of 9 per cent they have not surrendered their voting privileges. This is not true of the stock exchanged for bonds of the Maine company in which case the Maine company exercises as owner of the stock the full voting privileges. The trust agreement follows:

Chicago Stock Yards Company Trust Agreement with Old Colony Trust Company

An Agreement the 27th day of September, 1911, by and between the Chicago Stock Yards Company, incorporated under the laws of Maine (herein called the Stock Yards Company), of the 1st part, the Old Colony Trust Company, incorporated under the laws of Massachusetts (herein called the Trustee), of the 2nd part, and the holders of certificates representing shares in the common stock of The Chicago Junction Railways and Union Stock Yards Company, incorporated under the laws of New Jersey (herein called the Old Stock Yards Company), guaranteed as hereinafter provided (said several holders being collectively referred to herein as the Guaranteed Shareholders) of the 3rd part. [fol. 1633] Whereas the Stock Yards Company has been organized under the laws of Maine with a capital of $1,000,000 and with power to own and hold shares of the Old Stock Yards Company and generally to engage in the business of a stock yards company and to have and exercise all the powers, rights, and authorities and do all the things that the Old Stock Yards Company is authorized to do;

And Whereas the holders of more than a majority of all of the common shares of the Old Stock Yards Company have either expressed their assent to the provisions of this agreement and agreed to deposit their certificates to be guaranteed as hereinafter provided or have sold or agreed to sell their shares to the Stock Yards Company, all in pursuance of a Plan, dated June 30, 1911, a copy of which is on file with the Trustee,—

Now, Therefore, it is agreed by and between the parties hereto as follows:

(1) The Stock Yards Company agrees to pay to every holder of shares of common stock in the Old Stock Yards Company whose certificates shall be stamped as hereinafter provided a sum equal to 2¼ per cent, of the par value of the shares represented by such certificates on the 1st days of January, April, July, and October in each year.

(2) Any holder of common shares of the Old Stock Yards Company may present his certificates representing such shares to the Old Colony Trust Company to be indorsed or stamped with the following indorsement, to wit:—

"The Chicago Stock Yards Company does hereby guarantee to the holder of the shares evidenced by this certificate and the assigns of such holder and to the transferee hereof, to pay to the registered holder of said shares at the time of such payment, on the first days of January, April, July and October in each and every year, beginning on the 1st day of January, 1912, a fixed sum amounting to two and one-fourth per cent. upon the par value of said shares, in consideration of which guaranty and the due and punctual performance thereof from time to time, the holder of said shares and each and every assign thereof does hereby sell, assign, set over and direct to be paid to the Old Colony Trust Company, as Trustee under the agreement hereinafter mentioned, or upon its written order, any and all dividends and other payments out of earnings apportionable to the shares represented by this certificate or directed to be paid to the holder hereof, which may at any time be made by or on behalf of The Chicago Junction Railways and Union Stock

Yards Company, or its successor, to be by said Trustee disposed of as in said agreement specified and provided.

"This indorsement is placed hereon pursuant to and subject to the terms and conditions of a certain Trust Agreement dated September 27th, 1911, signed by the Chicago Stock Yards Company and deposited [fol. 1634] with the Old Colony Trust Company, as Trustee, to which the holder hereof has assented and become a party.

"Each and every assign or transferee of this certificate, by accepting delivery hereof, does accept and confirm the above-mentioned assent of the holder and the terms and conditions of said Trust Agreement and become a party thereto and does direct the placing of this indorsement on any new certificate which may be issued in lieu hereof."

Chicago Stock Yards Company, by Assistant Secretary.

And upon such guaranty having been indorsed upon the said certificate or certificates every holder of such certificate by accepting delivery thereof shall become a party of the 3rd part to this agreement in the same manner and to the same extent as if he had signed the same and affixed his seal thereto.

(3) The Stock Yards Company hereby agrees to authorize, execute, and deliver to the Old Colony Trust Company as Trustee a trust indenture to secure an authorized issue of its Collateral Trust Gold Bonds, and payable in 50 years from their date with interest in the mean time at the rate of 5 per cent, per annum, payable semi-annually, and to secure such debentures by deposit with the Trustee of (1) shares in the common stock of the Old Stock Yards Company to an amount of $100 on par value of such shares for $200 of face amount of bonds, or (2) shares in the preferred stock of the Old Stock Yards Company to an amount of $100 in par value of such shares for $120 in face amount of bonds. And, in case shares so deposited as security shall be represented by certificates guaranteed as hereinbefore provided, such guaranty shall be cancelled and new certificates without such guaranty shall be obtained from the Old

Stock Yards Company and substituted under said trust indenture.

(4) The Stock Yards Company hereby vests in each and every holder of certificates guaranteed as herein provided the privilege to exchange such certificates and the shares represented thereby for Collateral Trust Bonds hereinbefore described at the rate of $200 in par value of debentures for $100 in par value of such shares. The Stock Yards Company may withdraw the said right of exchange provided that such withdrawal shall not take effect until at least 30 days after notice thereof shall have been given to the Trustee. Upon receiving such notice the Trustee shall as soon as convenient notify the holders of the outstanding certificates so guaranteed by mail at their addresses as shown on its books or the books of the Old Stock Yards Company, of the termination of such right of exchange and the date when the same takes effect.

(5) In consideration of the foregoing agreement on the part of the Stock Yards Company the Guaranteed Shareholders hereby sell, assign, and transfer to the Trustee all their several and respective rights to dividends upon the shares of common stock of the Old Stock Yards Company represented by the guaranteed certificates, and hereby authorize and direct the Old Stock Yards Company to pay [fol. 1635] such dividends and all other sums, profits, and values accruing from or on account of any such shares to the Trustee, to be held and paid out by the Trustee as follows: (a) to be used together with any sums that may be contributed by the Stock Yards Company for the purpose in paying to the respective holders of guaranteed certificates fixed sums amounting to 2¼ per cent. on par value of the shares represented by the said certificates on the first days of January, April, July, and October in each year, and (b) to pay the residue thereof to the Stock Yards Company or upon its written order. And the Stock Yards Company hereby guarantees to the Trustee and to the Guaranteed Shareholders that it will pay and make up to the Trustee all deficits, so that the Trustee will be able to pay the said fixed sums to the Guaranteed Shareholders as hereinbefore provided.

(6) In case for any reason the Trustee shall not pay the

said fixed sums to the Guaranteed Shareholders and default in such payment shall continue for a period of 60 days the Trustee shall have the right to proceed against the Stock Yards Company and enforce such payment and the fulfillment of all the agreements on the part of the Stock Yards Company herein contained. And the Trustee shall represent equally and pro rata all the Guaranteed Shareholders in any such proceedings.

(7) In case of such default continued for the period of one year any Guaranteed Shareholder may notify the Trustee that he withdraws from this agreement and may present his certificate to the Trustee for the purpose of having his said indorsed guaranty thereon cancelled. In that case the Trustee shall cancel the said guaranty and the holder of such certificate shall be freed from all further obligation hereunder and the Stock Yards Company shall be freed from all obligations to such certificate-holder except with respect to any fixed sums which theretofore shall have become due and payable under the provisions hereof.

(8) Each Guaranteed Shareholder hereby irrevocably directs the Old Stock Yards Company (except as in and by the foregoing Paragraphs 3 and 7 permitted) not to make or cause to be made any transfer of any stock certificate which may be stamped as hereinbefore provided or to issue or deliver any certificate for or representing any shares mentioned therein, unless (a) the transferee of such stock certificate shall have first assented to this Trust Agreement and consented to and directed the stamping thereon of said guaranty and agreement or (b) the said new certificate shall before the issue and delivery thereof be stamped with said guaranty and agreement.

(9) It is expressly agreed that the Trustee shall not have any duty or responsibility from, arising out of, or on account of any the terms or provisions of these presents, except for the payment of the moneys coming into its hands according to the provisions hereof, and shall not be in any way liable or responsible for the execution or fulfilment of any covenants or agreements herein contained. But it is agreed that the Trustee may and shall be fully empowered, either in its own name or for or on behalf of the Guaranteed Shareholders, with or without the request of any of them,

[fol. 1636] to enforce and compel, or to take any or all proceedings to enforce or compel, the due execution and fulfilment of the said covenants and agreements without any duty, obligation, or responsibility on the part of the Trustee to take, bring, or continue any such action or proceeding. The Trustee may pay such reasonable remuneration as it shall deem proper to any attorneys, officers, agents, servants, and employees that it may reasonably employ in the management of the trusts and powers thereof, and all such remuneration and all other reasonable expenses and disbursements of the Trustee, including its own reasonable remuneration, shall be paid by the Stock Yards Company. The Trustee may at any time in its discretion resign its trusts hereby created by filing its resignation in any court having jurisdiction and publishing notice thereof once a week for three successive weeks in one or more newspapers published in the city of Boston, and such resignation shall take effect upon the appointment of a new trustee, which shall be a trust company incorporated by or under the laws of Massachusetts, and may be appointed by such court upon application of the retiring Trustee or any of the Guaranteed Shareholders. And the clauses contained herein and referring to the Trustee shall extend and be applicable to the trustee for the time being of these presents, and every such trustee shall be exempt from giving any bond or surety in respect of the execution of the said trusts or powers or otherwise in respect of the premises.

In Witness Whereof the Chicago Stock Yards Company and the Old Colony Trust Company have caused their common seals to be hereto affixed and these presents to be assigned in their behalf by their proper officers thereto duly authorized the day and year first above written.

Chicago Stock Yards Company, by —— ——, President. Attest: —— ——, Secretary. Old Colony Trust Co., by —— ——, Vice-President. Attest: —— ——, Secretary.

Section 24.—The $1,000,000 Fund of the Maine Company and the Reasons for Raising the Fund

The Maine Company was formed as announced in the foregoing circular letter and the first meeting of directors of the company was held September 27, 1911. Two letters quoted below show that two days prior to this meeting, F. W. Croll, representing J. O. Armour, sent a check for $194,000 to W. M. Wadden, confidential man for F. H. Prince. This amount, together with $806,000 furnished by Prince, as disclosed from a study of Prince & Co.'s accounting records, represented the $1,000,000 of paid-in capital which it had been announced the new company would have as a guarantee fund.

[fol. 1637] Chicago, Sept. 25, 1911

Personal.

Mr. W. M. Wadden,
28 State St., Boston, Mass.

Dear Mr. Wadden:

As requested in your telegram of the 22nd I beg to enclose herewith check on Boston for $194,000. I should have forwarded this on Saturday but it was overlooked and I trust that this will not inconvenience you in any way.

Kindly acknowledge receipt.

Yours very truly,

FWC Er ENC. (Signed) F. W. Croll

F. H. Prince & Co., Cor. State and Devonshire Sts.
Boston, September 27.

Dear Mr. Croll:

I duly received your cheque for $194,000, which has been paid in to the Chicago Stock Yards Company. This Company was formed today and held its first meeting. I will write you later, giving the list of officers and full information regarding the company.

Very truly yours,

F. W. Croll, Esq., Chicago, Ill.

The following letter written by Wadden on the same day that the $1,000,000 referred to above was placed to the credit of the Maine company in the Merchants National Bank throws light on the motives that prompted Prince and Armour to pay the $1,000,000 into the treasury of the Maine company. According to the circular letters issued by the committee and the Moseley letters, this money was to serve as a guarantee fund for the prompt fulfillment of the stipulations made to the assenting stockholders of the New Jersey company.

October 4, 1911

Dear Mr. Croll:

Assents have been obtained regularly since Mr. Prince was in Chicago and we now have close to 62,000 deposited. Exchanges are being made rapidly and should be completed some time the middle of the month. We are arranging in accordance with instructions from Mr. Prince to have bonds issued covering the 6,500 shares owned by Trust Account A.

I suppose you know that at present I am Treasurer of the Chicago Stock Yards Co. We have $1,000,000 in cash on deposit with the Merchants National Bank. This deposit is drawing 2 per cent. interest at present and we thought it best to allow it to stand for a time,—for the moral effect.

I expect to be in Chicago at an early date and will be glad to go over all the affairs with you at that time that you may have whatever information you desire.

Very truly yours, ——.

[fol. 1638] The words "we thought it best to allow it to stand for a time—for the moral effect" are significant in as far as they show that in offering the stockholders of the New Jersey company a guarantee of 9 per cent dividends on their stock to insure the payment of which they pledged on behalf of the Maine company the sum of $1,000,000, Prince and Armour were well aware that the property already back of the New Jersey company's stock possessed an earning power sufficient to pay dividends very much in excess of 9 per cent, and that any income which might be derived from the contribution of $1,000,000 would not be needed. The $1,000,000 fund was useful in the committee's letters and the Moseley letters in that it tended to impress the small stockholders and so minimized the sacrifice they

were being called upon to make. The fact that a few months later Prince and Armour borrowed almost all of the $1,000,000 from the Maine company serves to explain what may have been meant by Wadden's words, "we thought it best to allow it to stand for a time," and furnishes further evidence that Prince and Armour never anticipated that the $1,000,000 would be used by the Maine company as an indispensable means of carrying out the stipulations of the Plan, and that it was only used for the "moral effect."

Section 25.—Dummies used as Organizers, Officers, and Stockholders of the Maine Company

Although the evidence is plain that Prince and Armour were the actual promoters and organizers of the Maine company and that they alone contributed between them the $1,000,000 in cash paid into the Maine company, at the time of its formation in 1911, their names have never been associated with the Maine company as officers or directors nor as stockholders of record on the books of the company. The officers and directors of the company have always been dummies consisting in part of clerks furnished by the Corporation Trust Co. of Maine and in part of employees in the office of F. H. Prince & Co., Boston.

The following names appear as the original subscribers to the stock of the Maine company, and these men, who were employees of the Corporation Trust Co. of Portland, Me., also constituted the first board of directors:

	Shares
Clarence E. Eaton, Portland, Me.	2
T. L. Crotean, Portland, Me.	2
Albert F. Jones, Portland, Me.	2
Albert A. Richards, Portland, Me.	2
B. M. Maxwell, Portland, Me.	2

Section 26.—Capitalization of the Plan at $7,000,000.

The first meeting of the directors at which official business was transacted, was held on September 27, 1911. At this meeting a resolution was adopted that an agreement be entered into by the directors with F. R. Pegram, a man who had been for 25 years in the employ of F. H. Prince & Co.

as messenger and bookkeeper. This agreement provided for the issuance by the Maine company of 80,000 shares of its capital stock, having a total par value of $8,000,000, all [fol. 1639] of which was to be given to F. R. Pegram as consideration for the payment by him of $1,000,000 in cash and the sale to the company of the Plan, dated June 30, 1911, with assents thereto of the shareholders of the New Jersey company; the Maine company to acquire thereby all the benefits arising out of the Plan and the assents. The following is a copy of this agreement as consummated at that meeting:

> An Agreement made this 27th day of September 1911 between Frank R. Pegram of Cohasset, in Massachusetts of the one part and the Chicago Stock Yards Company, Inc. under the laws of Maine (herein called the company) of the other part.

Whereas the said Pegram and his associates caused to be formulated a plan dated June 30, 1911 with the following, namely: Richard Olney, Chairman, Guy Norman, S. L. Schoonmaker, E. V. R. Thayer, F. R. Hart, as committee and the said Pegram has obtained the assent to the said plan of the holders of more than sixty thousand common shares of the Chicago Junction Railways & Union Stock Yards Company. As evidenced by their assents deposited with the Old Colony Trust Company and the said Pegram now holds and controls the said assents and the right to transfer the same together with all interests therein and all benefits to accrue therefrom.

And whereas the said plan

> (a) Assures to the Chicago Junction Railways & Union Stock Yards Company a continuance of the business now carried on by the packers upon a permanent basis and a great increase in the earnings, profits and dividends, to which the holders of the common shares of the Chicago Junction Railways & Union Stock Yards Company will become entitled as well as a great increase in the value of the said shares, and
>
> (b) will vest in the company (if it shall acquire the uses and benefits of the said plan) the right to all divi-

dends and other payments out of earnings apportionable to the said common shares the holders of which have heretofore assented or may hereafter assent to the said plan over and above the fixed annual amounts and fixed annual charges specified in the said plan. But the company cannot receive any of the said benefits without having acquired the same from the said Pegram nor without having raised $1,000,000 in cash in order to comply with the conditions specified in the said plan.

And whereas the company has been organized under the laws of Maine with a capital of $1,000,000, and desires to acquire the uses and benefits of the said plan and the action of the said share holders thereunder and requires the sum of $1,000,000. in cash so to do.

Now therefore it is agreed by and between the parties hereto as follows:

[fol. 1640] (1) The said Pegram hereby sells, assigns, transfers and sets over to the company its successors and assigns the said plan dated June 30, 1911 and all the assents thereby of the share holders of the Chicago Junction Railways and Union Stock Yards Company which have heretofore been made as well as all such assents and benefit in and to the said plan and assents that may hereafter be made together with all right title, interest of every kind and nature. And the said Pegram agrees to pay to the company forthwith the sum of $1,000,000. in cash.

(2) The company hereby accepts the foregoing property and acknowledges that it has received the payment of the said sum of $1,000,000.

(3) As consideration for the said property and for the services of the said Pegram the company agrees to pay $8,000,000. therefor payable in the full paid nonassessible stock of the company at par. The company agrees to issue and deliver forthwith to the order of the said Pegram $999,000 par value of the capital stock of the company now authorized and not heretofore subscribed. The company further agrees to cause to be delivered forthwith to the order of the said Pegram the $1,000 par value of its capital stock

heretofore subscribed. The company further agrees to increase its authorized capital stock to an authorized amount of $8,000,000 capital and to issue and deliver to the order of the said Pegram $7,000,000 par value of its shares as soon as such increase can be made according to law.

In witness whereof the said Pegram has hereto affixed his hand and seal and the company has caused its common seal to be hereto affixed and these presents to be signed in its name and behalf of its proper officer the day and year first above written.

Frank R. Pegram (Seal)
Chicago Stock Yards Company
By
George F. Doherty, President
Attested, Norman J. MacGaffin

(Seal C. S. Y. Co.)

It is evident that Pegram was used as a dummy by Prince and Armour to conceal their identity with the deal. The $1,000,000 which Pegram used in this connection was the same money which Prince and Armour had jointly contributed, and the Plan, which had now become possessed of a value of $7,000,000, was the same Plan to which the holders of about 60,000 shares of the New Jersey company's stock had assented at that time.

On November 11, 1911, the capital stock of the Maine company was increased to $8,000,000 divided into 80,000 shares of a par value of $100 all of which was given to [fol. 1641] Pegram in accordance with an agreement of September 27, 1911. On the records of the company he was credited only with 79,990 shares, the other 10 shares having been recorded in the names of other dummies in order to qualify them as directors.

Section 27.—Obstacles Encountered by Prince and Armour in Absorbing the Surplus Earnings of the New Jersey Company and of its Subsidiaries.

Prince had intended to have the New Jersey company and its subsidiary companies declare dividends from their accumulated surplus earnings soon after the Maine com-

pany was formed. This plan was frustrated owing to the fact that the holders of nearly 4,000 shares of the common stock of the New Jersey company failed to send in their assents to the Plan of June 30, 1911, at the time the Maine company was formally organized and consequently he could not declare a dividend without permitting the holders of the non-assenting stock to share in it. The situation was still more complicated by the fact that not all of the stock of the Yards company was owned by the New Jersey company in 1911 and any dividends declared by that company would not go to the New Jersey company alone but would be shared by all the holders of the stock.

The obstacle presented by the non-assenting stock of the New Jersey company and of the 1,000 and odd shares of the Yards company owned by outside interests was not removed until the end of 1913. At that time the assents of all but 103 shares of the non-assenting stock of the New Jersey company had been secured. Prince and Armour found it necessary to purchase 100 shares of the stock, paying the sum of $65,000 for it, while no arrangement has ever been made with reference to three shares owned by P. H. Clark, it having been asserted that it has been impossible to locate him.

All of the stock of the Yards company was finally acquired in 1913 and added to that already held by the New Jersey company. For some of this stock more than $470 per share was paid. The following table, an analysis made from the records of the New Jersey company, shows when and at what price the stock of the Yards company was acquired by the New Jersey company.

[fol. 1642]

Analysis of Investment account representing Union Stock Yard & Transit Co. stock owned by the New Jersey company.

Year Bought	Number of Shares	Total Amount paid	Average Price Paid per Share
1890	[1] 129,770	$22,587,283.90	$174.05
1893	218	39,759.92	182.38
1894	205	35,450.00	172.92
1894	50	10,000.00	200
1896	360	72,000.00	200
1906	52	13,000.00	250
1907	139	33,360.00	240
1908	52	12,532.00	241
1910	10	2,400.00	240
1911	94	22,586.00	240.27
1912	300	100,000.00	333.33
1913	12	4,801.50	400
1913	548	258,424.00	471.57
1913	190	60,851.17	320.26
Total	132,000	23,252,448.49	.....

[1] Original purchase from promoter.

Section 28.—Issue of Bonds by the Maine company and Reasons for their low market value

On October 1, 1911, the Maine company began to issue its 5 per cent collateral trust gold bonds in exchange for the assented stock of the New Jersey company. By the end of December 1911, three months after the formation of the Maine company a total of $3,741,000 in bonds had been exchanged for 18,705 shares of common stock. During the next two years the records of the Maine company show that only 12,265 additional shares were exchanged for bonds, or in other words in December, 1913, the records show that a total of 30,970 shares of stock had been acquired by the Maine company in exchange for bonds which that company had issued amounting to $6,194,000. Since that date and up to December 31, 1918, only 130 additional shares of stock have been converted into bonds. At that date, 33,897 shares still bore the guarantee of the Maine company and were receiving 9 per cent dividends, while the three shares owned by P. H. Clark were still classed as non-assenting stock, having never been stamped with the guarantee or exchanged for bonds.

The bonds of the Maine company were not favorably regarded by the investing public as sales of these bonds

as low as $76 were recorded. There was one reason at least which undoubtedly accounts in part for the attitude of the investing public toward the bonds of the Maine company. These bonds were secured only by the stock of the New Jersey company for which they had been exchanged and the $1,000,000 in cash paid into the Maine company by Armour and Prince. The New Jersey com-
[Vol. 1643] pany had been paying 8 per cent dividends on its common stock and since the Maine company had obligated itself under the terms of the Plan to pay 9 per cent dividends on such shares as accepted the guarantee provision of the Plan, the additional 1 per cent had to be made up by the Maine company. In the case of stockholders who had elected to exchange their stock for 5 per cent bonds of the Maine company at the rate of $200 in bonds for $100 par value of stock, thus insuring themselves a 10 per cent return on their stock, the Maine company was obligated to make up the additional 2 per cent.

The income derived from the $1,000,000 of cash paid in by Armour and Prince was not sufficient to pay the expenses of the Maine company and provide the additional income required to meet the obligations of the Maine company outlined above. It is not surprising, therefore, to find that on December 31, 1912, the Maine company showed a deficit of $168,489.44. This means that the fund of $1,000,000 which had been provided as a guarantee fund to insure that the provisions of the Plan would be carried out, had been depleted to that extent in less than one and one-half years after the company had been formed. As the depletion of the $1,000,000 increased, that part of the income of the Maine company which had been derived from this source decreased. This naturally hastened the depletion of the capital of the Maine company. The attitude of the investing public toward the bonds of a company which seemed to be approaching insolvency is readily understandable.

It will be noted that the Maine company owns and exercises the voting rights of the stock surrendered to it in exchange for its 5 per cent bonds. The Maine company also owns 100 shares of the New Jersey company's common stock which it purchased outright for $65,000. This stock

has been stamped with the guarantee and is therefore classed as guaranteed stock. It has been pointed out on page 242 that the holders of the guaranteed shares retained and may exercise full voting rights with respect to their stock holdings.

At the end of 1913 the Maine company owned 30,970 shares of the common stock of the New Jersey company for which it gave bonds in exchange and 100 shares of guaranteed stock, thus giving the Maine company a total voting strength of 31,070 shares. This represented less than one-half of the voting strength of the 65,000 shares of common stock and less than one-fourth of the total voting strength of the stock of the New Jersey company—it being recalled that the 65,000 shares of preferred stock issued by that company also carry full voting privileges.

The fact that the Maine company owns less than one-fourth of the voting securities issued by the New Jersey company does not, however, prevent the Maine company from actually controlling that company due to the fact that Prince succeeded in being elected president and in securing the election of a sufficient number of his associates as directors in 1911 to insure to him the majority control of the management of that company. Prince continues to main- [fol. 1644] tain his control of the management by naming the men each year who vote the proxies which he obtains from the preferred and guaranteed stockholders.

It was pointed out above that the $1,000,000 of the Maine company was rapidly nearing depletion owing to the fact that from October, 1911, to December, 1913, the New Jersey company had continued to pay 8 per cent dividends on its common stock and the Maine company had been forced to provide the additional funds in order to make up the 9 per cent dividends on the guaranteed stock and the interest on the 5 per cent bonds given in exchange for stock—this interest being an equivalent of 10 per cent dividends on such stock.

It lay within the power of Prince and Armour to remedy the condition of the Maine company at any time by having the New Jersey company increase the dividend rate on its common stock or by declaring a special dividend. But, as previously brought out, if this had been done at any time during 1911 or 1912, those stockholders of the New

Jersey company who had not assented to the Plan would also have shared in the extra dividends. Furthermore, the declaration of extra dividends would have made it more difficult for Prince and Armour to acquire the outstanding stock for the obvious reason that this would have increased its market value.

As evidenced from the letters quoted on pages 238 to 239, Prince and Armour had expected to convert the 13,000 shares of stock which they had acquired under the syndicate agreement into 5 per cent bonds of the Maine company soon after the formation of that company. But in view of the attitude of the investing public toward the bonds of the Maine company, they did not deem it wise to carry out this plan for a time.

However, in August, 1912, Prince found that the New Jersey company and its subsidiary companies had some funds which were not needed for their immediate business operations, and he then decided to convert part of his stock and of Armour's into bonds to be sold to these companies. In this way he eventually disposed of $2,085,000 worth of the Maine company's bonds mostly at the rate of $91, which was a somewhat better price than he had originally planned to dispose of the bonds to the banks. The companies were induced by Prince to invest their funds in these bonds, as shown in the following table:

	Number of bonds purchased	Amount paid
New Jersey company	600	$ 546,000
Yards company	1,244	1,127,415
Railway company	241	218,810
Total	2,085	1,892,225

[fol. 1645] Section 29.—The First Acquisition of the Surplus of the New Jersey Company and of its Subsidiaries

In October, 1913, the first steps were taken by Prince and Armour to acquire the surplus of the New Jersey company and of its subsidiary companies, but it was not until December, 1913, that the Maine company received any of these surplus funds.

On October 2, 1913, both the Yards company and the Railway company adopted resolutions authorizing the pay-

ment of a special dividend to the stockholders of record on that date. The New Jersey company in turn adopted a similar resolution on November 31, 1913. At the same time a resolution was adopted by the directors of the New Jersey company, instructing the Yards company and the Railway company to pay the special dividends declared on October 2, 1913, to the Maine company. It should be noted that, although the subsidiary companies had authorized the payment of the special dividends declared by them immediately, such payment was held up. The reason for withholding the payment of the dividends on the part of the Yards company may have been the fact that on October 2, 1913, there were still a few shares of stock of this company which the New Jersey company had not acquired, and it would have been necessary to have divided the special dividend between the New Jersey company and the outside shareholders. The directors of the Yards company had probably taken the action declaring the special dividend on October 2, 1913, without being aware that all of the Yards company stock had not yet actually been acquired by the New Jersey company.

On December 11, 1913, a short time after the New Jersey company had finally acquired all of the outstanding stock of the Yards company, a new resolution was adopted by the Yards company, as well as by the Railway company, amending their respective resolutions of October 2, 1913, to the effect that instead of making the dividends payable to the stockholders of record, each of these companies adopted a resolution making the dividend payable to the order of the Chicago Junction Railways & Union Stock Yards Co., the owner of all of the stock of this company.

Copies of the records of the directors' meetings at which all of the above actions were taken follow:

Meeting of the Board of Directors of The Union Stock Yard & Transit Company, held at the office of the Chairman, Room 1305 First National Bank Building, Chicago, pursuant to by-laws and due notice, at 2:30 P.M., Thursday, October 2nd, 1913.

Present: A. G. Leonard, R. Fitzgerald, F. H. Prince, J. A. Spoor, R. M. Shaw.

Mr. Spoor acted as Chairman and Mr. Poronto as Secretary.

Minutes of the last meeting were read and approved.

[fol. 1646] The Chairman read the following letter:

"Chicago Junction Railways and
Union Stock Yards Company,
Chicago, October 1, 1913

Mr. J. A. Spoor, Chairman of the Board, Union Stock Yards & Transit Company, Chicago, Illinois.

Dear Sir: Referring to our personal conversation at different times, I would be glad to have you call a meeting of the directors of the Company and declare a dividend from your surplus earnings and undivided profits of Eight and three-quarters (8¾) per cent, to be paid to the shareholders of record on October 2nd.

It is understood that this dividend shall be paid in part by the transfer to the stockholders of 1,244 (par value $1,000.00 each) Chicago Stock Yards 5% bonds your Company hold at their book value with interest to October 2nd, amounting to $1,127,587.79; and it is further understood that these bonds will be accepted by the stockholders in lieu of cash on the above basis, the remainder of the dividend, amounting to $27,412.21, to be paid in cash.

Very truly yours, (Signed) F. H. Prince, President."

On motion duly made and seconded, the following Resolution was unanimously adopted:

Resolved that a dividend of Eight and three-quarters (8¾%) per cent, on the capital stock of the Union Stock Yard & Transit Company, from the surplus earnings and undivided profits of the Company be, and the same is, hereby declared payable on the second (2nd) day of October 1913, to stockholders of record of said date.

On motion duly made and seconded, the following Resolution was unanimously adopted:

Resolved that the Treasurer of this Company be authorized to use the 1,244 bonds of the Chicago Stock Yards Company, now in the treasury, value, including interest to October 2nd, being $1,127,587.79, in partial payment of the

dividend of 8¾%, providing the stockholders agree to accept the same in lieu of cash. The balance of said dividend to be paid in cash.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, adjourned.

(Signed) J. A. Spoor, Chairman, H. E. Poronto, Secretary.

Meeting of the Board of Directors of the Chicago Junction Railway Company, held at the office of the Chairman, Room 1305 First National Bank Building, Chicago, pursuant to By-laws and due notice, at 2:15 P.M., Thursday, October 2nd, 1913.

[fol. 1647] Present: J. A. Spoor, A. H. Leonard, F. H. Prince, R. Fitzgerald, A. H. Veeder, S. H. Strawn, H. E. Poronto.

Mr. Spoor acted as Chairman and Mr. Poronto as Secretary.

Minutes of the last meeting were read and approved.

The Chairman read the following letter:

"Chicago Junction Railways &
Union Stock Yards Company
Chicago, October 1, 1913

Mr. J. A. Spoor, Chairman of the Board, Chicago Junction Railway Company, Chicago.

Dear Sir: Referring to our personal conversations at different times, I would be glad to have you call a meeting of the directors of the Company and declare a dividend from your surplus earnings and undivided profits of Ten (10%) per cent, to be paid to the shareholders of record on October 2nd.

It is understood that this dividend shall be paid by the transfer to the stockholders of the 241 (per value $1,000 each) Chicago Stock Yards 5% bonds your Company hold at their book value with interest to October 2nd, amounting to $218,843.47; and it is further understood that these bonds will be accepted by the Chicago Junction Railways & Union Stock Yards Company in lieu of cash on the above basis, the balance of the dividend, amounting to $1,156.53, to be paid in cash.

Very truly yours, (Signed) F. H. Prince, President."

Upon motion duly made by Mr. Leonard and seconded by Mr. Fitzgerald, the following Resolution was unanimously adopted:

Resolved, that a dividend of Ten (10%) per cent, on the capital stock of the Chicago Junction Railway Company, from the surplus earnings and undivided profits of the Company, be, and the same is, hereby declared payable on the second (2nd) day of October, 1913, to stockholders of record of said date.

Upon motion made by Mr. Fitzgerald and seconded by Mr. Leonard the following Resolution was unanimously adopted:

Resolved that the Treasurer of this Company be authorized to use the 241 bonds of the Chicago Stock Yards Company, now in the treasury, value, including interest to October 2nd, being $218,843.47, in partial payment of the dividend of ten (10%) per cent, providing the stockholders agree to accept the same in lieu of cash. The balance of said dividend to be paid in cash.

[fol. 1648] There being no further business to come before the meeting, it was, upon motion duly made, adjourned.

(Signed) J. A. Spoor, Chairman, H. E. Poronto, Secretary, Silas H. Strawn.

At the meeting of the Board of Directors of The Chicago Junction Railways and Union Stock Yards Company held at the office of F. H. Prince & Company, Boston, Mass., on Monday, the third day of November, 1913, at 11 o'clock A. M.

Present: Messrs. Prince, Wadden, Palmer, Thayer, Ames, Gardner, and Norman.

Absent: Messrs. Lane, Schoonmaker, Dennis, and Spoor.

Upon motion duly made it was unanimously

Voted to authorize and instruct the Union Stock Yard & Transfer (Transit) Co. to deliver and pay to the Chicago Stock Yards Company or order the 1244 bonds and the $27,412.21 in cash constituting the special dividend declared by the said Union Stock Yard & Transit Company on the 2nd of October, 1913, and to authorize and instruct the Chicago

Junction Railway Company to deliver and pay to the Chicago Stock Yards Company the 241 bonds and $1,156.53 in cash constituting the special dividend declared by the Chicago Junction Railway Company on the 2d of October, 1913.

Whereas the Chicago Stock Yards Company has acquired and now owns 31,073 shares of the common stock of this company and the holders of all the remainder of the said common stock to wit the holders of 33,927 have accepted the terms of the trust agreement between the Chicago Stock Yards Company and the Old Colony Trust Company dated 27th September 1911 and the payment of guaranteed dividends at the rate of 9 per cent per annum as therein provided and all their certificates have been endorsed as provided therein and in consideration thereof have assigned all their rights to dividends and to all other sums profits and values accruing from or on account of the said guaranteed shares to the said trustee and subject to the payment of the said guaranteed dividends to the use of the Chicago Stock Yards Company.

And whereas the full guaranteed dividends have been paid to the holders of the guaranteed certificates for the year 1913 and accordingly the Chicago Stock Yards Company is entitled to all dividends and payments out of earnings apportionable to the common shares of this company.

Upon motion duly made and seconded it was unanimously

Voted to pay an extra dividend of 10 per cent on the Common share of the company in cash such payment to be made to the Chicago Stock Yards Company forthwith.

Upon motion duly made and seconded it was unanimously

[fol. 1649] Voted to authorize and instruct the treasurer to deliver $600,000 bonds of the Chicago Stock Yards Company now held by this Company and constituting part of its surplus net earnings to the Chicago Stock Yards Company.

There being no further business to come before the meeting it was unanimously

Voted to adjourn

The meeting adjourned pursuant to foregoing vote.

A true record.

Attest: W. G. Dooley, Secretary.

Meeting of the Board of Directors of the Union Stock Yard & Transit Company held at the office of the Chairman, Room 1305 First National Bank Building, Chicago, pursuant to by-laws and due notice, at 2 P. M., Thursday, December 11th, 1913.

Present: J. A. Spoor, R. M. Shaw, A. G. Leonard, R. Fitzgerald.

Mr. Spoor acted as Chairman and Mr. Poronto as Secretary.

Minutes of the last meeting were read and approved.

On motion duly made and seconded, the following Resolution was unanimously adopted:

Whereas, The Chicago Junction Railways and Union Stock Yards Company, the owner of all the capital stock of this Company, has requested this company to amend the resolution declaring the 8¾% dividend on October 2d, 1913;

Now, therefore, in accordance with said request:

Be it resolved, that the resolution declaring a dividend of 8¾% on the capital stock of this Company adopted on October 2d, 1913, be and the same is hereby amended to read as follows:

Resolved, that a dividend of 8¾% on the capital stock of the Union Stock Yard & Transit Company from the surplus earnings and the undivided profits of the company be, and the same is, hereby declared payable to the order of the Chicago Junction Railways and Union Stock Yards Company, the owner of all of the stock of this company.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, adjourned.

(Signed) J. A. Spoor, Chairman, H. E. Poronto, Secretary.

Minutes of meeting of the Board of Directors of the Chicago Junction Railway Company, held at the office of the Chairman of the Board, Room 1305 First National Bank Building, Chicago, pursuant to by-laws and due notice, at 2:15 o'clock P.M. Thursday, December 11, 1913.

[fol. 1650] Present: J. A. Spoor, H. E. Poronto, A. G. Leonard, R. Fitzgerald, Arthur Meeker, S. H. Strawn, A. H. Veeder, and Mr. R. M. Shaw of the Company's Counsel.

Mr. Spoor acted as Chairman and Mr. Poronto as Secretary.

Minutes of the last meeting were read and approved.

Upon motion duly made and seconded, the following Resolution was unanimously adopted:

Whereas, The Chicago Junction Railways and Union Stock Yards Company, the owner of all the capital stock of this Company, has requested this Company to amend the resolution declaring the 10% dividend on October 2d, 1913:

Now, therefore, in accordance with said request:

Be it resolved, that the resolution declaring a dividend of 10% on the capital stock of this company adopted on October 2nd, 1913, be and is hereby amended to read as follows:

Resolved, that a dividend of 10% on the capital stock of the Chicago Junction Railway Company from the surplus earnings and the undivided profits of the company be, and the same is hereby declared payable to the order of the Chicago Junction Railways and Union Stock Yards Company, the owner of all of the stock of this company.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, adjourned.

(Signed) J. A. Spoor, Chairman; H. E. Poronto, Secretary.

Summarizing the above actions of these three companies, it is found that the three companies placed the following amounts at the disposal of the Maine company at that time:

	Maine company bonds valued at	Cash	Total
The Union Stock Yards & Transit Co.	$1,127,587.79	$37,412.21	$1,155,000.00
The Chicago Junction Ry. Co.	218,843.47	1,156.53	220,000.00
The Chicago Junction Ry. & Union Stock Yards Co. of New Jersey	540,000.00	650,000.00	1,196,000.00
Total	$1,886,431.26	$678,568.74	$2,571,000.00

The above table shows that in addition to $678,568.74 in cash having been turned over, bonds of the Maine company valued at $1,886,431.26 were also turned over by the three [fol. 1651] companies named. The value of these bonds, as stated, represents the price which these three companies

had paid for the bonds in 1912 when Prince had sold them to these companies, plus accrued interest amounting to $2,872.92. The par value of the bonds amounted to $2,085,000, and when they were received by the Maine company the following entry (copies from the record of the company) was made to place them on the books of the company.

1913		Dr.	Cr.
Dec. 31.	Chicago Stock Yards Co.	$2,085,000	
	5% Bonds in Treasury to		
	Surplus Account		$1,895,097.92
	Discount		189,902.08

The effect of the above entry was to record the bonds as an asset, and the company having become the owner of part of its own liabilities might very well have chosen to cancel the bonds thereby reducing its liabilities and the yearly interest charges for which it was obligated to provide funds. But the bonds were not canceled and the company continued to pay interest on them each year. The most interesting feature connected with these bonds now presents itself.

Section 30.—Interest Paid on Bonds Held by the Maine Company Not Recorded on the Books of That Company

Although the company continued to record the $2,085,000 of bonds as an asset of the company from December 31, 1913, and continued to pay interest on the bonds, none of the interest paid on the entire amount of $2,085,000 of bonds, amounting to $104,250 each year, has ever been recorded as income on the books of the Maine company.

The first interest payable on the bonds after December 31, 1913, was due on April 1, 1914. Coupons from the $2,085.00 of bonds amounting to $52,125, representing the interest due on April 1, 1914, were credited on March 31, 1914, to the profit and loss account of F. H. Prince & Co. At the same time, an account was opened on Prince & Co.'s books in the name of F. H. Prince, trustee, and this account was charged with the same amount, namely, $52,125. The records show that the coupons were not presented for payment by Prince & Co. until July 25, 1914. On that date Prince & Co. received cash amounting to $52,125, which was added to Prince & Co.'s cash balance and the account with F. H. Prince, trustee, was credited with the same

amount, thus closing the account. From the above entries it appears that Prince was credited with all of the April 1 interest on the $2,085,000 of bonds.

Since April 1, 1914, the Commission has been unable to trace to whom all of the interest on the $2,085,000 of bonds has been paid. It has been found, however, that F. H. Prince's personal account—as kept on the books of F. H. Prince & Co.—has been credited with the interest on $485,000 of these bonds as follows:

[fol. 1652]

Interest due	Amount of bonds	Amount of interest
October 1, 1914	$485,000	$12,125
April 1, 1915	$485,000	$12,125
April 1, 1916	$485,000	$12,125
October 1, 1916	$485,000	$12,125
April 1, 1917	$485,000	$12,125
October 1, 1917	$485,000	$12,125

The interest on the $485,000 of bonds, amounting to $12,125, due on October 1, 1915, was not shown on the books of F. H. Prince, and it is not known to whom the interest was paid on that date. It has also been impossible to ascertain to whom the interest on $1,600,000, amounting to $40,000 every six months, has been paid since April 1, 1914.

The following entries were found on the books of Armour & Co., for which the officials of the company could give no satisfactory explanation:

	Credit of—
October 21, 1914	$40,000
July 10, 1915	$24,575
October 30, 1915	$24,575
May 3, 1916	$24,575

These amounts were credited to an account called J. O. Armour No. 4, Dividend Account, this being the name of the account to which all income derived from Armour's investment in the Chicago stockyards was credited. It is quite probable that the entry of October 21, 1914, amounting to $40,000, represents the interest on $1,600,000 of bonds due on October 1, 1914. It has been shown that Prince received interest on $485,000 of bonds, amounting to $12,125, due on the same date.

These two entries would seem to account for the total

interest due on the $2,085,000 for October 1, 1914. The total interest for the year 1914 would seem, therefore, to have been divided between Prince and Armour, the former receiving $64,250 and the latter receiving $40,000.

In default of any tangible evidence as to the nature of the other three entries of $24,575 each, comment can only be made on the basis of speculation as to what these entries represent. It is quite possible that these entries represent a part of the interest payable on the $1,600,000 of bonds which the Commission has been unable to trace.

The inquiry also revealed that an entry had been made on the Maine company's books under date of December 31, 1916, the effect of which was to reverse the entry of December 31, 1913, with the result that the bonds no longer constituted an asset of record of the Maine company in 1918, [fol. 1653], at the time when the records of this company were being examined by the representatives of the Commission. The entry read as follows:

1916	Debit	Credit
Dec. 31, Surplus Account	$1,895,097.92	
Discount Bonds	189,902.08	
To Chicago Stock Yards 5% Bonds in Treasury		$2,085,000

Section 31.—Disposition of the Bonds and the Interest Payments Thereon

The elimination of the bonds as an asset of record on the books of the Maine company and the fact that the Commission has been unable to locate to whom the interest has been paid on the greater part of these bonds gains still greater significance in the light of letters and other documents found in an investigation of this case.

The following letter is from the files of Swift & Co., and was written by L. F. Swift, president of Swift & Co., to his brother, E. F. Swift. The letter itself bears no date but the file number with which it was marked, as well as the fact that reference is made in the letter to a meeting to be held on December 4, 1913, indicate that the letter was written in the latter part of November, 1913. This letter reads in part as follows:

Did not get anything from Wadden as he has not the 18 shares but thinks will get in a week. Says Spoor called

meeting New York, December 4, and he, Wadden, will be Chicago December 5 with goods if can get 18 shares. Had a wire from Croll. Hurry him up. Will tell you lot more he said.

It would appear from this letter that L. F. Swift had some kind of an understanding with Prince and Armour at the end of 1913 by virtue of which he expected to receive some financial consideration from their hands.

It also appears that L. F. Swift was made to believe that the fulfillment of the promise made to him was contingent upon the procuring of some 18 shares of common stock of the New Jersey company which evidently were the last 18 shares that Prince and Armour were endeavoring to obtain before having the Maine company acquire the surplus earnings of the New Jersey company and of its subsidiaries, the Yards company and the Railway company. It will be remembered that the efforts of Prince and Armour were finally successful, and in December, 1913, they were in a position to have the Maine company absorb part of the surplus earnings of the New Jersey company and its subsidiaries by receiving $2,085,000 per value of bonds and $678,568.74 in cash.

The tenor of the following letter, however, written by Croll to Wadden on February 10, 1914, seems to indicate that Swift met with a setback to his expectations, and as late as February, 1914, about two months after the time that his claim was to have been adjusted, he was still expecting [fol. 1654] a settlement.

Chicago, February 10, 1914.

Mr. W. M. Wadden, 28 State Street, Boston, Mass.

MY DEAR MR. WADDEN:

We are very anxious to hear from you as to what progress you are making in the matter that we are jointly interested in. It should be cleaned up as soon as possible and, while we know that you are doing the best you can, we are of the opinion that the other parties are somewhat anxious about it.

Kindly write me on receipt of this under personal cover.

Very sincerely yours, (Signed) F. W. Croll.

The letter does not disclose the identity of the individuals that were designated as "the other parties." But, if read in conjunction with the Swift letter cited above, the indication would be that in this letter Croll was urging a speedy adjustment of the understanding that existed between Prince and Armour on the one hand and Swift and possibly Morris on the other hand, and which according to the representations made to Swift by Wadden was to be settled some time in December, 1913.

No more letters bearing on this matter were found and the Commission is not in a position to state definitely whether the pending claims have ever been adjusted or what was to have been the method of adjustment.

Exhaustive efforts have been made in this inquiry to secure an authentic explanation of these letters from the parties involved but without success. The parties claimed that they could not recall the subject matter which was under discussion in these letters and were most emphatic in asserting that Swift did not receive any financial consideration from the Maine Company either at the time of its formation or at any time thereafter.

On the basis of the evidence obtained in the course of the investigation of the Chicago stockyards, and as borne out by the evidence submitted in this report, the Commission is able to definitely state that neither Swift nor Morris have obtained any of the stock of the Maine company, but the question must still be left open as to whether either or both of these parties received any other financial compensation to satisfy their previous demands.

In the absence of any tangible evidence which would show what the ultimate outcome of the subject matter under discussion in the above letters was, further comment can only be based upon speculation. One interpretation which might be offered would be that Swift, or possibly both Swift and Morris, had been given a part or the whole of $1,600,000 of Maine company bonds. It has been shown that while Prince has been receiving the interest on $485,000 of the $2,085,000 [fol. 1655] of bonds received by the Maine company from the New Jersey company and its subsidiary companies no records could be found showing to whom the interest on $1,600,000 of these bonds has been paid.

F. H. Prince has been examined several times by representatives of the Commission with reference to the disposition of the bonds and the interest paid on them since 1914, but no satisfactory information could be obtained from him on these two points.

Prince was interrogated on May 8, 1918, with reference to these bonds and the interest payments which had been made on them and he then asserted that he was the owner of the bonds and the recipient of the interest, the same having been given to him by the Maine company as a commission for having promoted the company. However, when the books of F. H. Prince & Co. were previously submitted to the representative of the Commission about a month and a half before Prince made the above statement his bookkeeper had only been able to show the receipt of interest on $485,000 of these bonds by Prince. In view of this fact his statement therefore could not be considered as conclusive.

Another opportunity to explain the disposition of the bonds and the interest payments thereon was offered to Prince by the Commission on June 13, 1919. On that occasion he asserted that the bonds had been taken off the books of the Maine company in December, 1916, on advice of his attorney, on the ground that the Maine company could not credit its own bonds to the surplus account of the company, and guided by this advice, he averred that the bonds had been turned over to F. H. Prince & Co. to be held by it as trustee for the Maine company until such time as the bonds could be disposed of and the proceeds turned over to the Maine company. Prince also asserted that Prince & Co. was holding the bonds as collateral security for stock of the New Jersey company, which Prince & Co. had been buying on behalf of the Maine company. He submitted the following statement in writing with reference to the bonds:

The $2,085,000 bonds of the Chicago Stock Yards Company of Maine paid to them as dividends are held by me as security for my loans to the Chicago Stock Yards Company of Maine. The interest coupons paid to me have been used in reducing these loans. Of this interest Mr. Armour has received $240,000 on account of the $300,000 borrowed by the Maine Company from him and there is now owed him about $60,000. When this loan is paid off this collateral will

be released and returned to the treasury of the Maine Company.

The books of the Maine company do not disclose that any loans have ever been made to that company either by F. H. Prince or J. O. Armour. The statement of Prince quoted above could not refer to anything else but to an entry which was made on the books of the Maine company on December 30, 1918, five years after the Maine company first recorded the receipt of the $2,085,000 on its books as a dividend from the New Jersey company and its subsidiary companies. [fol. 1656] This entry reads as follows:

1918				
Dec. 30	(Ca-15)	Chicago Stock Yards 5% Bonds Par Value $286,000 at $85.06	$ 243,354.39	
	(Ca-8)	Chicago Junc. Ry. & Union Stock Yards Co. Common Stock		
		13,196 shares of $100 each at $177.11	2,385,092.90	
		4,733 shares of $100 each at $160.00	804,247.06	
		To Bankers		$3,433,694.35

To record the cost of the foregoing securities hitherto carried by Bankers, to be taken up by the company at cost (subject to adjustment of interest and coupon charges) in accordance with vote of the directors of the company this date.

It appears from this entry that 17,929 shares of the assented common stock of the New Jersey company and $286,000 par value of the Maine company bonds were acquired on December 30, 1918, from some parties designated as "bankers," and that the Maine company assumed a liability to those "bankers" for $3,433,694.35. In the light of the memorandum it would appear that Prince and Armour were the parties who sold this stock to the Maine company. It is also evident that part of the stock thus acquired by the Maine company was made up of the assented common stock of the New Jersey company originally bought by Prince and Armour under the syndicate agreement of October 1, 1910, toward which Armour contributed at that time $300,000 in cash. Prince's assertion now is that the interest on the $2,085,000 of bonds has been used to pay back to Armour and himself the cash invested by them in purchasing stock of the New Jersey company and that Prince has been holding the $2,085,000 of Maine company bonds as collateral security for this debt.

While the books of Armour & Co. have not been examined since this statement was made, a previous examination of those books showed no entry that could be identified as representing the interest payment of $240,000 referred to in this memorandum. Nor did the books of F. H. Prince & Co., when examined in March, 1918, show that Prince had received the interest on more than $485,000 of these bonds, after the interest date of April 1, 1914, leaving unaccounted for to the Commissions' accountants the interest on $1,600,000 of bonds.

Furthermore, the contention that the $2,085,000 of bonds were held as collateral by F. H. Prince & Co. for stock which was only turned over to the Maine company on December 30, 1918, does not satisfactorily explain the circumstance that the Maine company has never recorded the interest paid on the $2,085,000 of bonds as income. Moreover, the books of the Maine company failed to show that any arrangement existed between Prince and Armour and the Maine company prior to December 31, 1917, whereby the former were to convey to the latter the stock of the New Jersey company which they owned, and in consideration of which [fol. 1657] the Maine company in turn assumed the obligation of assigning to Prince and Armour the interest to which that company has been entitled since December 31, 1913.

Another complicating feature was injected into the obscure situation which has arisen as a result of the accounting procedure followed in handling the $2,085,000 of bonds, by the fact that on December 30, 1918, the same day that the entry was made on the books of the Maine company, recording an obligation on the part of the Maine company of $3,433,694.35 to "Bankers," another entry was made, putting back on the books of the company and crediting again to surplus account the $2,085,000 of bonds which had been stricken off the books on December 31, 1916. It will be recalled that Prince said that the bonds had been taken off the books in December, 1916, because his attorney had advised him that the Maine company could not credit its surplus account with its own bonds. It is obvious that none of the explanations advanced by Prince solve the problems arising out of the accounting procedure connected with the handling of the bonds of the Maine company and the interest paid thereon.

If Prince's statement that the interest on the $2,085,000 of bonds has been used to pay back to Armour and himself the cash they invested in purchasing the New Jersey company stock is accepted, then Prince and Armour have made the Maine company repay them for the money they had invested in the New Jersey company's stock, the Maine company having derived no benefit from the transaction.

Section 32.—The Bearer Warrants and Reasons for Issuing Them

The secrecy with which Prince and Armour surrounded all their transactions in connection with the Maine company, beginning with the purchase of the New Jersey company's common stock in 1910, and up to the time of the formation of the company in 1911, when dummies were employed in the organization of the company, was emphasized by the issue in 1914 of bearer warrants in lieu of the regular stock certificates which up to that time served as evidence of the ownership of the company.

Pegram was recorded as the owner of 79,990 shares of stock of the Maine company in 1911, after his sale of the plan and the payment of $1,000,000 by him to the company had been made, 10 shares having been recorded in the name of the dummy directors as qualifying shares.

The stock records of the Maine company do not record any changes in the ownership of the stock until June, 1913, when 64,480 shares of stock were transferred to Mrs. F. H. Prince, who held this amount of stock in her name for F. H. Prince until April, 1914. Pegram continued to hold 15,510 shares of stock for Armour until November, 1913, at which time certificates of stock for this number of shares were transferred to W. M. Wadden, who sent them as shown in the following letter, to F. W. Croll, treasurer of Armour & Co.:

[fol. 1658] Nov. 14, 1913.

Dear Mr. Croll:

Your deposit on account of the Chicago Stock Yards Co. capital was $194,000, which entitled you to 19.4 per cent

of the stock or $1,552,000. I am therefore enclosing you certificates

No. 10, for 10,000 shares
No. 29, for 5,510 shares

leaving 10 shares still due you. These ten shares have been issued in the names of the directors and are held by me to qualify those gentlemen. As soon as Mr. Prince returns from Europe I will have other stock issued to you to cover the above 10 shares and thereby complete your requirements.

I will appreciate it if you will wire me upon receipt of this letter that you have received same and also acknowledge the receipt by mail.

Very truly yours, F. W. Croll, Esq.

Croll's acknowledgment follows:

Frederick W. Croll, 205 LaSalle St., Chicago

Chicago, November 19, 1913.

Mr. W. M. Wadden, 28 State Street, Boston, Mass.

My Dear Mr. Wadden:

Your favor of the 14th instant with enclosures of Certificate No. 10 for 10,000 shares and Certificate No. 25 for 5,510 shares was duly received as per my wire.

I wired you first at Boston and afterwards repeated that wire to New York when I heard from you.

Very truly yours, (Singed) F. W. Croll.

In April, 1914, bearer warrants were issued in accordance with a by-law of the Maine company, which provided that any stockholder of the company could exchange his regular certificate of stock by depositing it with the treasurer of the company and receive in turn a warrant entitling the bearer at any time to the certificate of stock which had been deposited.

It was also provided that coupons should be attached to the bearer warrants entitling the holder of such coupons to any dividends declared by the company. Meanwhile, the treasurer of the Maine company, under the terms of the

by-laws, held the stock, which had been deposited, as trustee for the share warrants.

The bearer warrants carried with them voting privileges which could be exercised by the holder upon the deposit of his warrants with the company or at any other place which might be designated by the directors not less than three days before any meeting of the company. The person depositing a warrant was to receive a ticket or proxy author- [fol. 1659] izing him to attend and exercise his voting privileges at the meeting. The treasurer of the company was authorized to exercise voting privileges for all warrants not thus deposited.. A copy of the provision of the by-laws, which provides for the issuance of bearer warrants, together with a copy of the bearer warrants from itself, follows:

Article 25

Warrants For Shares To Bearer

(1) The Company may upon the delivery to it of the certificate for any fully-paid up share or shares with a transfer thereof to the Treasurer of the Company issue for each share therein specified a warrant entitling the bearer to such share and providing by coupons or otherwise, for the payment of the future dividends on the share.

(2) The shares specified in the certificate so delivered up shall from time to time be transferred to the Treasurer for the time being of the Company as Trustee for share warrants and shall not afterwards be transferred and no certificate shall be issued therefor except in accordance with the provisions hereof.

(3) The warrant may be expressed in either the English or the French language and shall be under the common seal of the Company and shall be signed by the President or a Vice-President and by the Secretary or an Assistant Secretary or some other person appointed in place of the Secretary by the directors and only one share shall be specified in each warrant.

(4) If any warrant or coupon shall be worn out or defaced the directors may on surrender thereof issue a new one in its place.

(5) The directors may upon proof to their satisfaction

of the loss or destruction of any warrant or coupon and upon such indemnity being given to the Company as they shall deem adequate to issue another warrant or coupon in its place.

(6) The Company shall be entitled to recognize the bearer of any warrant or coupon as absolutely entitled to the share or dividend therein specified.

(7) The bearer of a warrant upon depositing the warrant at the office or such other place as the directors shall appoint not less than three days before any meeting of the Company shall receive a ticket or proxy authorizing him to attend and vote and exercise the rights of a member at such meeting in respect of the share or shares for which the warrant or warrants have been so deposited and after the meeting the warrant or warrants shall be returned to him or the bearer of the ticket or proxy upon surrender thereof. And in respect of all shares specified in any warrants that shall not have been so deposited the Treasurer shall attend and vote and exercise the rights of a member in such manner as he and the President of the Company shall agree.

[fol. 1660] (8) If the bearer of a warrant shall surrender it and request in such form as the directors prescribe that he be registered as a stockholder or member in respect of the share specified in it the Company shall transfer into his name one of the shares specified in the certificate of shares originally delivered up and issue a new certificate therefor.

(9) The Company may appoint agents in London, Paris or elsewhere with full power and authority to do all things that may be necessary to carry out and give effect to the foregoing provisions respecting the share warrants and to vest in the holders of such warrants the rights and interests specified herein.

Chicago Stock Yards Co.

Warrant to Bearer

This is to certify that the bearer of this warrant is entitled to ..... fully paid up shares in the Chicago Stock

Yards Co. upon demand, and meanwhile to receive all dividends declared upon the said shares and to exercise the voting powers in respect thereof under and subject to the provisions of article 25 of the by-laws of the company, a copy of which is indorsed hereon." (On the back.)

In witness whereof the Chicago Stock Yards Co. has caused this warrant to be signed by its president or vice president and its secretary or an assistant secretary this ..... day of .....

——— ———, President.

Preparatory to the deposit with the treasurer of the Maine company and the issuance of bearer warrants in exchange by that official the 64,480 shares of stock held by Mrs. F. H. Prince were split up in April, 1914, and recorded in the names of dummies, who were found to be employees of F. H. Prince & Co. Similarly, the stock held by J. O. Armour was converted into bearer warrants in January, 1915. The records of the treasurer therefore did not show that Prince and Armour held any of the stock of the Maine company.

The following telegram was sent by the Commission on November 7, 1917, to F. R. Pegram, treasurer, of the Maine company, for the purpose of ascertaining the names of the common stockholders of that company:

November 7, 1917.

Frank R. Pegram, Treas, Chicago Stock Yards Co., Ames Building, No. 1 Court St., Boston, Mass.

Referring to your report Schedule "A", Slaughtering and Meat Packing, the Commission requires immediate transmission to it of names and addresses of owners of Common Stock for whom you as Trustee hold block re- [fol. 1661] ported on page 4 Schedule.

L. L. Bracken, Secretary, Federal Trade Commission.

To the above telegram Pegram telegraphed the following reply:

248W HP 54 4EX

Federal Trade Commission Received Nov. 9, 1917. Mails and Files.

Boston, Mass. 245 P M Nov 8

AG Bracken Washn DC

Answering your telegram just received the stock of Chicago Stockyards Company held in my name held by me as Treasurer of the Corporation in capacity of Trustee for the holders of Bearer Warrants. My books do not show who hold the bearer warrants which are transferrable by delivery.

F. R. Pegram, Treas., Chicago Stockyards Co.

It was only through a study of the books of F. H. Prince & Co. and of Armour & Co. that it was definitely ascertained that F. H. Prince held 50,000 shares, J. O. Armour 15,520, and Mrs. F. H. Prince [1] 14,480 shares of the 80,000 shares of common stock of the Maine company.

It is pertinent to inquire into the reasons for the issuance of the bearer warrants in lieu of stock certificates as an evidence of ownership in the Maine company. F. H. Prince stated to agents of the Commission that in issuing the bearer warrants he was prompted solely by the desire to conceal Mr. Armour's interest in the Chicago stockyards, as it had always been advertised throughout the West that the management of the yards was absolutely free from control by the packers. He found that should Armour's interest in the yard become known it would injure the reputation of the Chicago stockyards as an independent market among the live-stock raisers.

Another and perhaps more urgent reason for issuing the bearer warrants may be found in the following clause of the Plan of June 30, 1911, which the stockholders of the New Jersey company were induced to accept:

No assenting stockholder shall have any interest in any

[1] Mr. Prince testified that he had assigned this stock to Mrs. Prince.

of the shares of the New Company (Maine company) or of the disposition thereof.

From the facts as developed above, it does not appear that the committee's pledge was taken seriously by the promoters. It has been shown that F. H. Prince and J. O. Armour, who between them held over 33,000 shares of the [fol. 1662] common stock of the New Jersey company, became the sole owners of the stock of the Maine company. Prince and Armour could not well permit the fact to become known that Prince and Armour were the beneficiaries of the Plan and that the confidence of the assenting stockholders had been betrayed. Had this fact become known the reputation not only of Prince and Armour but of the men who had acted as the committee and of those who had assisted in soliciting the assents would have been weakened in the eyes of the investing public. The bearer warrants were evidently designed in part to forestall such a situation.

Section 33.—Dividends Paid by the Maine Company

The Maine company paid its first dividend on January 1, 1914. This was a cash dividend of 2½ per cent on the $8,000,000 of capital stock which had been issued by the company to F. R. Pegram in 1911 as consideration for the payment by Pegram to the company of $1,000,000 in cash and the transfer to it of his title to the Plan of June 30, 1911, and the assents of the stockholders of the New Jersey company thereto, which had been obtained through the agency of the committee and F. S. Moseley & Co. The interest of Pegram in this Plan and the assents thereto was appraised at a value of $7,000,000.

It has already been shown that Pegram acted as a dummy in this transaction for Prince and Armour, who, between them, had contributed the $1,000,000 in cash. The value of $7,000,000 which was placed upon the Plan represented merely the capitalization of their title to the surplus earnings of the New Jersey company and of its subsidiary companies.

The table following shows the amount of money received by Prince and Armour in the form of dividends paid by

the Maine company from January 1, 1914, to January 1, 1918.

Page 269

Dividends paid by the Chicago Stock Yards Co. of Maine

Date	Rate	Amount Paid	Received by— F. H. Prince	Mrs. Prince	J. O. Armour
Jan. 1, 1914	2½	$200,000	$125,000	$36,200	$38,800
July 1, 1914	2½	200,000	125,000	36,200	38,800
Jan. 1, 1915	2½	200,000	125,000	36,200	38,800
July 1, 1915	2½	200,000	125,000	36,200	38,800
Jan. 1, 1916	2½	200,000	125,000	36,200	38,800
July 1, 1916	4	320,000	200,000	57,920	62,080
Jan. 1, 1917	4	320,000	200,000	57,920	62,080
July 1, 1917	2½	200,000	125,000	36,200	38,800
Jan. 1, 1918	2½	200,000	125,000	36,200	38,800
Total	25½	2,040,000	1,275,000	369,240	395,760

[fol. 1663] As shown by this table, Prince and Armour have received in dividends from the Maine company up to January 1, 1918, $2,040,000 or the equivalent of over 200 per cent on their investment of $1,000,000.

Section 34.—Analysis of the Contract of October 1, 1914

It has been shown on pages 253 to 258 how the Maine company acquired funds in December, 1913, from the New Jersey company and its subsidiary companies. Prior to that time the Yards company and the Railway company had paid dividends to the New Jersey company on the stock which it owned in these two companies, and from this income the New Jersey company had paid its fixed charges and regular dividends on its outstanding preferred and common stock. It will be noted that the procedure followed by the New Jersey company in 1913 in instructing its two subsidiaries to pay directly to the Maine company the special dividends which those subsidiary companies had declared payable to the New Jersey company marked a departure from the regular method theretofore followed.

The Maine company had originally acquired its right to the surplus of the New Jersey company and of the underlying companies, owned and controlled by the latter, by virtue of the terms of the contract the Maine company had

entered into on June 30, 1911, with the individual common stockholders of the New Jersey company. This was the Plan which the committee, composed of Messrs. Richard Olney, chairman, Samuel Carr, Guy Norman, S. L. Schoonmaker, E. V. R. Thayer, F. R. Hart, secretary, submitted to the stockholders of the New Jersey company on behalf of the Maine company. Through this contract the Maine company became the guarantor of the 9 per cent dividends payable on the common stock of the New Jersey company, and the common stockholders assigned their respective rights to dividends upon their holdings in the company to the Maine company.

These contractual arrangements were extended on October 1, 1914, to all the outstanding obligations of the New Jersey company, including interest payments on the outstanding bonds and notes of the company, the payment of its expenses, taxes, and other obligations, and the payment of dividends on its preferred stock. The contract of October 1, 1914, also provided for the reorganization of the methods by which funds were secured by the Maine company from the New Jersey company and its subsidiaries. In lieu of the regular dividends formerly paid by the Yards company, a schedule of fixed payments was established which the Yards company and the Railway company had to make for the payment of the interest on the bonds of the New Jersey company and the dividends on its guaranteed preferred and on its guaranteed common stock. The schedule of payments established under the terms of the contract of October 1, 1914, follows:

Vol. 1664]

Schedule of periodical payments required to be made by the Yards company and the Railway company under the terms of the contract of October 1, 1914.

Date	To whom made	Application of payment	Amounts to be paid by the Yards Company	Amounts to be paid by the Railway Company
Mar. 15	Guaranty Trust Co.	Interest on New Jersey company's 4 per cent bonds	.....	$80,000.00
Sept. 15	....do	....do	.....	80,000.00
Mar. 15	....do	Interest on New Jersey company's 5 per cent bonds	.....	250,000.00
Sept. 15	....do	....do	.....	250,000.00
Mar. 25	Old Colony Trust Co.	6 per cent dividends on New Jersey company's preferred stock	$97,500.00	.....
June 25	....do	....do	97,500.00	.....
Sept. 25	....do	....do	97,500.00	.....
Dec. 25	....do	....do	97,500.00	.....
Mar. 25	....do	9 per cent dividends on New Jersey company's guaranteed common stock	76,324.50	.....
June 25	....do	....do	76,324.50	.....
Sept. 25	....do	....do	76,324.50	.....
Dec. 25	....do	....do	76,324.50	.....
Mar. 15	The Maine Company	Subject to use of Maine company	.....	38,750.00
Sept. 15	....do	....do	.....	38,750.00
Mar. 15	....do	....do	105,175.50	.....
June 15	....do	....do	105,175.50	.....
Sept. 15	....do	....do	105,175.50	.....
Dec. 15	....do	....do	195,175.50	.....
	Total payments for year	.....	1,116,000.00	737,500.00

The most significant fact, both from a financial and legal viewpoint, about this arrangement is that while not being a holding company the Maine company controls the finances of the New Jersey company and of its subsidiaries, and the Maine company is entitled to absorb the entire surplus of these companies, not because of stock ownership in them, but because of the position of guarantor assumed by the Maine company as the result of the contractual relations it has established with those companies.

A copy of the contract of October 1, 1914, is presented as Exhibit 8, on page 317 of this report.

[fol. 1665] Section 35.—Summary of Financial Conditions of the Chicago Stockyards up to 1917

On December 31, 1917, a little over six years after the Maine company was formed by Prince and Armour, and the acquisition of the surplus earnings of the New Jersey company and of its subsidiaries, the Yards company and the Railway company, in excess of a stipulated per cent was made possible, these companies reported surplus balances as shown in the following table. The surplus balances of these companies reported for December 31, 1910, the end of the fiscal year preceding the formation of the Maine company, are included in this table for comparative purposes.

Company	Surplus	
	Dec. 31, 1917	Dec. 31, 1910
New Jersey company	$3,415,185.88	$2,449,673.71
Yards company	2,476,101.97	2,014,692.41
Railway company	1,044,848.64	[1] 1,204,533.70
	6,936,136.49	5,668,899.82

[1] This amount was taken from the report of the company to the Interstate Commerce Commission for the fiscal year ending June 30, 1911.

It appears from these figures that the surplus of the three companies has increased by $1,267,236.67 during the seven-year period from December 31, 1910, to December 31, 1917. The New Jersey company and the Yards company each show a gain in surplus while the Railway company shows a small decrease.

The significance of the recorded surplus balances of these three companies can be best understood when viewed in

when considered in conjunction with the data given in sections 3 and 6 relating to the history of the increases in the capital obligations of these companies, which have occurred at various times. It was stated in section 17 that the accumulated surpluses of the New Jersey company and of its subsidiaries, as reported by those companies December 31, 1910, could not be considered as representing the actual extent of the accumulated earnings of those companies because of the accounting policy adhered to by them for several years.

Undervaluation of Investments.—It was noted that the two operating companies had followed a practice of charging additions to, and improvement of, their properties to operating expenses which might well have been charged to capital accounts. Nor could the surplus of the New Jersey company be taken as representing the true financial condition of that company in so far as several of its investments were carried on the books of the company at a figure very much below that which the real value would have warranted. As outstanding instances of this nature, the com- [fol. 1666] pany's investments in the bonds of the Indiana Harbor Belt Railroad Co. and in the Central Manufacturing District were mentioned.

It was pointed out that the bonds of the Indiana Harbor Belt Railroad co., with a par value of $2,500,000, which bear interest at 4 per cent and mature in 1957, were carried on the books of the New Jersey company in 1910 at $50,000. The company still recorded these bonds at a value of $50,000 on December 31, 1917. On this date the Central Manufacturing District was recorded on the books of the New Jersey company at a net value of $1,661,718.96, although the net value of this property as determined from the balance sheet of the Central Manufacturing District for December 31, 1917, was $8,137,848.64.

The Yards Company.—In section 3 of this chapter it was shown that the $13,200,000 of outstanding capital stock of the Yards company had grown out of an original cash investment of $1,000,000 by the stockholders in 1865 through periodically capitalizing up to 1881 in the form of stock dividends the increment in property values and the accumulated earnings of the company. A regular dividend rate

of 13 per cent on the $13,200,000 of capital stock had been maintained from 1890 to 1917, inclusive. Between 1913 and 1917 after all of the outstanding capital stock of the Yards company had been acquired by the New Jersey company extra dividends were paid by the Yards company amounting to $1,787,998.50; of this amount $1,155,000 was paid in 1913, when the Maine company for the first time took up the surplus of the New Jersey company and its underlying companies.

The net earnings of the Yards company have ranged from $1,892,572.90 to $2,643,171.01 [1] during the seven-year period from 1911 to 1917, inclusive. It will be seen, therefore, that the rate of profit of this company based upon the capital stock has ranged from 14 to 20 per cent during this period.

The Railway Company.—The fact that the Railway company showed a decrease in its surplus on December 31, 1917, as compared with the balance of December 31, 1910, is not to be taken as an indication that this company has met with serious financial reverses during the period from 1910 to 1917. It was found that in 1913 a stock dividend of 150 per cent, amounting to $3,300,000, was paid on its capital stock of $2,200,000 thus increasing the outstanding capital stock of the company to $5,500,000. During the same year the company declared a special 10 per cent dividend (in addition to its regular dividend of 6 per cent), amounting to $220,000.

[fol. 1667] The payment of the $3,300,000 stock dividend by the Railway company out of surplus was made possible by capitalizing addition and betterment expenditures from January 1, 1905, amounting to $1,514,136.85 all of which had previously been charged to operating expenses. The following letter was written by C. C. Chace, auditor of the

---

[1] This includes $600,000 paid by the Railway company as a rental for use of railroad property belonging to the Yards company; this rental since 1914 has not been paid to the Yards company but has been diverted as per schedule shown on page 270 to meet the obligations of the New Jersey company which were guaranteed by the Maine com-

Railway company, on February 5, 1914, a few months after the stock dividend was paid. This letter, while dealing with extraneous matters, discloses the accounting practices followed by the company in recording property values.

Chicago Junction Railway Company

Chicago, Feb. 5, 1914

Mr. J. A. Spoor, Chairman of the Board.

Dear Sir: The question before me at this writing, upon which I ask advice, is the subject of the depreciation to be used in connection with the Income Tax upon the physical assets of the C J Ry; that is, the rate of depreciation and the value which in your judgment should be placed upon the property in applying this per cent.

December report shows the physical value of the property investment as $3,978,678.16. This of course not including the value of the equipment which we depreciate monthly in our accounts under Interstate Commerce Commission provision. Said amount is the result of the capitalization of our Additions and Betterments expenses since January 1, 1905, and as previously explained is in the sum of $1,614,136.85.

It carries with it, however, somewhat fictitious valuation with respect to the property, inasmuch as it brings over the amount left in our capital account after the Outer Line was sold, and the capital investment was credited with the amount derived from the sale thereof, leaving balance in capital account of $2,286,427.84, which was designated by the attorneys and by Price, Waterhouse & Co. to represent the value of what we had left.

There are no books extant prior to January 1, 1905; and I do not believe that any government investigator could controvert our statement that this is the book value of the property, the result of legitimate capital account charges.

The books being destroyed, we can not in answer to their inquiry substantiate the figures; but we assume that we have a perfect right to depreciation on the book value of the property.

My suggestion is that we use as basis of depreciation this full capital investment valuation, less the value of

This would give us a figure on which to base depreciation of $3,954,144.30.

Our former method was the same as obtains with U S Y & T Co. accounts, namely, to take 6 per cent of the gross earnings as the depreciation to be used in connection with our income statement, which depreciation averaged $135,000.

[fol. 1668] We do not experience as heavy depreciation upon our railroad property as upon that of the Stock Yard Co. The heavy values of the railroad are iron and steel bridges, track elevation, rail, etc., on which the depreciation would be extremely light; but probably a reasonable depreciation would be allowed without comment, and my idea is that we should not greatly exceed the former depreciation written off, in order to avoid adverse criticism.

My recommendation is—subject to your approval—that we take 3½ per cent depreciation on this valuation, which would give us $138,395.05, or about $3,000 in excess of the average depreciation written off in former years; and considering the class of construction that obtains with the Railroad Company, it occurs to me that this is ample, if not too much.

However, the whole matter is left to your judgment, and I await instruction.

Yours truly, (Signed) C. C. Chace, Auditor.

After declaring the above special dividend the Railway company showed a surplus of $99,279.17 on December 31, 1913. The surplus of $1,044,848.64 on December 31, 1917, as shown by the report of the company, represented therefore an accumulation of earnings in four years amounting to $945,569.47, or an average of $236,392.36 each year. These earnings were accumulated after payment of a yearly rental of $600,000 for properties leased from the Yards company and after payment of dividends from 1914 to 1917 amounting to $137,500 each year.

From 1899, the year following the formation of the company, up to 1914 regular dividends at the rate of 6 per cent on its capital of $2,200,000 had been paid by the Railway company to the New Jersey company. It was pointed out in section 17 of this chapter that the original cost to the New Jersey company of the $2,200,000 capital stock of

the Railway company had been $500,000. It will thus be seen that the New Jersey company had actually been receiving dividends up to 1914 at the rate of 26.4 per cent each year on its original investment in the Railway company. Following the increase of the capital stock of the Railway company to $5,500,000 the annual dividends paid by the Railway company were increased from $132,000 to $137,500.

The New Jersey Company.—In section 6 emphasis was laid upon the fact that the proceeds derived from the sale of the $13,000,000 of capital stock issued in 1890 by the New Jersey company and the $10,000,000 5 per cent bonds issued at the same time were used to acquire the capital stock of the Yards company. These new capital obligations were increased by the issue of $4,000,000 of 4 per cent bonds in 1900, the funds received from the sale of these bonds having been used to retire the 5 per cent income bonds then outstanding, which had been given to the [fol. 1669] packers as a bonus in 1892 and to make additional payments to other packers in order to induce them to locate plants at the Chicago stock yards. A total, therefore, of $27,000,000 of capital obligations were created as a result of the formation of the New Jersey company, none of which were issued to increase the working capital of the yards.

The income of the New Jersey company up to 1899, when dividends from the Railway company were first received, was derived from the dividends paid to it by the Yards company. This income had been sufficient to pay interest on the bonded indebtedness of the New Jersey company, 6 per cent dividends on its preferred stock, and 8 per cent on its common stock up to 1911. The income of the New Jersey company had, however, for several years prior to 1911 exceeded the amount required for interest and dividend payments and on December 31, 1910, the New Jersey company recorded on its books an accumulated surplus amounting to $2,449,673.71.

As shown in the table on page 271, the surplus of the New Jersey company on December 31, 1917, amounted to $3,415,185.88, an increase of $965,512.17 for the seven-year period, or an average annual increase of $137,930.31. It

was noted in section 17 that for several years prior to January 1, 1911, the surplus of the New Jersey company had been increasing annually at the rate of $300,000. It is evident therefore that the average annual increase of the surplus account of the New Jersey company had decreased about $163,000 per year since December 31, 1910.

This large decrease in the annual surplus earnings of the New Jersey company is the direct result of the arrangements made on October 1, 1914, by the Maine company, whereby part of the income formerly received by the New Jersey company in the form of dividends from the Yards company and the Railway company was diverted to meet the obligations of the New Jersey company which were guaranteed by the Maine company and whereby part of the income went direct to the Maine company; the funds thus paid direct to the Maine company were used by that company from 1914 to 1918 to pay dividends on its $8,000,000 of common stock.

On December 31, 1913, about one year before the schedule of payments shown on page 270 was put into effect, the New Jersey company reported a surplus of $3,479,920.54. When this is compared with the surplus reported for December 31, 1917, amounting to $3,415,185.88, it will be seen that a decrease of $64,734.66 has occurred during the period of four years from 1913, and that the increase, therefore, of $965,512.17 in the surplus account of the New Jersey company on December 31, 1917, over the surplus balance reported for December 31, 1910, occurred during the three years from December 31, 1910, to December 31, 1913, before the dividends received by the New Jersey company from the Yards company and the Railway company were diverted by the Maine company. The average annual increase of the surplus account of the New Jersey company during the three-year period from December 31, 1910, to December 31, 1913, was $343,422.27.

[fol. 1670] It will be recalled that the Railway company declared a stock dividend in December, 1913, of $3,300,000. This dividend was paid to the New Jersey company and added to the surplus account of that company, thereby increasing the surplus account of the company by that amount. However, the published balance sheet of the company for

that year did not show that any such increase had taken place. This was due to the fact that in December, 1913, the New Jersey company paid a special dividend out of surplus to the Maine company of $1,196,000. Surplus account was also charged at that time with $2,104,000, and this amount was used to reduce the value at which the New Jersey company carried its investment in the stock of the Yards company on its books. Thus the $3,300,000 credited to surplus account as a result of the stock dividend paid by the Railway company was exactly offset by these charges, and the surplus account of the company remained unaffected by the transaction.

It was pointed out that in 1913 the Yards company paid a special dividend of $1,155,000, that the Railway company paid a special dividend of $220,000, and that the New Jersey company paid a special dividend of $1,196,000. All of these dividends, amounting to $2,571,000, went to the Maine company. Of this amount $678.568.74 consisted of cash, while the balance of $1,886,431.26 represented the value at which these three companies carried the $2,085,000 of bonds of the Maine company on their books and which were thus given back to the Maine company at that time.

The Maine Company.—The balance sheet of the Maine company for December 31, 1917, shows an accumulated surplus of $157,821.55 on that date. The surplus account at that time did not include the $2,085,000 (par value) of bonds which had been received in December, 1913, as a dividend from the New Jersey company, the Yards company, and the Railway company, as these bonds had been taken off the books of the Maine company, as previously described, on December 31, 1916. Had these bonds been left on the books of the Maine company at the value at which they were first received in December, 1913, the surplus account of that company would have amounted on December 31, 1917, to $2,044,212.81.

The Maine company accumulated this surplus from the time of its formation on September 27, 1911, to December 31, 1917, a period of a little over six years, after paying dividends on its common stock amounting to $2,040,000 to Prince and Armour.

Copies of balance sheets of the Yards company, the Rail-

way company, the Central Manufacturing District, the New Jersey company, and of the Maine company, as of December 31, 1917, are presented as Exhibits 9-A to 9-E, inclusive, on pages 324-325 of this report.

By way of a summary, it may be stated that as a result of the acceptance of the plan of June 30, 1911, by the common stockholders of the New Jersey company the Maine company was in a position on December 31, 1917, to absorb the recorded surpluses of the New Jersey company, the Yards company and of the Railway company, aggregating $6,936,136.49 this surplus could be increased by adding the [fol. 1671] surplus value of the Central Manufacturing District as shown on the report of the latter company over and above the value at which the New Jersey company carries this investment. If the additional value of this investment were taken up by the New Jersey company and added to its surplus account an increase in this account of $6,476,129.68 would result. A still further increase in the surplus account of the New Jersey company could be effectuated were its other investments, now carried on the books of that company at nominal values only, recorded at their true values. These surplus values were made available to Prince and Armour, the organizers of the Maine company, through the investment of $1,000,000.

[fol. 1672] EXHIBIT 7

Meeting of the board of directors of the Union Stock Yard and Transit Company on Monday, May 7th, 1894

Pursuant to a call issued by the Secretary of this Company a Special Meeting of the Board of Directors of the Union Stock Yard and Transit Company was held at the office of Mr. John Newell, Lake Shore & Michigan Southern Ry. depot on Monday May 7th, 1894, at eleven o'clock A. M.

Present F. H. Winston, John B. Sherman, John Newell, Marvin Hughitt, R. R. Cable, Geo. B. Harris, E. J. Martyn, A. H. Veeder, J. J. Mitchell and Jas. H. Ashby, Jno B. Sherman, Chairman, and Geo. T. Williams, Secy.

Minutes of the Executive Committee so far as same pertained to the donation to the Columbian Museum of the

World's Fair Stock held by the Union Stock Yard & Transit Company, were read.

Upon motion of Mr. Veeder, seconded by Mr. Winston, it was resolved that the action of the Executive Committee in donating the Stock of the World's Fair to the Columbia Museum be ratified:

Upon motion of Mr. Veeder, seconded by Mr. Winston, it was resolved that the further reading of minutes be postponed until the next meeting.

The Committee on Track Matters was then asked to report, and Mr. Martyn, as Chairman, prefaced his report by the following remarks, it was found upon investigation that the trackage system, considered aside from the Stock Yards proper, was earning but a very small revenue. Also that it was evident that a good deal of money had got to be accumulated to provide for track elevation; and recommended the following resolution:

Resolved: That this Company shall make and collect a trackage charge on all live stock cars, loaded and empty, passing over the tracks of this Company, which trackage charge shall be the same as the trackage now charged on all other cars passing over the tracks of this Company—This resolution shall take effect on May 20th, 1894.

Chicago, Ills., March 19, 1894

To the Board of Directors of the Union Stock Yard and Transit Company, Chicago.

Gentlemen: Your Committee appointed at the last meeting of your Board to report upon the suggestion of the President of your Company, that trackage should be charged upon all live stock cars passing over the tracks of your Company as is now charged upon other cars has carefully considered the matter and we beg to submit the following report:

[fol. 1673] Your Committee finds upon investigation that the Company is operating a terminal track system which was appraised in the year 1890 as being of the value of ten million ($16,000,000) dollars. Your Committee finds that for the past four years from 1890 to 1893 inclusive, the cost of maintaining and operating this system has been $1,131,810.91, or an average cost per year $282,952.72.

The average net revenue for the four years named has been $119,732.69. It is clear to your Committee that this return upon a system of tracks carefully appraised and valued as being worth $10,000,000, is entirely insufficient, amounting as it does to .0119 per cent. It is also apparent to your Committee that as all other cars do and have for a long period paid a trackage charge upon your tracks, we might be accused of permitting discrimination against dead freight in favor of live stock, unless this apparent discrimination is removed.

Your Committee are also informed and believe that within the near future, a large amount of money will be required by this Company to carry out the ordinances of the City of Chicago, in the Elevation of tracks—and other improvements for which expense provision must be made.

Your Committee therefore conclude that the same charge for trackage should be made on all live stock cars passing over your tracks, as is now made on cars carrying dead freight, and so recommend.

(Signed) John B. Sherman, Edward J. Martyn,
Albert H. Veeder.

Mr. Newell dissented from the report of the Committee as embodied in resolution submitted by Mr. Martyn, saying—"A trackage charge on live stock coming into the Stock Yards would be put upon the shipper—the railroads not feeling able to sustain it—I think it would be taken out of other charges. In my judgment such a charge will react upon the Stock Yards Company and tend to drive business away from the Yards. Therefore I report against the adoption of such a charge upon live stock",—Upon motion of Mr. Martyn; supported by Mr. Winston, it was resolved that such report of Mr. Newells be transcribed and filed.

The following additional report, signed by Mr. Harris, was submitted by him and read:

The undersigned, members of your Committee, report against the proposition to charge the same trackage on stock as on other car load freight for the following reasons:

I. Many years ago, when the Union Stock Yard & Transit Company was organized, the business was turned over

by the railroads to the Stock Yards Company, as we are informed with the understanding that the charges should remain on the basis then adjusted, and that no charge for trackage on stock would be made, the Stock Yard Company undertaking to secure its profit from the feed and yardage charges. The said charges of the Stock Yards Company [fol. 1674] have been maintained while the transportation charges received by the railroad have steadily decreased.

II. As a guaranty that the railroad interests would always be treated fairly, and for no other purpose whatever, officers of the railroads were elected Directors of the Stock Yard Company. "As an example of the manner in which the business has been made profitable to the Stock Yard Company, and burdensome to the railroads, we call attention to the charge made for unloading stock. A charge of 25 cents per car for unloading Stock was originally made for the purpose of enabling the railroads which then owned the Stock Yards, to show a profit on the investment, and to justify the judgment of those railway officers who induce their Companies to make that investment.

When the charge for unloading was fixed, as above mentioned it was with the distinct agreement that it should be abandoned as quickly as the feeding and yarding charges made the business profitable. That time speedily arrived, but the unloading charge remains to this day a burdensome charge. Instead of burdening an unprofitable traffic with charges it cannot afford to pay, we think good judgment and good business requires the abolition of some of the charges now made, and among them the charge for unloading stock. In our opinion it will be unfortunate for all concerned, when the Stock Yard Company, and the Railroad Companies divide on this trackage or on any other important question.

III. It is impracticable to add Eighty Cents (80c) or any other sum to the present charges, and pay it sum over to the Stock Yard Company, because the transportation charges are fixed by competition, and any such charge would necessarily have to be absorbed by the railroads, and the railroads cannot afford it.

IV. The Stock Yard Company cannot afford to make any additional charge, because competition stock would prob-

ably be diverted from the Yards in such quantity as to cause a net loss.

V. The proposed charge would be out of proportion to the railroad charges, and, in comparison therewith, seem extortiate and we fear that the application of such charges at this time would react to the disadvantage of all interests concerned in this question.

VI. The question of Stock Yards trackage and charges cannot be entirely divorced from the railroad side of the question, and we most respectfully urge that no charge be made. Having for nearly thirty years carried out the arrangement made, it would seem an inopportune time to add charges already exorbitant and provoke comments and comparisons, which must be expected and which will show that in view of value of property and franchises used, and value of services rendered, that the Stock Yard Company now makes larger charges and a larger profit from the live stock traffic than any interest or business coming in contact with it.

(Signed) Geo. B. Harris.

[fol. 1675] Upon motion of Mr. Hughitt seconded by Mr. Winston, it was ordered that the report submitted by Mr. Harris be placed on file and that a copy of the same be furnished the Directors.

After a very full and lengthy discussion of the whole matter, and upon suggestion of Mr. Mitchell the roll was called upon the passage of said resolution the vote being as follows:

Yes	No
James H. Ashley	Marvin Hughitt
J. J. Mitchell	Geo. B. Harris
F. H. Winston	John Newell
A. H. Veeder	R. R. Cable
J. B. Sherman	
E. J. Martyn	

There being six votes in favor of the resolution and four opposed to it, it was declared adopted.

After the ballot was announced and declared adopted Messrs. Cable, Hughitt, Harris and Newell tendered their

resignations as Directors, but no action was taken thereon, and upon motion of Mr. Veeder the meeting then adjourned.

(Signed) John B. Sherman, Chairman, Geo. T. Williams, Secy.

EXHIBIT 8

Agreement between the Chicago Junction Railways and Union Stock Yards Co. and the Chicago Stock Yards Co., relating to application of income, dated October 1, 1914.

An Agreement made this first day of October 1914 between the Chicago Junction Railways and Union Stock Yards Company incorporated under the laws of New Jersey (hereinafter called the New Jersey Company) of the one part the Chicago Stock Yards Company incorporated under the laws of Maine (hereinafter called the Maine Company) of the other part.

Whereas the Union Stock Yards & Transit Company (hereinafter called the Transit Company) is a corporation duly organized under the laws of Illinois and has issued and outstanding 132,000 common shares of the par value of $100 each and $500,000 4½ per cent gold debentures dated 1st January 1910 payable 1st January 1920 issued under an indenture between the Transit Company and the First Trust & Savings Bank dated 1st January 1910

Common Shares	$13,200,000
Debentures	500,000
Total Capitalization of the Transit Company	$13,700,000

[fol. 1676] And Whereas the Chicago Junction Railway Company (hereinafter called the Railway Company) is a corporation duly organized under the laws of Illinois and has now issued and outstanding 55,000 common shares of the par value of $100 each

Common Shares	$ 5,500,000
Total Capitalization of the Railway Company	$ 5,500,000

And Whereas the railways of the Transit Company are leased to the Railway Company of instrument dated 1st December 1913 under which the Railway Company is bound to pay as annual rent the sum of $600,000 to the Transit Company or upon its order.

And Whereas the New Jersey Company now has issued and outstanding

(a) 130,000 shares of capital stock of the par value of $100 each of which 65,000 are 6 per cent cumulative preferred shares and 65,000 are common shares

Preferred Shares	$ 6,500,000
Common Shares	6,500,000

(b) $10,000,000 Five Per Cent Collateral Trust Gold Bonds dated 1st July 1890 payable 1st July 1915 issued under a deed of trust from the New Jersey Company to the Central Trust Company of New York dated 10th July 1890 whereby 120,000 shares of the Transit Company are pledged as security for the said bonds

5% Bonds	$10,000,000

(c) $4,000,000 Four Per Cent Forty Year Mortgage and Collateral Trust Refunding Gold Bonds dated 1st April

1900 payable 1st April 1940 issued under a mortgage and deed of trust from the New Jersey Company to The Standard Trust Company of New York dated 10th April 1900 whereby there are pledged as security for the said bonds 11,083 shares of the Transit Company 54,991 shares of the Railway Company and $2,500,000 Fifty Year General Mortgage Gold Bonds of 1907 of the Indiana Harbor Belt Railroad Company dated 1st July 1907 payable 1st July 1957 issued under a mortgage from the Indiana Harbor Belt Railroad Company to the Guaranty Trust Company of New York dated 1st November 1907 and the said 120,000 shares of the Transit Company (subject to the lien of the said Five Per Cent Collateral Trust Gold Bonds)

4% Bonds	$ 4,000,000.
Total Capitalization of the New Jersey Company	$27,000,000

[fol. 1677] And Whereas the New Jersey Company has guaranteed the payment of the principal interest and sinking fund of a total authorized issue of $3,000,000 First Mortgage Five Per Cent Twenty Year Real Estate Improvement Bonds dated 1st March 1908 payable 1st March 1928 issued under a mortgage and deed of trust from John A. Spoor Frederick S. Winston and the New Jersey Company to the Standard Trust Company of New York dated 1st March 1908 of which there are now outstanding $2,584,000 bonds

Real Estate Bonds	$ 3,000,000

And Whereas the New Jersey Company has guaranteed the payment of the principal and interest upon $2,327,000 first mortgage Four Per Cent Forty Year Gold Bonds of The Chicago Junction Railroad Company dated 1st March 1905 payable 1st March 1945 issued under a first mortgage from The Chicago Junction Railroad Company to the First Trust and Savings Bank of Chicago dated 1st March 1905

Railroad Bonds	$ 2,327,000

And Whereas the New Jersey Company owns or controls all of the shares in the capital tock of the Transit Company and of the Railway Company now issued and outstanding

And Whereas the Maine Company now owns 31,075 common shares of the New Jersey Company and certificates representing 33,922 common shares of the New Jersey Company have been deposited with the Old Colony Trust Company under an agreement between said Old Colony Trust Company and the Maine Company dated 27th September 1911 and the Maine Company has in accordance with the said agreement endorsed the said certificates as follows:

The Chicago Stock Yards Company does hereby guarantee to the holders of the shares evidenced by this certificate and the assigns of such holder and to the transferee hereof, to pay to the registered holder of said shares at the time of such payment, on the first days of January, April, July and October in each and every year, beginning on the 1st day of January 1912 a fixed sum amounting to two and one-fourth per cent: upon the par value of said shares, in consideration of which guaranty and the due and punctual performance thereof from time to time, the holder of said shares and each and every assign thereof does hereby sell, assign, set over and direct to be paid to the Old Colony Trust Company, as Trustee under the agreement hereinafter mentioned, or upon its written order, any and all dividends and other payments out of earnings apportionable

to the shares represented by this certificate or directed to be paid to the holder hereof, which may at any time be made by or on behalf of The Chicago Junction Railways and Union Stock Yards Company, or its successor, to be by said Trustee disposed of as in said agreement specified [fol. 1678] and provided.

This indorsement is placed hereon pursuant to and subject to the terms and conditions of a certain Trust Agreement dated 27th September 1911, signed by the Chicago Stock Yards Company and deposited with the Old Colony Trust Company, as Trustee, to which the holder hereof has assented and become a party.

Each and every assign or transferee of this certificate, by accepting delivery hereof, does accept and confirm the above-mentioned assent of the holder and the terms and conditions of said Trust Agreement and become a party thereto and does direct the placing of this indorsement on any new certificate which may be issued in lieu hereof.

Chicago Stock Yards Company, By —— ——, Assistant Secretary.

so that the Maine Company is now entitled to all of the income of the New Jersey Company applicable to dividends on the common shares of the New Jersey Company.

And Whereas the parties hereto desire to simplify their financial relations and operations for their mutual benefit and the protection of the various creditors holders of securities and shareholders respectively

Now Therefore in consideration of the premises and of the mutual promises herein contained it is agreed by and between the parties hereto as follows.

1. The Maine Company hereby guarantees to the New Jersey Company the prompt payment of the following:

(a) All expenses, interest and taxes payable by or chargeable to the New Jersey Company including certain principal and interest payments under the two contracts between Richard Fitzgerald the Merchants' Loan & Trust Company and Anna L. Sexton both dated 1st June 1914 and the interest on certain demand notes of the New Jersey Company aggregating

$259,520 secured by 548 shares of the Transit Company.

(b) The interest upon the said Five Per Cent Collateral Trust Gold Bonds and the said Four Per Cent Forty Year Mortgage and Collateral Trust and Refunding Gold Bonds when and as the same become due and payable and the Maine Company further agrees to make the payments and to fulfil all of the obligations of the New Jersey Company under the mortgages and deeds of trust securing the said bonds except the payment of the principal of the said bonds.

[fol. 1679] (C) All payments which the New Jersey Company may be required to make under and in accordance with Article 6, section 3 of the said mortgage and deed of trust from John A. Spoor, Frederick S. Winston and the New Jersey Company to the Standard Trust Company of New York dated 1st March 1908 and all other payments other than the principal of the said First Mortgage Five Per Cent Twenty Year Real Estate Improvement Bonds which the New Jersey Company may be required to make under and in accordance with the covenants contained in the said mortgage to be performed by the New Jersey Company.

(D) All payments which the New Jersey Company may be required to make by virtue of its guaranty of the interest but not of the principal of the said $2,327,000 First Mortgage Four Per Cent. Forty Year Gold Bonds of the Chicago Junction Railroad Company.

(E) Dividends at the rate of 6 per cent per annum upon the preferred shares of the New Jersey Company now issued and outstanding.

(F) Fixed sums on the first days of January, April, July and October in each year amounting to 2¼ per cent upon the par value of all common shares of the New Jersey Company now or hereafter deposited with the Old Colony Trust Company as trustee under the said agreement dated the 27th September 1911.

2. The New Jersey Company assigns and transfers to the Maine Company all its right title and interest in and to any dividends that may hereafter be declared by the

Transit Company and the Railroad Company respectively and all its right title and interest in and to all income and surplus earnings of the said companies or either of them that may now or hereafter be divisible or distributable among the shareholders of the said companies or either of them in the form of dividends or otherwise subject however to all obligations and agreements respecting such dividends and income as may now exist.

3. The New Jersey Company as the owner of all of the shares in the capital stock of the Railway Company and in fulfillment of its obligation under the preceding paragraph hereof and for the purpose of insuring the performance by the Maine Company of its agreements hereunder hereby agrees to direct the Railway Company from time to time out of the funds in its treasury otherwise applicable to the payment of dividends on the shares of its stock owned by the New Jersey Company to pay the following:

(a) On or before the 1st days of June and December in each year the Railway Company shall be directed to pay to the Central Trust Company of New York the sum of $250,000 to be applied to the payment of interest on the said Five Per Cent Collateral Trust Gold Bonds of the New Jersey Company provided that after the said bonds shall have been paid or retired [fol. 1680] the said sums shall be paid in accordance with the order of the Maine Company.

(b) On or before the 15th day of March and September in each year the Railway Company shall be directed to pay to the Guaranty Trust Company of New York the sum of $80,000 to be applied to the payment of interest on the said Four Per Cent Forty Year Mortgage and Collateral Trust Refunding Gold Bonds of the New Jersey Company provided that after the said bonds shall have been paid or retired the said sums shall be paid in accordance with the order of the Maine Company.

(c) Whenever it shall from time to time appear that the Railway Company will have in its treasury funds sufficient to make the payments above specified as the same become due it may pay any surplus of the said funds to the Maine Company upon its request.

4. The New Jersey Company as owner of all of the shares in the capital stock of the Transit Company and in further fulfillment of its obligations under paragraph 2 hereof and for the purpose of insuring the performance by the Maine Company of its obligations hereunder hereby directs the Transit Company from time to time out of the funds in its treasury otherwise applicable to the payment of dividends on the shares of its stock owned by the New Jersey Company to pay the following:

(a) On or before the 25th day of March, June, September and December in each year the Transit Company shall be directed to pay to the Old Colony Trust Company the sum of $97,500 to be by it applied to the payment of the quarterly dividends on the preferred shares of the New Jersey Company now issued and outstanding.

(b) On or before the 25th day of March, June, September and December in each year the Transit Company shall be directed to pay to the said Old Colony Trust Company the sum of $76,324.50 to be by it applied to the payment on the 1st days of January, April, July and October of the sums payable under the said agreement of the 27th September 1911 to holders of common shares of the New Jersey Company deposited thereunder or such other sums as may from time to time be sufficient and payable for that purpose.

(c) Whenever it shall from time to time appear that the Transit Company will have in its treasury funds sufficient to make the payments above specified as the same become due it may pay any surplus of the said funds to the Maine Company upon its request.

5. The New Jersey Company agrees that it will by irrevocable instrument order the Transit Company to authorize and direct the Railway Company to apply the annual rent of $600,000 payable under the said lease to the payments to be made by the Railway Company under the provisions of paragraph 3 hereof.

[fol. 1681] 6. All income of the New Jersey Company hereafter received or collected by it from any source what-

ever shall be by it applied first to the payment of its own expenses second to the payment of all taxes payable or chargeable to the New Jersey Company and the surplus if any then remaining shall be paid to the Maine Company upon its request but subject however to any agreements or obligations on the part of the New Jersey Company now existing. Whenever practicable the New Jersey Company shall authorize the Maine Company to collect such other income direct from the source thereof and shall take all such proceedings and do all such acts as may be necessary or expedient to enable the Maine Company so to do.

7. The New Jersey Company may from time to time with the written consent of the Maine Company issue additional bonds or debentures secured by mortgage or otherwise or may guarantee the payment of principal and interest of bonds and debentures of other companies associations organizations or individuals whether or not the same are secured by mortgage whenever such issue or guaranty appears to be for the best interest of the New Jersey Company. And in the event that bonds or debentures are so issued or guaranteed the Maine Company guarantees to the New Jersey Company the prompt payment of all interest sinking fund payments, expenses and taxes which the New Jersey Company may be required or obliged to make in respect of such bonds or guaranty.

8. Both parties hereby agree to execute and deliver all agreements and instruments that may be necessary or proper to enable the provisions of this agreement to be carried out and fulfilled according to the true spirit hereof it being understood however that nothing herein contained shall be construed to require any corporation or person to do anything contrary to its existing contracts or obligations.

9. The president or treasurer of the Maine Company and of the New Jersey Company respectively may from time to time determine all questions which may arise relating to the accounts between the said companies and may make such payments from one company to the other as may be necessary or convenient in order to carry out the true intent and purpose of this agreement.

10. This agreement may be amended, modified or re-

scinded at any time by action of the boards of directors or executive committees of the parties.

[fol. 1682] In witness whereof the parties have caused their respective common seals to be hereto affixed and these presents to be signed in their respective names and on their behalf by their respective officers thereunto duly authorized the day and year first above written Executed in four parts.

The Chicago Junction Railways and Union Stock Yards Company, By Frederick H. Prince, President, M. A. Taylor, Secretary.

Attest: (Seal of C. J. Rwys. & U. S. Y. Co.)

Chicago Stock Yards Company, By Norman J. MacGaffin, President, Edward N. Manning, Secretary.

Attest: (Seal of C. S. Y. Co.)

EXHIBIT 9A—Condensed Balance Sheet of the Yards company, as of Dec. 31, 1917

Assets

Investment account	$15,537,284.39
Working assets and funds	1,597,944.57
Deferred and unadjusted debit items	67,065.03
	17,202,293.99

Liabilities

Capital stock	$13,200,000.00
Debenture notes	500,000.00
Working liabilities	641,814.65
Accrued liabilities not due	384,377.37
Surplus account	2,476,101.97
	17,202,293.99

EXHIBIT 9B—Condensed Balance Sheet of the Railway Company as of Dec. 31, 1917

Assets

Investment account	$ 5,726,333.63
Current assets	1,674,239.99
Deferred and unadjusted debit items	135,555.51
	$ 7,536,131.13

Liabilities

Capital stock	$ 5,500,000.00
Current liabilities	454,158.99
Deferred and unadjusted credit items	537,123.50
Corporate surplus	1,044,848.64
	7,536,131.13

EXHIBIT 9C.—Condensed balance sheet of the Central Manufacturing District, as of Dec. 31, 1917

Assets

Property investment	$11,929,415.15
Working assets	869,103.72
Deferred and unadjusted debit items	24,434.68
	$12,822,953.55

Liabilities

Fixed liabilities	$ 3,850,000.00
Working liabilities	560,395.89
Accrued liabilities	245,729.19
Deferred credit items	38,981.81
Due New Jersey company	4,088,181.80
Increment in land values	3,842,795.42
Profit and loss	196,869.44
	12,822,953.55

[fol. 1683] EXHIBIT 9D—Balance sheet of the New Jersey company, as of Dec. 31, 1917

Assets

Investment account:		
132,000 shares capital stock of the Union Stock Yard & Transit Co., 54,991 shares capital stock of the Chicago Junction Railway Co., and other investments		$30,255,879.21
Interest and accounts receivable		202,501.00
Central Manufacturing District		500,000.00
Cash at bankers:		
Cash in banks	$ 148,019.89	
Collateral trust gold bonds (due 1915) coupon account	172.92	
Mortgage and collateral trust refunding gold bonds, coupon account	6,350.00	
		154,542.81
		31,112,923.02

Liabilities

Capital stock:		
65,000 shares preferred, par $100	$ 6,500,000.00	
65,000 shares common, par $100	$ 6,500,000.00	
		$13,000,000.00

Four per cent 40-year mortgage and collateral trust refunding gold bonds (deed of trust dated Apr. 10, 1900), $10,000,000 issued at 5 per cent under supplemental trust deed, dated Apr. 1, 1915	14,000,000.00
Notes payable	500,000.00
Accounts payable	16,808.62
Interest accrued on mortgage and collateral trust refunding gold bonds	165,000.00
Unpaid dividend vouchers	695.00
Unpaid coupons	6,525.00
Income tax payable (withheld)	7,346.10
Reserve for Federal Income Tax	1,362.42
Surplus	3,415,185.88
	31,112,923.02

EXHIBIT 9E.—Balance sheet of the Maine company, as of Dec. 31, 1917

Assets

Cash on deposit		$ 509,612.25
Notes receivable:		
Armour & Co., due Feb. 27, 1918	$ 100,000.00	
F. H. Prince, demand, collateral	560,000.00	
		660,000.00
Securities owned:		
100 shares Chicago Junction Rys. & Union Stock Yards Co.		65,000.00
Old Colony Trust Co.:		
Cash on hand for tax		1,874.50
Securities pledged:		
31,100 Chicago Junction Railways & Union Stock Yards Co.		6,220,000.00
Investment account		7,000,000.00
		14,456,486.75

Liabilities

Common stock:		
80,000 shares		$8,000,000.00
Collateral trust 50-year 5 percent bonds, due 1961, secured by 31,000 shares Chicago Junction Railways & Union Stock Yards Co.		6,220,000.00
Suspended items payable:		
Bond interest accrued	$ 77,750.00	
Discount received in advance on notes	804.55	
P. H. Clark account, 3 shares Chicago Junction Co.	109.65	
		78,665.20
Surplus account		157,821.55
		14,456,486.75

[fol. 1684] FOOD INVESTIGATION

REPORT OF THE FEDERAL TRADE COMMISSION

ON THE

MEAT-PACKING INDUSTRY

Summary and Part I

June 24, 1919

[fol. 1685] Letter to the President

3 July, 1918.

To the President of the United States:

Sir: On February 7, 1917, you directed the Federal Trade Commission to "investigate and report facts relating to the production, ownership, manufacture, storage, and distribution of foodstuffs and the products or by-products arising from or in connection with their preparation and manufacture; to ascertain the facts bearing on alleged violations of the antitrust acts, and particularly

upon the question whether there are manipulations, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the law or the public interest," to the end that "proper remedies, legislative or administrative, may be applied."

On July 1, 1917, funds for carrying out this direction became available and the Commission undertook the task.

The work fell naturally into various divisions and reports have already been made to you with reference to the milling and jobbing of wheat flour and the preparation and distribution of certain canned food products. Other divisions will be the subject of reports to you as rapidly as the results of our studies can be reduced to proper form. At this time we are reporting to you on the meat-packing industry.

[fol. 1686] Answering directly your question as to whether or not there exist "monopolies, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the laws and the public interest," we have found conclusive evidence that warrants an unqualified affirmative.

This evidence in summary form accompanies this letter and will be set forth in more detailed form in seven reports in support of our findings and recommendations, which will be placed in your hand at the earliest possible moment.

While we have found and will disclose to you an intricate fabric of "monopolies, controls, combinations, conspiracies, and restraints" which would seem to indicate a similarly complex and minute system of legislative or administrative remedies, we believe that an adequate remedy may be more simply arrived at.

We believe that if the fundamental and underlying evils are rooted out the while structure of conspiracy, control, monopoly, and restraint must fall.

If we are correct in this judgment, the task of applying legislative and administrative remedy is greatly simplified.

It appears that five great packing concerns of the country—Swift, Armour, Morris, Cudahy, and Wilson—have attained such a dominant position that they control at will

the market in which they buy their supplies, the market in which they sell their products, and hold the fortunes of their competitors in their hands.

[fol. 1687] Not only is the business of gathering, preparing and selling meat products in their control, but an almost countless number of by-products industries are similarly dominated; and not content with reaching out for mastery as to commodities which substitute for meat and its by-products, they have invaded allied industries and even unrelated ones.

The combination has not stopped at the most minute integration but has gone on into a stage of conglomeration, so that unrelated hetrogeneous enterprises are brought under control.

As we have followed these five great corporations through their amazing and devious ramifications—followed them through important branches of industry, of commerce, and of finance—we have been able to trace back to its source the great power which has made possible their growth. We have found that it is not so much the means of production and preparation, nor the sheer momentum of great wealth, but the advantage which is obtained through a monopolistic control of the market places and means of transportation and distribution.

If these five great concerns owned no packing plants and killed no cattle and still retained control of the instruments of transportation, of marketing, and of storage, their position would not be less strong than it is.

The producer of live stock is at the mercy of these five companies because they control the market and the marketing facilities, and, to some extent, the rolling stock which [fol. 1688] transports the product to the market.

The competitors of these five concerns are at their mercy because of the control of the market places, storage facilities, and the refrigerator cars for distribution.

The consumer of meat products is at the mercy of these five because both producer and competitor are helpless to bring relief.

The stock car is a part of the equipment of the common carrier whose services are necessary to the producer of meat animals so that he may reach the market. The rail-

roads furnish suitable cars for the transportation of other kinds of freight, and as to the use of such cars the miner of coal or the manufacturer of furniture are on an equality, but in the matter of transportation of live stock to a small degree their comes in a private ownership and a control and a manipulation of the means of transportation—the stock car—so it is that we recommend:

> 1. That the Government acquire, through the Railroad Administration, all rolling stock used for the transportation of meat animals and that such ownership be declared a Government monopoly.

In the transportation of all other kinds of freight the transportation companies provide proper and suitable freight depots. The proper and suitable freight depot for [fol. 1689] live stock is a stockyard with its equipment of exchange buildings, terminal railways, and means of distributing full, unbiased, helpful market information, etc. We therefore recommend:

> 2. That the Government acquire, through the Railroad Administration, the principal and necessary stockyards of the country, to be treated as freight depots and to be operated under such conditions as will insure open, competitive markets, with uniform scale of charges for all services performed, and the acquisition or establishment of such additional yards from time to time as the future development of live-stock production in the United States may require. This to include customary adjuncts of stockyards.

A requisite for the proper transportation of fresh meat and dairy products is that type of rolling stock known as refrigerator cars. The railroads supply proper, special types of cars for other classes of freight, but the beef refrigerator cars and icing facilities, which are absolutely necessary for the transportation and distribution of fresh meats, are in private ownership. This ownership furnishes these five great packing companies one of their most powerful means for controls, manipulations, and restraints. Lacking access on equal terms to these facilities competitors of the five great packers are at their mercy, and, com-

[fol. 1690] petition being stifled, the consumer similarly is helpless. We therefore recommend:

> 3. That the Government acquire, through the Railroad Administration, all privately owned refrigerator cars and all necessary equipment for their proper operation and that such ownership be declared a Government monopoly.

Proper freight houses are provided by common carriers for the various sorts of freight except meat and perishable products. The indicated freight depot for such commodities is a cold-storage house. Such a depot used as a distributing station, if free of access to all, would constitute an agency for fair and free competition. Such a depot in private hands, as now, constitutes an invincible weapon for monopoly and control and manipulation. We therefore recommend:

> 4. That the Federal Government acquire such of the branch houses, cold-storage plants, and warehouses as are necessary to provide facilities for the competitive marketing and storage of food products in the principal centers of distribution and consumption. The same to be operated by the Government as public markets and storage places under such conditions as will afford an outlet for all manufacturers and handlers of food products on equal terms. Supplementing the marketing and storage facilities thus acquired, the [fol. 1691] Federal Government establish, through the Railroad Administration, at the terminals of all principal points of distribution and consumption, central wholesale markets, and storage plants, with facilities open to all upon payment of just and fair charges.

The Commission believes that these four suggestions strike so deeply at the root of the tree of monopoly that they constitute an adequate and simple solution of a problem the gravity of which will be unfolded to you in the pages which follow.

Out of the mass of information in our hands, one fact stands out with all possible emphasis. The small dominant group of American meat packers are now international

in their activities, while remaining American in identity. Blame which now attaches to them for their practices abroad as well as at home inevitably will attach to our country if the practices continue. The purely domestic problems in their increasing magnitude, their monopolization of markets and their manipulations and controls, grave as those problems are, are not more serious than those presented by the added aspect of inter-national activity. This urgently argues for a solution which will increase and not diminish the high regard in which this people is held in inter-national comity.

Some show of competition is staged by the five great packing companies. It is superficial. There is the natural [fol. 1692] rivalry of officials and departments, and this is made much of as indicating the existence of real competition. It is not real. How sham it is will be fully set out in the accompanying summary and the complete reports.

Some independent packers exist by sufferance of the five, and a few hardy ones have survived in real competition. Around such few of these as remain the lines are drawing in.

Having answered affirmatively the question to which you directed our attention and having summarized what we believe to be the simplest form of an adequate remedy, and before proceeding to a more detailed discussion of the subject, we make acknowledgment of the tireless industry, the fidelity to the public interest, and the patience and forbearance of the men who have composed the Commission's staff in this inquiry.

These men have met and overcome every obstacle that ingenuity and money could devise to impede them. Space forbidding individual mention, we make this general acknowledgment and this seems the proper time to call to your attention again and especially the work of Mr. Francis J. Heney, whose conduct of the case, because of its success, has met with condemnation, misrepresentation, and criticism. We contrast Mr. Heney's legal ethics with the legal ethics of the men by whom he was opposed.

[fol. 1693] The Commission, through Mr. Heney, had to meet deliberate falsification of returns properly required

under legal authority; we had to meet schools for witnesses where employees were coached in anticipation of their being called to testify in an investigation ordered by you and by the Congress of the United States; we had to meet a situation created by the destruction of letters and documents vital to this investigation; we had to meet a conspiracy in the preparation of answers to the lawful inquiries of the Commission.

We will not trespass upon your time to go into details as to the legal and business ethics employed, but on the foregoing statement, which we are prepared to substantiate in every detail, we contrast the ethics of the Commission's legal and investigating staff with the legal staffs of the five great companies. And in leaving this part of the subject, we say as we have said repeatedly to you during the time of the investigation, that Mr. Heney's conduct of the case, as well as that of the other agents and attorneys of the Commission, was under the direct supervision of the Commission, the acts were performed with the knowledge and under the direction of the Commission, and the Commission assumes all responsibility for them.

Respectfully, William B. Colver, Chairman, John Franklin Fort, Victor Murdock.

[fol. 1694] EXHIBIT 62

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

No. 37623. Equity

THE UNITED STATES OF AMERICA, Petitioner,

v.

SWIFT AND COMPANY AND OTHERS, Defendants

Decree and Consents

This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, Chief Justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the

United States, by its district attorney, John E. Laskey, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, thereto duly authorized, and having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not con-
[fol. 1695] stitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents,

or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopolizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons, to monopolize any part of such trade or commerce.

Second. That the defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants, or employees, for the use of and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the [fol. 1696] purchase, sale, handling, transporting, dis-

tributing, or otherwise dealing in any of the articles or commodities named and described in paragraph fourth of this decree, except in so far as permitted in said paragraph fourth, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are purchased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other

conveniences; primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

[fol. 1697] 2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Potatoes.
Navy beans.	Tomatoes.
Lima beans.	Celery.
Peas.	Garlic.
Beets.	Horse-radish.
Corn.	Pumpkins.
Okra.	

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following; but not including the same when used as an ingredient of mincemeat, to wit:

Ginger.	Figs.
Cherries.	Gooseberries.
Apple butter.	Oranges.
Apricots.	Strawberries.
Blackberries.	Apples.
Peaches.	Prunes.
Pineapple.	Raisins.
Raspberries.	Dates
Currants.	

4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in this paragraph 4; see paragraph 14), including therein, but in

nowise limiting the foregoing general description, the following, to wit:

Apple cider.	Lemon extract.
Cherry juice.	Marshmallow topping.
Coca Cola.	Orange extract.
Creme de menthe.	Root beer.
Crushed fruit frappe.	Vanilla extract.
Ginger ale.	Vin fiz.
Green pineapple sirup.	

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.	Olives.
Chili sauce.	Oyster cocktail sauce.
Cinnamon.	Pepper.
Cloves.	Pickles.
Mustard.	Spinace chili.
Mustard seed.	Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit:

Almonds.	Walnuts.
Pecans.	

But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

[fol. 1698] 11. Cereals, including therein, but in no wise limiting the foregoing general description, the following, to wit:

Grits.	Ground corn.
Oats.	Cracked corn.
Hominy.	Crushed white oats.
Hominy feed.	Feed barley.
Horse feed.	Feed meal.
Brewers' flakes.	Feed wheat.
Brewers' grit.	Rolled oats.

Brewers' meal.
Buckwheat.
Canned hominy.
Clipped oats.
Corn grits.
Ground meal.
Ground oats.
Standard middlings.
Standard spring brand.
Spaghetti.
Vermicelli.
Macaroni.
Corn flakes.
Wheat foods.

12. Grain.

13. Miscellaneous articles, to wit:

Cigars.
China.
Furniture.
Bluing, starch.
Fence posts and wire fences.
Alfalfa meal.
Babbitt.
Bar iron.
Binding and twine.
Brass castings for heavy ordnance.
Brick.
Builders' hardware.
Bumping posts for railroads.
Cement, lime, plaster.
Doors and windows.
Dried brewers' grains.
Lath.
Pitting and fruit handling machinery.
Roofing.
Sand and gravel.
Shingles.
Soda fountains or parts thereof.
Structural steel.
Tile.
Waste.

14. Grape juice.

And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants, and each of them

be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50 per cent or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defandant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of [fol. 1699] manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Potatoes.
Navy beans.	Tomatoes.
Lima beans.	Celery.
Peas.	Garlic.
Beets.	Horse radish.
Corn.	Pumpkins.
Okra.	

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing gen-

eral description, the following, but not including the same when used as an ingredient of mince meat, to wit:

Ginger.
Cherries.
Apple butter.
Apricots.
Blackberries.
Peaches.
Pineapples.
Raspberries.
Currants.
Figs.
Gooseberries.
Oranges.
Strawberries.
Apples.
Prunes.
Raisins.
Dates.

4. Confectionery, sirups, soda fountain supplies, and sirups and soft drinks, not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineapple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extract.
Vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.
Chili sauce.
Cinnamon.
Cloves.
Mustard.
Mustard seed.
Olives.
Oyster cocktail sauce.
Pepper.
Pickles.
Spinace Chilli.
Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

[fol. 1700] 8. Nuts, including therein the following, to wit:

Almonds. Walnuts.
Pecans.

But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States: *Provided, however,* That nothing contained in this decree shall prohibit said defendants or any of them from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat markets shall be continued to be operated for that purpose.

Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States; pro-

vided, however, that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public cold-storage warehouses now maintained by the defendants or any of them at stockyards where said defendants or any of them now maintain packing plants; nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested, nor from renting space in any cold-storage warehouse directly or [fol. 1701] indirectly owned or leased by any of them to the public whenever such space is not in good faith required or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing, or otherwise dealing in fresh milk or cream; provided, however, that nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargarine or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specif-

ically mentioned and described in paragraph fourth hereof; and further provided that nothing herein contained shall be construed as preventing said defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by themselves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature whatsoever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies [fol. 1702] and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard market company or stockyard terminal railroad, or in any corporation organized to take over such public stockyard market companies or stockyard terminal railroads or the stock thereof; but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stockyard market companies, stockyard terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests or-

dered by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall in good faith and with due diligence proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership of or interest in all public cold-storage warehouses and retail meat markets; but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-storage warehouses and retail meat markets, the Attorney General may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs fourth and fifth of this decree and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interests which are to be disposed of by them as and to the extent required by this decree in firms, corporations, and associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and de- [fol. 1703] scribed in paragraphs fourth and fifth of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise

involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this decree; provided, however, to the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard, shall as a part of said purchase, agree with such of the defendants as now maintain packing plants in said stockyards that for a period of at least 10 years after the date when such purchase shall be consummated said purchasers, their successors or assigns, will continue to maintain and efficiently operate such stockyards and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and operate said packing plants at the points where the same are now located, unless strikes, shortages of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants, shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants or any of them in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defend-

ants; provided, however, that nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any [fol. 1704] violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transaction consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned

with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto, and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the first day of October, nineteen hundred and nineteen, of any of their interests in public stock yard market companies, stock yard terminal railroads, stock yard newspapers or journals, public cold-storage warehouses and retail meat markets, or in-[fol. 1705] corporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their delivery systems, shall be submitted by the defendants to the court for its investigation and determination as to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.

Walter I. McCoy, Chief Justice.

February 27, 1920.

The defendants Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, and Fred L. Washburn, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Henry Veeder, Attorney for above-named defendants.

Dated 27th day of February, 1920.

The defendants Wilson & Co., Inc., (N. Y.); Wilson & Co. (N. J.), Wilson & Co., Inc., of Calif. (Nev.); Wilson and Co., Inc., of Louisiana (La.); Wilson & Co., Inc., of Okla. (Oklahoma); South Dakota Provision Co., Gotham Hotel Supply Co., Inc.; Standard Beef Co.; Stiefel-O'Mara Co., Inc.; Drexel Packing Co.; Albert Lea Packing Co., Inc.; Mississippi Packing Co., Inc.; Morton-Gregson Co.; Paul O. Reymann Co.; Standard Provision Co., Central Products Corporation, Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, [fol. 1706] James C. Good, appear herein generally by Jewel P. Lightfoot, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Jewel P. Lightfoot, Attorney for above-named Defendants.

Dated Washington, February 27, 1920.

The defendants The Cudahy Packing Company (Me.), Cudahy Packing Company of Nebraska, Cudahy Packing Company of Alabama, Cudahy Packing Company of Louisiana, Ltd., Nagle Packing Company, Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, and George Marples, appear herein generally by

Thomas Creigh, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in the cause without further notice.

Thomas Creigh, Attorney for above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Armour and Company (Ill.), Armour & Company (N. J.), Armour & Company (Ky.), Armour & Company (Tex.), Armour & Company, Ltd. (La.), The Anglo American Provision Company, The Colorado Packing and Provision Company, Fowler Packing Company, Hammond Packing Company, The New York Butchers Dressed Meat Company, Atlantic Hotel Supply Company, Inc., J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, and George B. Robbins, appear herein generally by Charles J. Faulkner, jr., their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Charles J. Faulkner, jr., Attorney for above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris & Company (La.), Morris & Company of Pennsylvania (Pa.), Joseph Stern & Sons, Inc., Brooklyn Beef & Pro-
[fol. 1707] vision Co., Condit Beef and Provision Company, Corwin, Wilde Company, Donnelly & Company, Inc., National Hotel Supply Company, Camberlain & Company, Inc., J. M. Wilson Company, Middletown Beef and Provision Company, Glenn & Anderson Co., Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane

and H. A. Timmins, appear herein generally by M. W. Borders, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

M. W. Borders, Attorney for above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Swift and Company (Ill.), Swift and Company (W. Va.), Swift and Company, Inc. (Ky.), Swift and Company, Ltd. (La.), Swift and Company (Me.), Swift Beef Company (Me.), United Dressed Beef Co. of New York, J. J. Harrington and Company, Inc., Bimbler Company, The G. H. Hammond Company, Omaha Packing Company, Plankinton Packing Company, Sturtevant & Haley Beef & Supply Company, E. K. Pond Packing Company, Van Wagenen and Schickhaus Company, Western Packing Company, Hammond Beef Company, Omaha Meat Company, A. Canfield Commission Company, H. C. Derby Company, Metropolitan Hotel Supply Company, Vermont Supply Company, The Hotchkiss Beef Co., New England Dressed Meat & Wool Company, North Packing & Provision Company, The Sperry & Barnes Company, John P. Squire & Company (Me.), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R. I.), Springfield Provision Company, White, Pevey and Dexter Company, Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, Jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, and William B. Traynor, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

Henry Veeder, Attorney for the above-named Defendants.

Dated Washington, February 27, 1920.

[fol. 1708] State of Illinois,
County of Cook, ss.

In the Circuit Court of Cook County.

In Chancery

Philip D. Armour, et al.

vs.

Union Stock Yard & Transit Co.

In Chancery

Swift & Company

vs.

Union Stock Yard & Transit Co.

In Chancery

Nelson Morris, et al.

vs.

Union Stock Yard & Transit Co.

State of Illinois,
County of Cook, ss.

Sheldon E. Holmes, being duly-sworn deposes and says that he is personally acquainted with the location of the slaughter and packing houses of the above named complainants, Armour and Company, Swift and Company, and Nelson Morris and Company, located upon the premises described in the Complainants' several bills of complaint, situated immediately west of the premises of the Union Stock Yard & Transit Company, also particularly described in said complainants' bills of complaint; that he has exam-
[fol. 1709] ined the map marked "Ex A" and made a part of this affidavit, showing the location of the property of said Union Stock Yard and Transit Company, and also the property of said complainants and the system of railroad tracks connecting said complainants' property with the main and other tracks of said Union Stock Yard and Transit Company. That upon said map the slaughter and packing houses and other improvements of said several

complainants are designated as follows, to wit: Those of the complainant Armour and Company, are colored yellow; those of Swift and Company, green; those of Nelson Morris and Company, pink. The deponent is also acquainted with the location of the joint stock yards of said complainants, known as the Central Stock Yards, the location of which is also designated and described upon said map.

The deponent further states that he is, at the present time, and has been for about eighteen months last past, employed by said complainant Swift and Company, and that prior thereto he was employed by the Railway Switching Association of Chicago, which said Association had charge of the distribution of cars and freights consigned to said several complainants and other parties, firms, or corporations engaged in prosecuting business upon said premises, lying immediately west of the Union Stock Yards, commonly known as Packingtown. The deponent says that he was in the employ of said switching Association for a [fol. 1710] period of about two years as yard clerk and assistant yard master; that prior to his last said employment, and for a period of about eight years prior thereto, he was employed by the Chicago, Rock Island & Pacific Railroad Company as yard clerk and bill clerk, and also that for about three years of said time he had charge and direction of the out-freight yard of said Company at the City of Chicago.

The deponent further says that for more than three years last past, and from the time he entered the service of said Chicago Railway Switching Association, he has been, and he is now, familiar with, and has had, and he now has a personal knowledge of the manner or system of handling and switching cars at said Packingtown and at the Stock Yards of said Union Stock Yard and Transit Company upon the side and main tracks owned and controlled by said last named Company, and upon the tracks connected therewith owned by the several complainants and other persons, firms and corporations; that he has a personal knowledge of the capacity of said tracks, as now located and constructed, for handling, delivering and receiving loaded and empty cars at the various packing and slaughter houses and other establishments located upon the property hereinbefore described, situate immediately west and

adjoining said Union Stock Yard & Transit Company's property, and at the Stock Yards of said Company.

Deponent further states that the various railways terminating at the City of Chicago, and having connections with the railway system of the defendant, connect with the [fol. 1711] tracks of said last named company as shown upon said map marked exhibit "A", as follows, to wit: The Chicago Milwaukee & St. Paul Railway Company, the Chicago & Northwestern Railroad Company, the Pan Handle, the Northern Pacific, the Chicago & Alton, and the Chicago, Burlington & Quincy Railroad Company, connect with said system of tracks on the west at or near Brighton Park; that the Michigan Central, The Illinois Central, the Rock Island, the Lake Shore, the Nickel Plate, the Chicago & Eastern Illinois, the Louisville, New Albany & Chicago, and the Pittsburgh, Fort Wayne & Chicago Railroad Company connect with said system of tracks on the east; that the Grand Trunk, the Wabash, the Atchison, Topeka & Santa Fe, and the Chicago & Erie Railroad Companies connect with said system of tracks on the south. All of said railways have suitable connections with the railway system of the said Union Stock Yard & Transit Company.

The deponent further says that each and all of said railroads so connecting with the defendant's railway system have in convenient proximity to the tracks of said Union Stock Yard & Transit Company, their several yards for the distribution of cars and freight consigned to said Stock Yards or to other parties and consignee located upon the tracks of said defendant company; that said defendant has also its own yards located upon the premises hereinbefore described, as shown upon said map marked Exhibit "A" and designated by being colored red, and that said several [fol. 1712] yards are especially adapted to and used for the switching of cars and the making up of trains preparatory to the delivery of such cars either loaded or empty at the said several slaughter houses and other establishments located upon said tracks, or for the delivery from said slaughter houses and establishments to the various Railroads.

The deponent further says that in the Fall of 1889 the defendant located and constructed yards for the distribu-

tion of cars upon the southwestern portion of said property as shown upon the said map, and also about the same time made proper double track connections with the tracks of the defendant previously constructed, and thereby greatly increased the capacity of the main tracks connecting said named roads with the premises of these complainants, especially of the west main north and south tracks upon which the principal packing and slaughter houses of these complainants, as well as said Central Stock Yards, are located.

The deponent says that all of said main tracks used for the purpose of receiving or shipping freight from the said packing and slaughter houses are double track roads and are not at any time used for loading, unloading, sorting or holding of cars or for making up trains. That all of the complainants have constructed or caused to be constructed upon their own premises, side tracks and switch connections for the accommodation of their own private business and for the greater convenience in receiving and [fol. 1713] delivering freight from and upon the main tracks of said defendant company.

Deponent says that he is generally familiar with the number of cars of dead freight now and heretofore handled by the defendant company in the regular prosecution of the business of complainants; also the method of delivering such freight to the complainants and of receiving the freight for transshipment to other markets; that he is also acquainted with the business of the organization now known as the Chicago Railway Transfer Association, which said association has charge of the switching and handling of freights upon the system of railroad tracks of the defendant company; that said Switching Association receives all of the dead freight, but the deponent says that cars of live freight, when delivered at the Stock Yards of the Union Stock Yard & Transit Company are so delivered by the different railways over which said freight is consigned to said Yards with the locomotives of said railways; that said Transfer Association use about twenty three switch engines, kept constantly in the business of said Stock Yard Company and connected therewith; that of the said twenty-three engines the complainants keep about seven thereof constantly employed in and about their special business in receiving and delivering loaded and empty cars to or

from their said several packing and slaughter houses and other business houses.

[fol. 1714] And deponent says that over ninety-five per cent of all of the business done upon or over said west main north and south tracks is the business of these complainants.

The deponent further says that he is personally acquainted with the premises known and described as the Central Stock Yards, constructed and arranged for the joint business of said complainants; that said yards cover about three acres of ground and are connected with said west main north and south tracks by proper switches and side tracks; that the capacity of said yards in the prosecution of the business of the complainants is about one hundred cars of stock per day, and the deponent believes that that would be the average amount of business that could be done by the complainants in said yards; and deponent says that the capacity of said side tracks and switches is ample in proportion to the capacity of said yards.

The deponent further says that from his personal knowledge of the distribution and the making up and delivery of cars by the said defendant and other railway companies, he believes and says that so far as track capacity is concerned much more than one hundred cars of live freight could be delivered at said Central Stock Yards each twenty-four hours without any interference with or interruption of the other business of the complainants, or of the business of other persons, firms and corporations located upon said main and side tracks, and without any interruption of the business of delivering live or dead [fol. 1715] freight at the stock yards of said Union Stock Yard & Transit Company, or elsewhere upon the said Company's system of railroad tracks; that all cars of live or other freight consigned either to the Central Stock Yards or to the yards of said Union Stock Yard & Transit Company, would be distributed into proper trains or sections of trains by the various railroad companies so transporting the said freight, in the private yards of said railway company adjacent to the track of said Union Stock Yard & Transit Company, and then delivered at either the said Central Stock Yards or at the Stock Yards of said Union Stock Yard & Transit Company, without interference with

each other and without any interruption to the business of said defendant or other business located upon said railway system. That under the present system of business as conducted by said Chicago Railway Transfer Association all of the freight consigned to, and that can be handled inside of the Central Stock Yards, can be delivered at said yards without causing any blockade or interruption of the business now prosecuted in the Stock Yards of said Union Stock Yard & Transit Company or upon the premises located upon or connected with said Company's railway system.

The deponent further says that from his knowledge of said defendant's railway system, and of the various roads, side tracks and switches connected therewith, and of the method of conducting such business by said Chicago Railway Transfer Association, he believes and states that at [fol. 1716] the present time the average amount of business now done upon the said west main tracks of said railway system, could be increased three fold, without any interference with or interruption of the business of said Union Stock Yard Company.

The deponent further says that prior to October 1889 said west main north and south tracks, being the west tracks shown upon said map, terminated on the south at Forty-fifth Street, and that all of the business of these complainants arising from or connected with their packing and slaughter houses located upon said west north and south tracks, was prosecuted upon the said tracks from the north end only, and was received from and delivered upon the main tracks of said defendant's railway system located upon the said north side of the property of said defendant; that when said yard was constructed in October 1889 at the southwest corner of said premises as shown by said map and connected at Forty-fifth Street with said north and south tracks theretofore existing, and also with the east and west tracks at the east of said yard, the track capacity of said west north and south main tracks, upon which the principal packing and slaughter houses of these complainants are located, was increased at least three fold, while the business of said complainants done upon and over said west main tracks has materially decreased since October 1889, and that therefore there has been a three

fold increase of track capacity with a decrease of the [fol. 1717] business of receiving and delivering loaded and other cars over said tracks.

The deponent further says that on account of such increase of track capacity and facility for handling freight, all of the live freight that can be consigned to or handled in said Central Stock Yards can be transported over said main tracks hereinbefore more particularly described, without interference with or interruption of other live freight consignments to the yards of the said Union Stock Yard & Transit Company, and without prejudice to the delivery of freights to other business houses located upon the tracks east of the premises of the said complainants.

(Signed) Sheldon E. Holmes.

Subscribed and sworn to before me this 4th day of June 1891.

(Signed) D. E. Hartwell, Notary Public, June 9th, 1891. (Notarial Seal Attached.)

[fol. 1718] [Endorsed:] 4419—90860. Circuit Court of Cook County. Philip D. Armour, et al. vs. Union Stock Yard & Transit Company. Swift & Company vs. Union Stock Yard & Transit Company. Nelson Morris, et al. vs. Union Stock Yard & Transit Company. Affidavit of Sheldon E. Holmes. Filed June 9, 1891, Henry Best, Clerk.

[fol. 1719] State of Illinois,
County of Cook, ss.

I, John E. Conroy, Clerk of the Circuit Court of Cook County, and the keeper of records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain affidavit of Sheldon E. Holmes filed in this office on the 9th day of June, A. D. 1891 in a certain cause lately pending in said Court, on the Chancery side thereof, between Philip D. Armour, et al., Complainant, and Union Stock Yards & Transit Co., Defendant.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 13th day of June 1938.

John E. Conroy, Clerk. (Seal.)

[fol. 1720] STATE OF ILLINOIS,
Cook County, ss.

IN THE CIRCUIT COURT OF COOK COUNTY

In Chancery

PHILIP D. ARMOUR, ET AL.

vs.

UNION STOCK YARD & TRANSIT COMPANY

In Chancery

SWIFT AND COMPANY

vs.

UNION STOCK YARD & TRANSIT COMPANY

In Chancery

NELSON MORRIS, ET AL.

vs.

UNION STOCK YARD & TRANSIT COMPANY

GEORGE ALEXANDER, being first duly sworn doth depose and says that he now is and for three years last past has been in the employ of the firm of Armour & Company, the complainants in one of the bills filed in this cause, as clerk of the transportation department of the business of said firm; that his office, in connection with said business, is located at the places of business of said Armour & Company lying immediately west of the Union Stock Yards in the City of Chicago; that in his employment aforesaid he has become familiar with the conduct of the said Armour & Company's business, so far as the same is affected by or relates to the transportation of dead freight to and from the various packing houses and slaughtering houses of said Armour & Company.

Deponent further says that in his employment aforesaid it is necessary for him to be out of his office nearly all the time and engaged upon and about the railroad tracks located in the neighborhood of and adjoining the premises of the complainants Armour & Company, as well as those

of the complainants in the other bills filed by Nelson Morris & Co. and Swift & Company.

[fol. 1721] Deponent further says that prior to his employment with the said Armour & Company he was for nine years train master of the Michigan Central Railroad in the City of Chicago, and that during his employment as such train master with said Michigan Central Railroad Company he was required frequently to be on and about the premises lying west of the Union Stock Yards, and on the premises of the Union Stock Yards, and that in his employment with the Michigan Central Railroad Company, as well as with Armour & Company he necessarily became thoroughly acquainted with the manner of transporting and shifting cars from place to place over main and side tracks wherever the same might be situated, and that he thereby ordained knowledge as to the capacity of railway tracks for transporting cars.

Deponent further says that he has examined the map which is called "Map of the Union Stock Yards in Chicago" and which is marked Exhibit A, which is herein referred to and hereby made a part of this; his affidavit, that he has examined the tracings on said map in blue and red colors showing the location of the various railway tracks, side tracks and switches upon the grounds occupied by the Union Stock Yard and Transit Company, and upon the grounds occupied by the packers whose premises are located west of the grounds of said Union Stock Yard and Transit Company and that said map correctly represents the location of said tracks, side tracks and [fol. 1722] switches.

Deponent further says that he has examined said map with reference to the location of the packing and slaughtering establishments of Armour & Company which are marked yellow on said map, those of Swift & Company which are marked green on said map, and those of Nelson Morris & Company which are marked pink on said map, and that said locations are correctly represented thereon.

Deponent further says that he has examined said map with reference to the location of the Central Stock Yards, and that the place marked on said map as the location thereof, is the place of location, and is a correct representation of the same, and that they lie immediately west

of and adjoining the packing and slaughtering establishments of Nelson Morris & Company.

Deponent further says that he has examined said map with reference to the location of the packing and slaughtering establishments of Armour & Company, Nelson Morris & Company and Swift & Company with reference to their proximity to the most westerly system of main tracks, shown on said plat marked red, belonging to the Union Stock Yard and Transit Company, extending from 47th Street on the south to nearly Transit Avenue extended, on the North; and that the relative position thereof is correctly shown thereon.

Deponent further says that all of the business which is conducted on said west main track between the points aforesaid, arises from the packing and slaughtering and [fol. 1723] kindred establishments which lie contiguous thereto and between Packers Avenue and Ashland Avenue, as shown on said map and that at least 95 per cent. of the cars which pass back and forth on said main track are engaged in the transportation of freight to and from the packing houses of said Armour & Company, Swift & Company and Nelson Morris & Company.

Deponent further says that said west main system of tracks above referred to consists of two double tracks the entire length, with such switches as are necessary to connect the same with the side track laid in and about the premises of said Armour & Company, Morris & Company and Swift & Company, and a few other small shippers; that said main track is not used for the purpose of switching cars or making up trains, but only for the purpose of hauling in or out cars, or trains of cars, as the same may be required, from the various establishments of said Swift & Company, Armour & Company and Nelson Morris & Company, and others; that said main tracks are not intended for any other purpose, and that it rarely occurs that the same are obstructed by reason of any delay in switching from said main tracks to said side tracks.

Deponent further says that prior to the fall of the year 1889 the said west main tracks extended only as far south as 45th Street; that in the fall of 1889 the same were extended southwardly to 47th Street, at which point a large

[fol. 1724] number of tracks were laid down by the defendant for the purpose of a switching yard, and that the same were thereupon connected with the system of tracks lying farther towards the east, and between said point and Halsted Street.

Deponent further says that prior to the extension of said west main track southwardly to 47th Street, all of the business in the way of the delivery of cars to and from the slaughtering and packing establishments of the complainants in said bill lying adjacent to said main tracks was carried on said west main tracks between 45th Street and their junction at the north with the east and west main track of the defendant company; and that prior to said extension, when cars came on to said west main tracks from the north, that is to say, from the main east and west tracks of the defendant company shown on the north part of said map, and were unloaded at the various places of business of said complainants, it was necessary, in order to dispose of the same, that they be taken back on the same track upon which they were brought upon said premises. That since the extension of said west main tracks southward to 47th Street, more than 50 per cent. of the business done on said west main tracks is done by way of said connection by 47th Street, and that by reason thereof the burden imposed upon said west main tracks at the northern end thereof, is relieved more than one half.

Deponent further says that if the same number of cars were now transported back and forth over the whole length [fol. 1725] of said west main track that were transported upon the northern end thereof before its connection aforesaid, the business which could and would be done thereby would be more than double the present business carried on upon said west main track.

Deponent further says that the track shown on said map as running east and west between Armour & Company's premises on the north and Moran & Healy's, John Morrell & Company's and Armour & Company's ware house on the south, and connecting with the said west main tracks at about 43rd Street, is a private track used only for the conducting of business arising from the premises immediately adjoining the same on the north and south, and is

not used for transporting cars in any other manner or for any purpose other than as last above stated.

Deponent further says that said last mentioned track is used for about three weeks in the winter time for transporting ice to the ice houses of Armour & Company, located directly to the north of said track, and that during said period of three weeks, daily from 80 to 100 cars of ice are transported over the same and over the north end of said west main tracks in addition to the ordinary business done on said west main tracks, and that during said period of three weeks whilst said cars are being transported over the north end of said west main tracks this deponent did not discover that said west main tracks was [fol. 1726] crowded or taxed beyond its capacity, or that any unusual delay occurred by reason of the transporting of said 80 or 100 cars of ice per day.

Deponent further says that prior to the fall of 1890 a large portion of the ice which Swift & Company required in their business was brought in the cars over the north end of said west main tracks, and therefrom said cars were switched to the side tracks of said Swift & Company, and that during the ice cutting season annually at least as many of 1800 cars of ice were so delivered to the ice houses of Swift & Company over the north end of said main track, and the empty cars returned over the same tracks, and that said cars of ice were delivered to Swift & Company in the manner aforesaid during the ice cutting season, and at about the same time that the cars of ice were delivered over said tracks to Armour & Company.

Deponent further says that the railroad tracks shown on Exchange Avenue extended westerly, which lie to the east of said west main tracks are not through tracks, and do not cross said west main tracks, and have no connection therewith, and that whatever freight originates on either side of said track lying on Exchange Avenue as aforesaid, and east of said west main tracks is carried eastwardly across Packers Avenue, and thence northwardly to the main east and west tracks of the defendant company, and that such freight is not carried over, nor does [fol. 1727] it cross the west main track of the defendant company aforesaid.

Deponent further says that in the fall of 1890 the complainants, Swift & Company, connected the tracks which had theretofore been laid and been in use by said Swift & Company on the western end of Exchange Avenue, and northwardly therefrom, with the main tracks of the defendant company lying further to the north thereof.

Deponent further says that by reason of the connection aforesaid all of the ice which is required in the business of said Swift & Company upon the premises located west of said west main tracks is now delivered to said Swift & Company over the connection thus made, and that the same is no longer brought over the north end of said west main tracks, as was the case prior to the making of said connections.

And deponent further says that at least 50 per cent. of the remainder of the railroad business required to be done for said Swift & Company on their premises last aforesaid, is now done over the connections thus made, instead of over the west main tracks of the defendant company aforesaid.

Deponent further says that he is familiar with the Central Stock Yards indicated on said map, and with the tracks connected with said Central Stock Yards, and that a train containing 35 cars of cattle can be accommodated at one time on the track connected with said Central Stock [fol. 1728] Yards, without extending onto the said west main track of the defendant company.

Deponent further says that at least 90 per cent of the cattle which are slaughtered by Armour & Company at their said slaughtering and packing establishments are purchased by Armour & Company in the yards of the defendant company, and that not more than 10 per cent of the cattle so slaughtered are purchased by said Armour & Company at points outside of Chicago and shipped to Chicago; that none of the cattle which would in the future be slaughtered by said Armour & Company would in the ordinary course of business be delivered at said Central Stock Yards, except those purchased by Armour & Company at points outside of Chicago; and deponent further says that he verily believes that not more than 10 per cent of all of the cattle which are slaughtered by Swift & Com-

pany at their establishments aforesaid are purchased by Swift & Company at points outside of the City of Chicago, and that the balance of the cattle and other animals slaughtered are purchased by said Swift & Company at the yards of the defendant company.

Deponent further says that all of the cattle which in the future are purchased by said Armour & Company and by said Swift & Company at the yards of the defendant company would in the ordinary course of business be [fol. 1729] driven over the viaducts to the places of slaughter of said companies, and would not be brought to the said Central Stock Yards by rail.

Deponent further says that the cars which would be used for the purpose of bringing live freight to the said Central Stock Yards would in so doing pass over the said west main tracks of the defendant company to the point thereon where the tracks of said Central Stock Yards connect with said west main track; that no delay would necessarily be caused in transporting said cars over said line onto the side tracks connecting with said Central Stock Yards, for the reason that said side tracks and tracks connected with said Central Stock Yards are in themselves ample and sufficient to contain all of the cars which would be brought to said yards at any one time for unloading; that immediately upon unloading the same they could and would be pulled out upon said west main track both north and south, and taken away without any interference with the business of hauling dead freight over said tracks.

Deponent further says that he verily believes that said west main tracks would at the present time accommodate at least double the business which is now done over the same.

Deponent further says that from his knowledge of railroad business he is of the opinion that the delivery to the Central Stock Yards of such stock as is bought by the [fol. 1730] complainants in said three cases at points outside of the City of Chicago over the tracks of the defendant company would not result in overcrowding of any of the said track of the defendant company, or producing any stoppage or serious delay to the business now done upon said tracks.

(Signed) George Alexander, June 9th, 1891.

Subscribed and Sworn to before me this 2nd day of June A. D. 1891.

Smith Collins, Notary Public. (Notarial Seal.)

[fol. 1731] [Endorsed:] 4419—90860. Circuit Court of Cook County. Philip D. Armour, et al., vs. Union Stock Yard & Transit Company. Swift and Company vs. Union Stock Yard & Transit Company. Nelson Morris, et al., vs. Union Stock Yard & Transit Company. Affidavit of George Alexander. Filed June 9, 1891, Henry Best, Clerk.

[fol. 1732] STATE OF ILLINOIS,
County of Cook, ss.

I, JOHN E. CONROY, Clerk of the Circuit Court of Cook County, and the keeper of records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain affidavit of George Alexander filed in this office on the 9th day of June A. D. 1891 in a certain cause lately pending in said Court, on the Chancery side thereof, between Philip D. Armour, et al., Complainant, and Union Stock Yard and Transit Co., Defendant.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 13th day of June 1938.

John E. Conroy, Clerk. (Seal.)

[fol. 1733] GOVERNMENT CONTROL OF THE MEAT-PACKING INDUSTRY

Hearings Before the Committee on Agriculture and Forestry, United States Senate, Sixty-Fifth Congress, Third Session, on S. 5305

A Bill To Stimulate the Production, Sale, and Distribution of Live Stock and Live-Stock Products, and for Other Purposes

Part 2

Printed for the use of the Committee on Agriculture and Forestry

Washington

Government Printing Office
1919

[fol. 1734] Excerpts From the Statement of Louis F. Swift, President, Swift & Company

Thursday, January 29, 1919

[fol. 1735] Mr. Heney: Were you promised any stock or bonds in the Chicago Stock Yards Co. of Maine by Mr. Prince or Mr. Warren?

Mr. Swift: Was I promised any?

Mr. Heney: Yes.

Mr. Swift: You know about these bonds or cash or something, the arrangement that Swift & Co. and the other packers made, when they were paid $3,000.00 of bonds?

Mr. Heney: Yes; that was in 1891, and they were payable by July 1, 1907.

Mr. Swift: Yes.

Mr. Heney: And they were paid off then. That is a matter of record.

Mr. Swift: That is a matter of record; yes.

Mr. Heney: They were paid off by new negotiable funds being issued to take the place of a portion of them; the rest had to be paid in cash; that is right, is it not, Mr. Swift?

Mr. Swift: Whatever the facts are; yes, sir.

Mr. Heney: That is my recollection of it.

Mr. Swift: That is the only circumstance that I know anything about.

Mr. Heney: When that was up, Swift & Co. had a representative, Swift & Co. and Armour & Co. each had a representative meet with the representative of the New Jersey company, and negotiated for several years down to 1910, from July, 1907, over what kind of an arrangement would be made, as a new inducement to Armour and Swift and Morris to remain at Chicago; is not that correct?

Mr. Swift: That may have been, but nothing ever came of it, so far as I knew.

Mr. Heney: I will come to that. Is it not correct that they did negotiate for several years, and that they finally agreed that they would take the Felzer case to the Supreme [fol. 1736] Court of the United States to determine whether a bonus could be given, the attorneys for the New Jersey company opposing the giving or holding back on the proposition that the Supreme Court would hold that it was a rebate.

Mr. Swift: We asked for a continuation of that.

Mr. Heney: Of that—arrangement?

Mr. Swift: Arrangement.

Mr. Heney: And how much were you getting a year out of that arrangement?

Mr. Swift: The evidence shows, I think, that out of that $3,000,000 we got about 30 per cent—perhaps $1,000,000, or close to it. That would cover a period of 15 years. That would be $60,000 a year.

Mr. Heney: With interest. There was interest at 5 per cent running on the entire $3,000,000.

Mr. Swift: That would be the same thing; if they paid $60,000 every year, it would be adding interest as you come along.

Mr. Heney: Was it not paid in that way?

Mr. Swift: I do not know how it was paid.

Mr. Heney: Then, you wanted the arrangement made by which you would get either $60,000 a year cash or its equivalent?

Mr. Swift: We tried to get something of that kind.

Mr. Heney: You negotiated for three years on that, and Armour, Swift, and Morris, and the New Jersey company agreed on the Felzer case, did they not?

Mr. Swift: Not that I know of. I am not familiar with that detail. That is a lawyer's matter, and I could not say that they did, but if it is in the evidence—if we did, we did; and if we did not, we did not. I would like to have you know all I know about it, Mr. Heney.

Mr. Heney: That was a matter that you folks were very insistent and pressing on, of getting that, was it not? [fol. 1737] Mr. Swift: I know that we wanted this arrangement to continue, and they would not do anything about continuing it, and they said something about the Felzer Case, or something. I think that had something to do with it.

Mr. Heney: And that the New Jersey company was going to await that decision before going ahead and doing what you folks were asking for.

Mr. Swift: They would not do anything for us, and they claimed that they wanted to wait about that decision, or something.

Mr. Heney: All right. Did not Mr. Prince tell you when that decision was pending that he had arranged a new scheme by which he was going to organize a holding company; that is, would acquire the common stock of the New Jersey company, and that they would give you stock in this company that would produce dividends about to the amount you were insisting upon having?

Mr. Swift: Mr. Prince did not take me into his confidence to that extent, Mr. Heney.

Mr. Heney: Never told you at any time that he would give you anything by way of a subsidiary from the New Jersey corporation or from the Maine corporation, or any other way; is that what you want to be understood as saying?

Mr. Swift: He did not give me any details about a stock or about stock in a stock company. Those names or facts were not mentioned. He told me if I would keep still and not press the matter—not move our plant or not threaten to move it, keep still, I might get something after awhile. But I never got anything.

Mr. Heney: That you might get something——

Senator Moses (interposing): Was $3,000,000 bonds issued in the first instance without any consideration?

Mr. Heney: The consideration was that they would stay there 15 years.

[fol. 1738] Mr. Swift: We signed a contract to support the Chicago stockyards, to purchase all of our cattle in Chicago at the stockyards; or if we did not purchase them there, if we did come in from the country, we were going to pay yardage just the same.

Mr. Heney: The question involved was whether you were going to leave the stockyards or not was it?

Mr. Swift: Yes, sir.

Senator Norris: The packers were threatening to leave Chicago, and this was a proposition to keep them there, was it not?

Mr. Swift: Yes, sir. The packers were in this position, that the stockyards in Chicago are pretty close to the center of the city—within the city limits—and they are more or less handicapped by being cramped and by being near the city; and I am sorry, as far as I am concerned, that we made this arrangement to stay there. I am sorry we did not move at the time we considered it.

Mr. Heney: Did the fact that you did not get anything at the final wind-up, and Armour got it all, have anything to do with that dissatisfaction? You were promised something and you did not get it, and Armour did, did he not?

Mr. Swift: That is right. At the same time we were promised something before and we did get it. I am sorry we took it. I had rather not have had it. I would rather have moved; we would have been better off to-day; it would be best, a much better proposition.

Mr. Heney: For the first 15 years you got your share of the subsidy for staying in Chicago?

Mr. Swift: Yes.

Mr. Heney: Then your understanding was with Prince that if you did not agitate the question, that when this other arrangement was carried out it would be arranged so you would still continue to get this subsidy that you did not get?

[fol. 1739] Mr. Swift: Senator, that was not the under-

standing. I tried to get an additional subsidy, and could not get it. That is all there is to it, and he kept telling me to keep still.

Senator Moses: This whole transaction was about the same that ordinarily takes place every time they locate a shoe factory in a town?

Mr. Swift: That is about the same thing.

Senator Moses: When they want to locate a shoe factory in a town in New England they give them exemption from taxes, and other things, which is simply that transaction on a larger scale in Chicago.

Mr. Swift: That is about the same thing, or it is the same thing as if we would go to such cities now. We have got offers before from certain people in certain cities that they would give us a bonus of a few thousand dollars or a land site if we would go and establish a packing house; it is an inducement to come and establish an industry in their town.

Mr. Heney: No, it is not; as I would say, as if Douglas or Emerson, if one or two of the other big ones at Brockton would say now to the trustees of the city of Brockton, "Unless you give us a mortgage on the town and agree to pay us half the taxes collected, we will get out of here and kill your town." Senator, would not that be a closer analogy?

Senator Moses: I am just trying to find out.

Mr. Heney: I am telling you what the facts were out there. They were already located. They had been located for years, these stockyards had grown up, belonging to some other company which had just organized, and these people held up the new corporation and made them come through with $3,000,000 on a threat to get out; is not that not a fact, Mr. Swift?

[fol. 1740] Mr. Swift: I would not exactly put it in that language.

Mr. Heney: I do not suppose you would. But you were threatening to get out unless they gave it to you, were you not?

Mr. Swift: Not exactly that way. We explained to them that it was through our support of the market that the stockyards was a profitable scheme; that if we continued

to support the market we would like to participate. We told them we were offered very great inducements to go to Stickney and to go to Gary, Ind.; in fact, we had land bought down there, and we were figuring on moving; and in the absence of our moving, they made an arrangement with us not to move for 15 years.

Mr. Heney: And if Emerson and Douglas said, "We are paying a large proportion of the taxes at Brockton, and we are going to get out unless the town releases us from that taxation, our share, by paying it to us as a subsidy," you would have the same situation, would you not, in principle?

Mr. Swift: If it were, and those factories had in view the moving of their plants to another advantageous location, and instead of their moving they were offered an inducement by the municipality to stay, that would be a similar thing.

Mr. Heney: Was this point af Gary, Ind., a more economic place in which to operate?

Mr. Swift: Yes, sir; that is where the Chicago stockyards ought to be; it is a serious mistake——

Mr. Heney (interposing): So that by staying there and taking the $3,000,000 the five big packers have taken a large amount of money out of the consumers and out of the producers of this country, have they?

Mr. Swift: No; I would not say that.

Mr. Heney: Well, you do not think, then, it is much more economic over at Gary, Ind., do you?

Mr. Swift: It would be better to be down in Indiana. As to how long it would take for those advantages to make up for the losses in wrecking these buildings already [fol. 1741] built is problematical.

Mr. Heney: And the longer you stay in Chicago, the bigger the problem will be?

Mr. Swift: The longer we stay in Chicago, the deeper we are in the proposition.

Mr. Heney: And the worse off?

Mr. Swift: I would not say that, Mr. Heney. I do not know that the public are getting the worse off by it.

Mr. Heney: If it is more economical to operate in Indiana, the public gets the advantage of all economies

of the five big packers—that is the contention you make now; that the five big packers are economizing to such an extent now that the public is getting its meat cheaper than it would otherwise get it?

Mr. Swift: Yes, sir; but whether the advantages in moving are going to make up for the disadvantages in leaving what we have got, that is a question; that is the only thing that we are hesitating about.

Mr. Heney: You do not have to stop in order to leave entirely, do you—stop entirely? Could you not start a plant over there and gradually increase it and gradually decrease this one at Chicago?

Mr. Swift: Mr. Heney, if you move, you move. Whether you do it gradually or all once, what is the difference—you know the loss.

Mr. Heney: Some great statesman said that the way to resume specie payments was to resume specie payments. I suppose that is so, but there are other ways of killing a cat besides drowning it?

Mr. Swift: There is no way of moving the plant except by dismantling it and taking a lot of money to build new ones.

Mr. Heney: Armour is putting a new plant up at St. Paul, and he has not abandoned Chicago.

[fol. 1742] Mr. Swift: Well, but he did not have an old plant in the neighborhood that he had to wreck first.

Mr. Heney: You do not have to wreck it first.

Mr. Swift: Armour is going to run his Chicago plant and he is going to run his St. Louis plant—that will make two plants running. When the packers move from the Chicago stockyards they would have to close down the stockyards there and have a new one, and that would make only one running.

Mr. Heney: What is the inducement offered to go to Gary, Ind.?

Mr. Swift: That was a question of being on the Lake there, having water privileges, dock privileges, sewer privileges—we would get rid of our sewage to better advantage, and we would get clean water to run the plant with, and it being a railroad terminal we would get our cattle, etc.

Mr. Heney: By the way, what is the name of that creek out there in Chicago, at the packing plants—what do they call it?

Mr. Swift: Bubbly Creek.

Mr. Heney: Did not the packers oppose permitting that creek being connected with the sanitary canal, or whatever they call it, that takes the sewage out?

Mr. Swift: I do not think so; not at all. The packers are working out a problem for the Chicago sewage jointly with the city.

Mr. Heney: Are being forced to do that right now, are they not?

Mr. Swift: I would not say that they are being forced into it; they are doing it from a matter of public policy.

Mr. Heney: At the time you demanded the $3,000,000 from the New Jersey company, was that because you wanted to get better service in the Chicago stockyards than you are getting?

Mr. Swift: I do not know that that had any bearing.

Mr. Heney: Do you not think that if you took away $3,000,000 for 15 years of their earnings, you would put them in a better position to give you improved service, [fol. 1743] decreased yardage, and decreased charges, or all?

Mr. Swift: That did not have any bearing.

Mr. Heney: Those $3,000,000 that they gave the three big packers with interest on it, and at least a million and a half more given to small packers, as Mr. Levy, by the way, told me as he was leaving here the other day, he jumped in and made them give the small packers, out of which he got a nice little slice.

Mr. Swift: Mr. Heney, there is one case where the small packers got equal advantage with the large ones.

Mr. Heney: They did not all get in.

Mr. Swift: The ones that did.

Mr. Heney: The ones that did not get that were in a much worse position, were they not? Do you think that if the stockyards company had all this money to pay out did not hamper it any in giving improved service during those 15 years; is that correct—that it could not give them any better service if it had that income to dispose of as it pleased?

Mr. Swift: I do not say that. I think that the service of the Chicago Stock Yards is gradually improving, barring the present war times, when they have had trouble in getting help.

Mr. Heney: Did Swift & Co. and Armour and Morris & Co. secure representation on the board of directors of the operating companies of the New Jersey company and upon the New Jersey company board of directors itself as a result of that arrangement by which they got the $3,000,000 of bonds back in 1891?

Mr. Swift: There is nothing in that connection that I know of about Swift & Co., except that Mr. A. H. V. Veeder, the father of this Mr. Veeder, was on the board of directors of the stockyards company for a few years. But I do not [fol. 1744] know the exact date—but I think it was previous to any of this—and I think Mr. Veeder might have the exact date, but I have not got it.

Mr. Heney: We do not care for it. Was any representative in the operating company at the stockyards, the Transit Co., board of directors in the past three years?

Mr. Swift: No, sir; Swift & Co., have no representative of that kind and never did have.

Mr. Heney: The Junction Railroad?

Mr. Swift: No, sir, they have not and they did not have, with the exception of what I said about Mr. Veeder, and that must have been 20 years ago.

Mr. Heney: Now, let us go back to Mr. Prince; I am not entirely satisfied on that. You say he said to keep quite and you might get something?

Mr. Swift: He said if I did not keep quiet I would not get anything. So I just kept quiet and did not get anything, either.

Mr. Heney: If that is so, when did he say that to you—not that I want to question you, [illegible]racity, but are you not stating some conclusions now rather than what he said to you? You then had the Felzer case pending, and it had been taken up by agreement of all the parties, including

the representatives of the New Jersey company, and Prince was not the whole thing in the New Jersey company at that time; this was before he had the absolute control, and as a matter of fact, Thayer was the president of the company, was he not?

[fol. 1745] Mr. Swift: I do not know, Mr. Heney.

Mr. Heney: You do not know who was president of the New Jersey company at that time?

Mr. Swift: I do not, and I do not know who is now.

Mr. Heney: And you do not know who the attorney was for the company who represented the English holders?

Mr. Swift: I do not.

Mr. Heney: I can not recall his name now; he is the author of a book on constitutional law.

Mr. Swift: Then we are both alike——

Mr. Heney: Except that I do know who he is; I know very well who he is.

Mr. Swift: I never pay any attention to that.

Mr. Heney: But you- representatives had agreed with Arthour and Morris and the representative of the New Jersey company that the Felzer case was to be taken up there; and Prince, I repeat, was not in control of the New Jersey company at that time, as shown by the records, and shown by the evidence. Now, then if Mr. Prince said to you that you would not get anything you would have considered that that was acting in bad faith, in consideration of that undertaking by which the Felzer case was to determine it, would you not?

Mr. Swift: I do not recall the details or the circumstances about it, Mr. Heney, the Felzer case or what bearing it had. That is something I did not keep track of.

Mr. Heney: Now, Mr. Wadden, the treasurer of the company, told me in Boston that down to the last minute of this correspondence which I am going to ask you about in a moment, he promised you—he acting for Mr. Prince—that you were to receive your share, and Morris his share, and that you were thrown down, that they did not carry out that promise when Mr. Prince got back from Europe: Is that true or false?

[fol. 1746] Mr. Swift: I presume it is true; I think Mr. Wadden is a truthful man.

Mr. Heney: Have you no recollection of it?

Mr. Swift: Now, I do not know that I would know him by sight. I am not positive that I ever met him, Mr. Heney. I may have been introduced to him. I may have met him once, but not over once, and I doubt if I did then, and I would not know him if he walked into this room this minute.

Mr. Heney: Do you recollect that conversation?

Mr. Swift: I do not recollect any conversation with him, and I do not know what kind of looking man he is. I do not recollect ever having met him.

Mr. Heney: Do you not recollect meeting him in New York City, and of writing your brother Edward F. Swift from the Holland House in New York, on Holland House paper, as follows:

Holland House, New York.

E. F. S.

Did not get anything from Wadden as he has not the 18 shares, but thinks will get in week——

Mr. Swift: Just one minute, Mr. Heney.

Mr. Heney: I will hand you this as soon as I read it so that you may have it before you (reading):

Says Spoon called meeting N. Y. Dec. 4 and he Wadden will be Chi. Dec. 5—with goods if he can get 18 shares.

Had a wire from Kroll of A. & Co.; hurry him up—will tell you a lot more he said.

L. F. S.

Did you not write that letter and does not that refresh your memory?

Mr. Swift: I think I wrote that letter, and I think I spoke with Wadden on the phone; I do not think I saw him. As I understand it, I was to buy 18 shares of stock for him of a man in Illinois—from Mr. Tilden. I think there were 18 shares of stock that he wanted that I was trying [fol. 1747] to get in for him, and that is what I understand that means.

Mr. Heney: Yes; and until they got the 18 shares in they were not going to divide up the spoils, because they were afraid of a lawsuit that might overturn the whole thing of their taking $3,000,000 surplus out of the treasury of these three corporations and passing it over to them-

selves, and that stock of Tilden's was put in then at $300 a share where they had been buying the other stock at $160. Do you recall that?

Mr. Swift: I do not recall it; that might be correct. But, Mr. Heney, this letter is not dated; might not this have referred to the other transaction?

Mr. Heney: Here you said you had Croll to wire them and here is Croll's letter.

Mr. Swift: No; this said I had a wire from Croll.

Mr. Heney: All right; let us see what it says. This says, "Had a wire from Croll of A. & Company; hurry him up." You said to Edward "hurry him up." Well, he did go on and hurry Croll up, and Croll wrote to Mr. Wadden, and here is what he wrote:

January 5, 1914.

Dear Mr. Croll:-I inclose herewith statements of "Trust account A" up to January 5, together with a check for $7,871.28 to balance same.

That was the dividend to Armour on his stock.

I also inclose a check for $25, being the dividend of 2½ per cent on the 10 shares of Chicago Stock Yards Co. stock which we have not as yet delivered to you.

Mr. Palmer will return to Boston this week and I will again take up that matter with him and have it straightened out. The more I think of it the more I am sure we are right in having it done the other way. I wrote to the other Chicago people and I believe they are satisfied to delay.

With best wishes for the new year, I am,

Very truly yours, ——— ———.

[fol. 1748] Now, the other Chicago people were Swift and Morris, were they not, particularly Swift?

Mr. Swift: Who signed this, Mr. Heney?

Mr. Heney: That is from Wadden.

Mr. Swift: I do not know this Mr. Palmer, and I do not know anything about anything in this letter.

Mr. Heney: Mr. Palmer is the attorney for Prince and also the main company—Bradley Balmor. He is also attorney for the Capital Issues Committee over here.

Senator Moses: Is he the partner of Walker Storey?

Mr. Heney: Yes; a partner of Storey; that is the Palmer.

Here is another letter:

Chicago, February 10, 1914.

Mr. W. M. Wadden,
28 State Street, Boston, Mass.

My Dear Mr. Wadden: We are very anxious to hear from you as to what progress you are making in the matter that we are jointly interested in. It should be cleaned up as soon as possible and, while we know that you are doing the best you can, we are of the opinion that the other parties are somewhat anxious about it.

Kindly write me on receipt of this under personal cover.

Very sincerely yours, F. W. Croll.

Senator Norris: Who wrote that?

Mr. Heney: This was written by F. W. Croll, the treasurer of Armour & Co.

You told your brother Edward there to hurry up Croll, and Croll is hurrying up Wadden. What is it all about?

Mr. Swift: Of course that letter is not dated. I do not know where that comes into the transaction. I do not know anything about these other two letters; I do not know what they refer to.

Mr. Heney: Let us confine ourselves to this one then. What was it that you were going to tell him a lot more about, that Wadden had told you, that you did not care [fol. 1749] to put on paper there?

Mr. Swift: I do not recall, but I presume it was that Mr. Wadden was trying to tell me he would get some further consideration from the Stockyards Co. I presume that is it.

Mr. Heney: Did he not tell you at that time, Mr. Swift, just what it was you were to get? And was not this it, that there was $2,085,000 of bonds of that Maine Company that were going to be divided between you and Morris in the proportions in which you had been receiving with Armour under this other arrangement?

Mr. Swift: No, sir; I do not know anything about those details. Do you mean $2,000,000 between the three, or just $2,000,000 for the two?

Mr. Heney: The two.

Mr. Swift: I do not know anything about that. The figures are not familiar to me, and I do not think I ever heard them before.

Mr. Heney: What would you have had to receive if those bonds were paying 5 per cent? That would be $100,000 a year. Now, you were expecting to get $60,000, in the proportion, as against Morris, of about 36 to 15, is it not—2 to 1?

Mr. Swift: In the proportion of the volume of business we did.

Mr. Heney: Yes; in the proportion in which you got that $3,000,000.

Mr. Swift: I do not know anything about that.

Mr. Heney: Then, if you got $2,085,000 of bonds which bore 5 per cent, which it $100,000, and you got your two-thirds of that, which it would amount to, you would be getting your $66,000, just about what the arrangement was before? Was not that what Wadden told you was to take place?

[fol. 1750] Mr. Swift: No, sir; I do not know that much about the details of how he was figuring it out. All I do know is that we did not get anything.

Mr. Heney: Did he tell you at that interview, that is referred to in this letter, that you would get the equivalent in some way, of what you had been getting under the prior arrangement.

Mr. Swift: He did not say that, but that is what I claimed we were entitled to.

Mr. Heney: Is not that what you expected, from your talk with him?

Mr. Swift: That is what we claimed, but, as I say, we never got together; there never was an arrangement.

Mr. Heney: When you had this talk with Mr. Wadden you understood the thing was going to be carried out, did you not?

Mr. Swift: I thought Swift & Co. was going to get some consideration; yes, sir.

Mr. Heney: And you thought the consideration you were going to get would be the equivalent of what you had been getting under the old arrangement?

Mr. Swift: I was in hope so.

Mr. Heney: Did he not give you to understand at that time that it would be?

Mr. Swift: He would not talk details with me.

Mr. Heney: But he tells me he did.

Mr. Swift: Well, perhaps his memory is better than mine.

Mr. Heney: If he says so you would not dispute it?

Mr. Swift: If he had those details in his mind, he might have had the impression that he spoke to me about them; at the same time, he may not. I do not recall his given me any details. But I do not see that it is important, Mr. Heney. We were trying to get this consideration if we could get it.

[fol. 1751] Mr. Heney: And you at that time understood that you were going to get it when you wrote that letter, did you not? Does not the tone of that indicate it to you, that you were satisfied with your talk with Wadden?

Mr. Swift: I was in hope we would get it, but I had felt the same way a good many time before. It was a matter of dragging this thing along——

Mr. Heney: Now, Mr. Swift, I have not asked you if you hoped you would get it; I asked you if you were not satisfied at the time you wrote that letter that you were going to get it as soon as the 18 shares were in?

Mr. Swift: No, sir; I was never satisfied; I was always more or less dubious about it.

Mr. Heney: Then you did not have much regard for Mr. Prince's word, did you?

Mr. Swift. Well, you know nobody's word is equivalent to—they say a bird in the hand is worth two in the bush.

Mr. Heney: I do not know about that. I know they say of some men that their word is as good as their bond. You do not consider Mr. Prince's word as good as his bond?

Mr. Swift: I could not say that; I can not cast any reflections on Mr. Prince.

Mr. Heney: Had you found Mr. Prince tricky in any way before that?

Mr. Swift: I cannot say anything detrimental to Mr. Prince's character, Mr. Heney. That would not be right, and you would not expect me to do that.

Mr. Heney: I expect you to tell me whether or not you expected to get that, and whether or not Mr. Prince gave you to understand you would get it.

Mr. Swift: I have told you several times that it was our expectation to get it. I would like to add to that that we did not get it.

Mr. Heney: Now, just one other thing, then. Is there [fol. 1752] any promise of any kind existing at present that you will get anything from any source?

Mr. Swift: No, sir; there is not, unless it should be connected back with previous promises.

Mr. Heney: Now, what was the final excuse that was given to you for their not coming through?

Mr. Swift: Oh, I do not know; they had lots of excuses.

Mr. Heney: Who gave you the excuses?

Mr. Swift: Why, it came from Mr. Prince and Mr. Wadden, that there was delay in the matter. Mr. Prince was away the biggest part of the time, and then Mr. Wadden would be away, and different things of that kind would happen.

Mr. Heney: Shortly after January, 1914. Mr. Wadden resigned as treasurer, and Mr. Prince came back from Europe and was out to Chicago more or less. How did it finally end? What was finally said? You did not give that up without a struggle, did you?

Mr. Swift: I never had very many meetings with Mr. Prince, Mr. Heney. I do not remember of over one or two meetings with him, and I have not seen the gentleman, I do not think, for three or four years.

Mr. Heney: No; this happened three or four years ago—1914; five years. Now, the last time you had a talk with Mr. Prince on the subject, what did he say?

Mr. Swift: Well, he intimated that he was going on with the transaction.

Mr. Heney: What was it he said that gave you the information?

Mr. Swift: I could not say, Mr. Heney. Do you know Mr. Prince?

Mr. Heney: Yes.

Mr. Swift: Of course he talks very fast and says a lot of things, and I could not enumerate what they were.

[fol. 1753]. Mr. Heney: Did he tell you at anytime that Armour had an interest?

Mr. Swift: No, sir.

Mr. Heney: Did you learn that at any time before these public hearings of the Federal Trade Commission?

Mr. Swift: All the knowledge I have got of the subject I have picked up at these hearings.

Mr. Heney: You did not attend the Borland hearings before the committee, did you?

Mr. Swift: No, sir.

Mr. Heney: Did you read in the papers that Arthur Meeker testified there that neither Armour & Co. nor Armour owned any interest in the Chicago stockyards?

Mr. Swift: I have heard that statement.

Mr. Heney: Did you see any of the letters that were sent out by Moseley & Co., in which he tried to get the common stockholders, a minority of common stockholders, to sign and assent that they would take a 9 per cent guaranty, and everything above that could go to the Maine company, and that the packers were to own the Maine company—putting it in the plural?

Mr. Swift: I did not see any of those letters, and I did not know anything about them at that time. I asked for one yesterday; I wanted to see one of them.

Mr. Heney: Did you get it?

Mr. Swift: No, sir.

Mr. Heney: Here are some here.

Mr. Swift: That is the first I have heard of it.

Mr. Heney: Oh, there was a large number of these sent out to stockholders, Mr. Swift, which you are welcome to see. Here is one dated August 15, 1911; that was to W. H. Latham. There are several to bankers.

[fol. 1754] Mr. Swift: That is the first I knew of it.

Mr. Heney: Here is one which I will read:

August 18, 1911.

W. B. Hale, Esq.,
Care of McMillan & Hale, Rondout, N. Y.

Dear Sir: Your letter to the Old Colony Trust Co. in regard to the Chicago Junction Railways & Union Stock Yards Co. has been referred to us, as we are acting in this matter for them.

This Maine corporation which is to guarantee the stock will be controlled by the packers, who now furnish 75 per cent of the business of the stockyards and have always demanded something in return for it. This something has been given in the past in large blocks, in either bonds or cash, periodically. Up to date something like $6,000,000 has been given to them as an inducement for them to remain in Chicago. In giving them the control, in our opinion, it will insure the permanency of the packers in Chicago, in any event, for a much longer time than they would ordinarily find it for their best interest to stay.

The company has earned about 10 per cent for the last four or five years and distributed 8 per cent. In this way you can take the 9 per cent or the 10 per cent if you so elect to take the bonds, which is in all probability more than the company could afford to give you on account of the demands made by the packers for their share of the profits.

About 45,000 to 50,000 shares of stock have assented to the plan, but the interests controlling the Maine Corporation insist that they obtain all the common stock, 65,000 shares. Of course, there may be some shares stay out, but exactly how much they will allow to stay out and declare the plan in operation we do not know.

We understand that a minority stockholder, while he would have the same dividend paid to him that was paid to the stock controlled by the Maine corporation, yet it would be perfectly possible for the packers to reduce the yard charges so that the earnings of the stockyards company would be much reduced.

That is a covert threat to induce the minority stockholders to let go. (Reading:)

We simply state this to show that it is safer to come along with the plan which has had the careful consideration of all the directors of the company, and who have no interest whatever in the Maine corporation.

Very truly yours, ——— ———.

Now, Mr. Swift, I do not know whether you heard my statement the other day, but here was the plan they had: There was over $3,000,000 of surplus in the treasury of the Junction Railway, the Transit Co., and the New Jersey company. Prince planned for him and Armour to put $2,040,000 into the purchase of common stock of the New

[fol. 1755] Jersey company, which, together with what Prince then had, would give them the majority. Then they would put this plan to the minority stockholders—the 49 per cent—by which they would assent to a guaranty of 9 per cent—and the company had been earning about 12 per cent—a guaranty of 9 per cent made by the Maine company, which would have no assets, except $1,000,000 which was put in and taken out, $400,000 two days later, $100,000 a week or so later, and another $100,000 three weeks later, and loaned back to themselves. The Maine company would guarantee it and exchange its bonds, bearing 5 per cent, at the rate of $200 for $100 of this common stock. The minority stockholders had to agree that everything over $9 per cent would go to the Maine company, the guarantor.

Now, Prince had a plan that he would exchange his stock and Armour's stock for bonds, and he did do that to the extent of $2,085,000 of bonds, and then sold those bonds to the two underlying companies and the New Jersey company, getting cash for them, from $89 to $94, making a total of $1,800,000. That left them with the majority of the stock still in their hands, because they were turning in at the rate of two to one for the bonds.

Now, they pay $160, and they sell the bonds for an average of $91, so they get all their money back from the sale of the bonds to the underlying companies. Then they had the underlying companies make a bond dividend and pass them along to the Maine company, it getting everything over the 9 per cent. Then they had an extra dividend of 3 per cent and passed along some more cash, and, of course, it would pass right through to the Maine company, and from the Maine company it went to Prince and Armour, because they owned all the stock. Armour put $194,000 into the Maine company, and borrower $100,000 back, and Prince [fol. 1756] put in the other $800,000, and borrowed it back within three weeks, and they put their notes into the company. They increased the $1,000,000 of stock to $8,000,000 without any consideration, except the false one that is recited, so that Armour's stock is now $1,500,000 and odd, and he has received dividends on it of over $300,000, and it only cost him $194,000 in the beginning.

So they have got back all the money they have put in, and Armour's share of it makes him a profit of about $2,000,000.

Mr. Swift: I do not know anything about it.

Senator Norris: Mr. Swift, you regard this Chicago incident now as closed? Have you any prospect or hope that you are going to get your share out of this transaction in which you said you hoped to get your share?

Mr. Swift: I do not know what to say to that, Senator Norris.

Senator Moses: Hope springs eternal in the human breast, Senator.

Senator Norris: For 15 years you had been getting your share of the interest on the $3,000,000. Now, when this operation with Mr. Prince commenced, you expected to have that, or its equivalent, continued if you remained in Chicago, did you not?

Mr. Swift: I was in hopes to.

Senator Norris: And you have not gotten that; you have not gotten anything out of that?

Mr. Swift: No, sir.

Senator Norris: What I am trying to get at is this: As to this bonus that it seemed Armour continued to get, do you expect to get a bonus somewhere?

Mr. Swift: There is no promise to that effect.

Senator Norris: I understand. You have not gotten it yet. But do you feel that Prince and Armour treated you squarely in that deal? You understand that Armour got his share?

[fol. 1757] Mr. Swift: Yes, sir.

Senator Norris: And he remained in Chicago, and you remained, just the same, and did not get anything. What I am trying to get at now is this: Is there some place where you expect to get it yet?

Mr. Swift: Why, I do not know of any place.

Senator Norris: Have you ever talked it over with Mr. Armour?

Mr. Swift: No, sir.

Senator Norris: Did you think Mr. Armour was treating you squarely in that deal?

Mr. Swift: It does not look very square.

Senator Norris: Did Mr. Morris get his share?

Mr. Swift: I do not know anything about that; not that I know of.

Senator Norris: You were all in, and expected to get the equivalent of what you had been getting for 15 years in the way of a bonus?

Mr. Swift: I can not answer about Morris, Senator.

Senator Norris: You understand Armour got his share?

Mr. Swift: Yes, sir; from the evidence here.

Senator Norris: From his own testimony.

Mr. Swift: Yes, sir.

Senator Norris: Have you ever told any of the parties interested in it that you had not been treated right and you expected your share of that bonus?

Mr. Swift: I have not made any such statement.

Senator Norris: You have not made a demand on anybody?

Mr. Swift: No, sir; I have not made any demand.

Senator Norris: Do you think there is any prospects of your getting it from any source?

Mr. Swift: I could not say, Senator Norris. I have no thoughts in the matter; it is a blank in my mind.

Mr. Heney: You would not refuse it, I suppose, Mr. Swift?

[fol. 1758] Mr. Swift: If it was legal and could be done clean and above board, I might not refuse it. If it had to be done under cover, I might.

Senator Norris: Do you know any way in which it could be done above board?

Mr. Swift: I can only repeat, if a way was in existence that it could be done legally and above board, I might participate. If it has to be done illegally and not above board, I would refuse to participate.

Senator Norris: At least, Armour did not get his above board, did he?

Mr. Swift: I can not comment, Senator. The evidence is all here, and one would have to be his own judge.

Senator Norris: You need not express your opinion unless you want to.

Mr. Swift: I do not want to say anything against Mr. Armour or Mr. Prince or anybody else. I want to keep my own counsel.

[fol. 1759] FOOD INVESTIGATION

Report of the Federal Trade Commission on the Meat-Packing Industry

Part III

Methods of the Five Packers in Controlling the Meat-Packing Industry

(Excerpts from Chapter I, Sections 6 to 13, pages 21 to 85.)

June 28, 1919

Washington

Government Printing Office

1919

[fol. 1760] Control of Principal Yards by Big Five

Section 6.—Companies controlled by Big Five.

The big packers are financially interested in most of the important stockyards companies of the country. Their holdings are increasing rapidly; they have acquired several new companies during the past few years.

Concealed Ownership.—The Commission had difficulty in ascertaining the exact ownership and control of the big packers in various stockyards. In many cases such ownership was concealed in the names of employees or business associates, and in the case of the Chicago Stock Yards Co. the concealment was through the "bearer warrants." The following communications are typical of a great number received by the Commission in its inquiry in reference to big packer ownership of the stock in various stockyards.

Eugene V. R. Thayer, 57 Broadway, New York,
January 21, 1918.

L. L. Bracken, Esq., Secretary,
Federal Trade Commission, Washington, D. C.

Dear Sir: I am in receipt of your favor of January 12, and in reply I beg to say that I am the sole owner of the 100 shares Kansas City Stock Yards Company of Maine preferred stock referred to. Of the 6,191 shares common

stock registered in my name 14 shares are owned by me, the balance having been endorsed in blank and forwarded to Mr. Edward Morris, of Chicago. The name or names of the beneficiary or beneficiaries are not known to me, and I did not receive any consideration for making such assignment.

Very truly yours, (Signed) Eugene V. R. Thayer.

Union Stock Yards,
Chicago, December 26, 1917.

Federal Trade Commission,
Washington, D. C.

Gentlemen: Replying to your letter, initialed A. B. A., and dated December 20, 1917, stating that you are informed that I hold stock in each of the following companies as enumerated below:

Company: Milwaukee Stock Yards Company, Milwaukee, Wisconsin. No. of shares of stock, common: 250.

[fol. 1761] I beg to advise I am not the owner of this stock, which was put into my name merely for convenience, at which time I endorsed certificates covering same in blank and delivered such certificates to the treasurer of Swift & Company, Union Stock Yards, Chicago, which corporation is the owner.

Yours very truly, W. W. Sherman.

Chicago, Feb. 11, 1918.

Mr. L. L. Bracken, Secy.,
Federal Trade Commission, Washington, D. C.

Dear Sir: Answering your letter addressed to me in care of the Portland Stock Yards Company, Portland, Oregon (No. 42901), which has just been forwarded to me here, relative to the 135 shares of stock of the Portland Union Stock Yards Company, standing in my name:

I wish to say that this stock was issued in my name several years ago, at which time certificates were endorsed

by me in blank and delivered to Mr. C. M. Macfarlane, of Morris & Company, and I had no other interest in said stock.

Yours respectfully, H. J. Nelson.

H. J. Nelson, incidentally, is employed in the office of L. F. Swift, but is here shown as stockholder of record for stock belonging to the Morrises.

Chicago, Dec. 31, 1917.

Mr. L. L. Bracken, Secy.,
Federal Trade Commission, Washington, D. C.

Dear Sir: Answering your favor of December 20th, will reply as follows:

Milwaukee Stock Yards Co., 200 shares.

These shares of stock were placed in my name some years ago merely for convenience, at which time I endorsed them in blank and delivered them to the treasurer of Swift & Company, and I hold these shares of stock for the benefit of Swift & Company and have no other or further interest therein.

Bourbon Stock Yards Co., 1,600 shares.

[fol. 1762] These shares of stock were placed in my name some years ago merely for convenience, at which time I endorsed them in blank and delivered them to the treasurer of Swift & Company, and I hold these shares of stock for the benefit of Swift & Company pension fund and have no other or further interest therein.

St. Paul Union Stock Yards Co., 3,985 shares.

These shares of stock were placed in my name some years ago merely for convenience, at which time I endorsed them in blank and delivered them to the treasurer of Swift & Company, and I hold these shares of stock for the benefit of Swift & Company pension fund and have no other or further interest therein.

Portland Union Stock Yards Co., 409 shares.

These shares of stock were placed in my name some years ago merely for convenience, at which time I endorsed them in blank and delivered them to the estate of G. F. Swift, Chicago, and I hold these shares of stock for the benefit

of the estate of G. F. Swift and have no other or further interest therein.

Jersey City Stock Yards Co., 900 shares.

I answered your inquiry on this stock in my letter of December 13th.

Ft. Worth Stock Yards Co., 100 shares.

These shares of stock were placed in my name some years ago merely for convenience, at which time I endorsed them in blank and delivered them to the treasurer of Swift & Company, and I hold these shares of stock for the benefit of Swift & Company pension fund and have no other or further interest therein.

Yours respectfully, H. A. Chetham.

Frank R. Pegram, Treas.,
Chicago Stock Yards Co., Ames Building,
No. 1 Court St., Boston, Mass.

Referring to your report Schedule "A", Slaughtering and Meat Packing, the Commission requires immediate transmission to it of names and addresses of owners of common stock for whom you as trustee held block reported on page 4, Schedule.

L. L. Bracken, Secretary Federal Trade Commission.

Bracken,
Washn., D. C.

Answering your telegram just received, the stock of Chicago Stock Yards Company held in my name, held by me as treasurer of the corporation in capacity of trustee [fol. 1763] for the holders of bearer warrants. My books do not show who hold the bearer warrants, which are transferable by delivery.

F. R. Pegram, Treasr. Chicago Stock Yards Co.

In view of the extent of concealment of their stockyards interest by the big packers the Commission is unable to say that it has located their complete ownership in the various yards companies. However, with the exception of

the Kansas City Stock Yards, it is probable that the amount of their ownership or control of stockyards still unknown to the Commission is comparatively small.

Extent of Big Packer Interests.—The table following shows to what extent the big packers are financially interested in 28 of the 50 stockyards companies in the United States which conduct livestock markets.

It should be noted from the table that the Big Five either jointly or separately have a controlling interest in 22 stockyards at which live stock are bought and sold. In the 20 companies named in the following list they own a majority of the voting stock:

Brighton Stock Yards Co.
Central Union Stock Yards Co.
Crescent City Stock Yards Co.
Denver Union Stock Yards Co.
Dallas Union Stock Yards Co.
El Paso Union Stock Yards Co.
Fort Worth Stock Yards Co.
Independent Union Stock Yards Co., St. Louis, Mo.
Interstate Stock Yards Co., Jacksonville, Fla.
Jersey City Stock Yards Co.
Kansas City Stock Yards Co.
Milwaukee Stock Yards Co.
New York Stock Yards Co.
Oklahoma National Stock Yards Co.
Pittsburgh Union Stock Yards Co.
Portland Union Stock Yards Co.
St. Joseph Stock Yards Co.
St. Louis National Stock Yards Co.
St. Paul Union Stock Yards Co.
Sioux City Stock Yards Co.

The Union Stock Yards of Omaha is also controlled by the Big Five through 36.8 per cent ownership, plus proxies. The Wichita Union Stock Yards Co. is also controlled through 41.7 per cent ownership plus proxies.

Pages 24 and 25 (table showing big packers' interests in stockyards which conduct live-stock markets) omitted.

Joint interests.—It will also be noted from the table that two or more of the Big Five are jointly financially

interested in the following 15 stockyards at which live stock is bought and sold:

[fol. 1764] Bourbon Stock Yards Co.
Brighton Stock Yards Co.
Denver Union Stock Yards Co.
Fort Worth Stock Yards Co.
Independent Stock Yards Co.
Jersey City Stock Yards Co.
Kansas City Stock Yards Co.
New York Stock Yards Co.
Oklahoma National Stock Yards Co.
Portland Union Stock Yards Co.
St. Joseph Stock Yards Co.
St. Louis National Stock Yards Co.
St. Paul Union Stock Yards Co.
Sioux City Stock Yards Co.
Union Stock Yards Co. of Omaha (Ltd.)

Section 7.—Relative importance of big packer yards.

Though the Big Five have a majority interest in only 44 per cent in number of the 50 stockyards where live stock are bought and sold and have a minority interest in an additional 12 per cent of them—which gives them an interest in 56 per cent of the marketing yards—more than 84 per cent of all the animals which are marketed at stockyards in the United States pass through the yards in which these packers are interested. They have the controlling interest in the marketing yards through which 56.8 per cent of the animals pass and have a minority interest in other yards through which an additional 27.7 per cent of the animals pass.

The live-stock receipts of the stockyards markets in which the Big Five are interested as compared with the receipts of the total number of stockyards are given in the following table:

Receipts of live stock at the 22 yards in which the Big Five have a controlling interest and at the 6 yards in which they have less than a controlling interest, as compared with the receipts at the total 50 stockyards markets in the United States.

(For the year 1916.)

	Receipts at the 50 market yards.	Receipts at the 22 yards controlled by Big Five.	Per cent of total.	Receipts at the 6 yards in which Big Five have less than controlling interest.[1]	Per cent of total.	Per cent of total receipts at the 28 yards in which the Big Five are interested.
Cattle	14,365,900	9,416,852	65.5	3,254,811	22.6	88.1
Calves	2,726,408	1,624,965	66.9	722,332	29.7	96.6
Sheep	19,389,784	11,567,709	59.5	5,822,149	30.0	89.5
Hogs	42,517,364	22,344,493	52.5	12,126,045	28.5	81.0
Total	78,999,456	44,954,019	56.8	21,925,337	27.7	84.6

[1] Chicago is included in this class.

[fol. 1765] The table shows that the market yards in which the Big Five are not interested are comparatively unimportant. It was pointed out on page 15 of this chapter that more than 69 per cent of the animals pass through 12 large markets in the United States, and it should be

(Map attached to page 26 showing location of the 50 stock yards markets and of the interstate slaughtering plants in the United States omitted.)

noted here that the Big Five have majority stock control in each of these markets with the exception of Chicago. It was further stated on page 15 that at Chicago, Kansas City, St. Louis, and Omaha—the four largest yards—more than 52 per cent of the cattle, 43 per cent of the hogs, and 51 per cent of the sheep are received. The big packers, again with the exception of Chicago, control each of these four largest markets.

The 12 large markets are equally important as slaughtering and meat-packing centers. Of the live stock slaughtered by interstate slaughterers in the country 70.7 per cent of all animals or 81 per cent of the cattle, 65.3 per cent of the calves, 78.5 per cent of the sheep, and 58 per cent of the hogs are slaughtered at these 12 centers.

A map showing the location of 50 stockyards markets and of the interstate slaughtering plants in the United States is inserted opposite this page. The proportion of big packer ownership of each yard or plant is indicated by

colors. The relative importance of the various yards and plants is indicated by the size of the symbols, except that, for legibility, a minimum sized symbol has been adopted which somewhat exaggerates the relative importance of the small independents.

Packer Feeding-in-Transit Yards.—The exact extent of the big packers' interest in feeding-in-transit yards is not known. It has been found, however, that some of these yards are owned or controlled by them, such as the Laramie Stock Yards Co. at Laramie, Wyo., and the Union Stock Yards of Lincoln, Nebr., controlled by Armour; Yankton Stock Yards Co. of Yankton, S. Dak., controlled by Swift through the Sioux City Stock Yards Co.; and the Connellsville Stock Yards Co. of Connellsville, Pa., controlled by Wilson & Co., Inc. Swift and Armour proposed buying the Hodge stockyards at Fort Worth, Tex., which were important feeding-in-transit yards, but were advised by their attorneys that such a purchase might be construed as a violation of the antitrust law. The yards were closed later at the request of the packers. The packers control several feeding-in-transit stations in Iowa in connection with their concentration stations.

There is another class of stockyards companies controlled by the big packers, such as the South San Francisco Stock Yards Co.; the Newark Stock Yards Co., and the Nebraska City Union Stock Yards Co., which are not [fol. 1766] public markets, but are used by the packers mainly as private concentration yards in connection with their slaughtering plants.

It is obviously to the advantage of the big packer to control feeding-in-transit stockyards. They buy a large proportion of the animals that are sent to the centralized markets. Those who control the feeding-in-transit yards have access to the shipping records relating to shipments made through their yards. Shipments may be and frequently are diverted at these transit points to different markets from those to which the live stock is originally consigned. This diverting is known to those who control the transit yards.

The acknowledgment of some of the advantages and the general attitude of Armour and Swift toward feeding-in-

transit yards are shown in the following letters from their files:

Union Stock Yards Company of Omaha,
South Omaha, Nebr., January 20, 1916.

Mr. R. J. Dunham, President, Chicago.

Dear Sir: Mr. Van Tassel of Cheyenne Yards has been in the hospital at Denver for some time, undergoing a pretty serious operation. Went out to the hospital to see him yesterday. While he is not at all well, he figures that in the near future he will be able to come to Omaha to discuss with me the sale of his grazing land in the vicinity of the Cheyenne yards, the situation there being very near the same as at Laramie, except that a good deal of the land he uses for grazing purposes he holds under lease. There was nothing said to indicate what he thought he ought to have for his land, transfer of leases, etc., but am a little afraid he is inclined to hold the figure a little high. This, however, will develop a little later on. There is one thing I would like to have you do and that is, ask Mr. Robbins to write to Mr. J. A. Munroe, vice president of the Union Pacific, about this Cheyenne yard proposition, as his doing so will make it a good deal easier to bring about the right kind of an understanding with the Union Pacific. They have been discussing among themselves the advisability of operating some of these yards instead of leasing them to outside parties, and they might take a notion to try it out at the Cheyenne yards.

If we can get hold of the Cheyenne yards, and thereby control of Sidney and Green River yards, both of which Van Tassel now operates, it will give us a cinch on the feeding business along the Union Pacific, and as I look at it, make it easier for the railroad company in that there will be no soliciting by feeding yards to influence business to stop at any particular yards. This will enable them to operate their trains of stock to better advantage, and they will have only one party to deal with instead of several, [fol. 1767] as at present. We would expect, of course, to maintain the same good service at all these yards that we are giving at the Laramie yards.

Have Mr. Robbins kindly mail me copy of his letter to Mr. Munroe.

Yours truly, E. Buckingham.

January 25, 1916.

Personal.

Mr. J. A. Munroe, Vice President,
Union Pacific R. R., Omaha, Nebraska.

Dear Sir: We are in communication, through Mr. Buckingham, with Mr. Van Tassel of the Cheyenne yards, who has been in the hospital for some time, we understand, and may be disposed to part with his feeding-yard holdings on certain conditions.

We are disposed to take over his Cheyenne holdings, and probably those of his in the other yards which go with them, and would like to do so and build these places up to the very highest possible standard, which, with our experience in this line, think we are better prepared to do than anyone else.

We also presume that the operation of all or most of these feeding yards by one interest will eliminate certain adverse influences and enable us jointly to arrange for stopping of shipments where it can be done to best advantage from an operating standpoint.

I hope you can see your way clear to use your good offices in connection with the matter.

With kind regards, I am,

Yours truly, —— ——, Vice President.

RM

May 7, 1912.

Mr. G. B. Robbins,

Armour & Company, Union Stock Yards, Ills.

Hodge Yards

Dear Sir: The following is an extract of telegram received from Mr. J. B. Googins, Fort Worth, Texas, yesterday, viz:

[fol. 1768] "Of Oklahoma City receipts today 1,400 cattle were tributary to our market; they went around us through Hodge. There are in Hodge yards today 20 cars beef cattle also billed for Oklahoma City. Oklahoma City buyers not buying any cattle here today. Hodge yards is a bad thing for this market, especially located as they are, one mile from us. Many cattle go through there for Oklahoma City and other northern markets directly from our own territory that we don't even get a chance at."

I presume we all agree that the Hodge yards are a detriment to the Ft. Worth Stock Yards Company, and it seems as though something should be done toward having them abandoned by the Katy.

In line with this, I asked Mr. Veeder if there was any legal objection to the Ft. Worth yards acquiring these if necessary, and I enclose you herewith a copy of letter from him, together with the copies of letters he refers to, which are all self-explanatory.

I know how you feel regarding the location of the dipping vats at Hicks, and I am taking the liberty of writing this letter to you. If you agree that something be worked out with the Katy which will eliminate this competition, you no doubt can get the stockyard's local attorney's opinion on this matter, and I would be glad to know your views.

Awaiting your reply.

Yours respectfully, H. A. Chetham, C.

GH

June 20, 1917.

Mr. Louis F. Swift: Mr. Harris reports this morning that at an interview with Vice President Haile and Vice President Webb, both of the M., K. & T. Railroad, that Mr.

Webb, the operating vice president, was given instructions to abandon and demolish the Hodge stockyards at once.

This will do away with the competition we have had at the gate of the Fort Worth yards for all these years.

In consideration of this; Armour and ourselves have agreed to give the M., K. & T. our shipments on the fast train from the Fort Worth plant Tuesdays and Thursdays of each week, as long as the rate and service via the M., K. & T. are equal to that of the other lines.

I feel quite sure you will be pleased to know that this competition is going to be discontinued.

I am sending a copy of this letter to Messrs. Dunham, Donovan, and Googins.

A. R. Fay.

ARF-LMC

[fol. 1769] CIRCUMSTANCES OF PACKER ACQUISITION OF YARDS

Section 8.—Reasons for acquisition of yards.

The big packers make the claim that they acquired control of stockyards and built new ones in order to provide adequate facilities for marketing live stock. In an article prepared by them, they said:

The producers of the live stock were unable and did not provide such facilities for caring for their product from the time of the arrival at the market until sold, and the railroad companies did not provide such facilities, so that it devolved upon the packers, at enormous cost, to establish and maintain the stockyards. * * * The packers did not acquire the stockyards and establish new ones at new centers in order to secure any peculiar or mysterious advantage over the industry, but it had to be done in order to secure proper facilities for accommodating the business and furnish fair treatment to the shippers.

The principal reason that the packers have become interested in the yards has been to provide such facilities and extend them as the business expanded. It is doubtful whether such efficient market places would ever have existed had they not been established in this manner.

Swift & Co., in a statement of July 23, 1917, said:

As a matter of fact, the principal reason why packers have become interested in yards at all has been to develop them to the highest point of efficiency. When a live-stock market is young and undeveloped the opportunity to make profits is hardly sufficient to induce private capital to enter the business; it has, therefore, devolved on the packing companies to develop the yards in some cases, so as to establish a market which will attract shipments and to provide facilities for the proper handling of animals. And this the packers have done.

In refutation of this claim the stockyards records show that, in general, private capital did go in and establish adequate and successful stockyards before the big packers ever became financially interested in them, and that the big packers subsequently gained control over those yards. This control passed to the big packers not because returns on the investments were unsatisfactory to the original owners nor because they had not properly equipped and maintained the yards. The big packers acquired the yards because they were profitable and because such ownership and control gave them private advantage in the industry.

Formerly there were several successful stockyards markets which had apparently kept pace with the development of the meat-packing industry. A number of these yards companies being ambitious to expand their business, gave the large packing companies gifts or bonuses as an inducement to establish packing plants at their yards. As the five big packing companies gained a predominant position in the meat-packing business they began to use their power, [fol. 1770] as the principal supporters of the markets at the large stockyards, to have the original owners and organizers of those markets cede to them the control of the yards. The original owners in many cases unwillingly relinquished their control to the packers.

As a result of the policy of first receiving gifts from the yards companies and then obtaining from the original owners an interest in the yards, the big packers gained control of most of the important stockyards of the country. They have established a few stockyards. But of the 28 market stockyards in which one or more of the Big Five

are interested not more than four of them were established by the big packers. At the 12 large markets only two of the yards—St. Joseph and Oklahoma City—were established by any of the big packers. None of the big packers had anything to do with the establishment of the stockyards at either of the four largest markets—Chicago, Kansas City, Omaha, and St. Louis.

The complete corporate records of the principal stockyards companies have not been located. In some cases parts of the records were destroyed, in others they were not to be found by the Commission. But a study of such records as are available shows that the big packers have in the past received gratis more than $9,000,000 from the yards in the form of cash, land, buildings, and bonds, in addition to the many more millions of stockyards stocks which they received free of cost. Practically all of these gifts were paid for out of the large earnings of the stockyards companies.

Section 9.—Nonstock gifts from yards.

Probably the big packers have received larger nonstock bonuses from the Chicago Stock Yards than from any other one yard. Swift & Co., Armour & Co.,[1] and Morris & Co. from 1892 to 1907 received $3,000,000 in bond bonuses from the Chicago Stock Yards. In 1900 Schwarzschild & Sulzberger Co. received $540,000 in cash bonus. In 1900 the Anglo-American Provision Co. received $200,000. In 1902-3 the G. H. Hammond Co.[2] got $500,000 in cash. Just how much and what the big packers have received from the Chicago Stock Yards since 1907 is uncertain, as shown in Chapter V.

A joint legislative committee of the State of Kansas reported that testimony up to 1907 showed that the Kansas City Stock Yards Co. had given to various packing companies bonuses amounting to about $2,400,000 in cash and in stock. The Commission was unable to locate the records of the Kansas City Stock Yards Co. but it secured evidence from other sources which shows that this stockyards com-

[1] Later absorbed by Armour & Co.

[2] Later absorbed by Swift & Co.

pany has given to the big packers the following nonstock bonuses: To Morris & Co. in 1904 $575,000 in cash and a site for a packing plant; to the Cudahy Packing Co. [fol. 1771] $500,000 in cash and a site for a packing plant valued at $129,000; to Sulzberger & Sons Co. in 1898 $200,000 in cash and a packing house site valued at $35,000.

The Union Stock Yards Co. of Omaha in 1887 gave to Swift & Co. $100,000 cash. About 1890 the Cudahy Packing Co. received a site for a packing plant from the Omaha Stock Yards Co. And in 1900 Armour & Co. received from that yards company 20 acres of land.

The St. Louis National Stock Yards Co. in 1893 gave to Swift & Co. $100,000 cash and a site for a packing plant. The same year Morris & Co. received a valuable tract of land from the stockyards. In 1901 the stockyards company gave to Armour & Co. 20 acres of land and in 1903 Armour received $388,000 in cash from the yards.

The St. Joseph Stock Yards Co. gave to Morris & Co. in 1897 $260,000 cash and a site for a packing plant. Also in 1897 this stockyards company gave to Swift & Co. $90,000 and a site for a packing plant. The next year Swift & Co. received an additional $390,000 from the St. Joseph yards company.

The Fort Worth Stock Yards Co. in 1902 gave to Armour & Co. $300,000 of the yards' bonds and 213 acres of land. At the same time Swift & Co. received from the Fort Worth yards $300,000 of the yards' bonds and a site for a packing plant.

The Sioux City Stock Yards Co. gave to the Cudahy Packing Co. real estate and building valued at $100,000. In 1901 that stockyards company gave to Armour & Co. 12½ acres of land.

The following letters show that the big packers were aggressive in demanding bonuses and other concessions from the stockyards companies. These letters do not disclose evidence of a desire on the part of the packers to secure stock in stockyards for the purpose of providing better facilities. On the other hand they do show the power of the packers to force stockyards companies into granting advantageous concessions:

In 1905 Armour and Swift interests purchased about 3,500 acres of land across the river from the present Kansas

City stockyards, located in what is now known as North Kansas City. It has been persistently rumored, and not without foundation in fact, that this land was secured either for the purpose of establishing new stockyards there or to threaten to do so; the latter as a means of securing concessions from the Kansas City Stock Yards Co.

The following extract of a letter written December 28, 1912, by C. M. Brewer to Kidder, Peabody & Co., reporting an interview with an official of the "Armour-Chapin estate," throws some light on this question:

[fol. 1772] Armour, Kirkland B., Armour, J. Ogden, Chapin, Simeon B., Trustee u/w Marietta Chapin, c/o Armour & Co., Chicago, Ill.

In regard to the Armour-Chapin estate, I called at the office of Mr. Chapin this morning, but learned that he resides permanently in New York City. However, his partner referred me to a Mr. Croll who, I believe, is treasurer of the Armour Company. He seemed to be perfectly familiar with the project, as he informed me that Mr. Thayer had tried to get the Armours and Swifts interested some time ago, but was unsuccessful, as the profit to Thayer, etc. seemed to be too great. He tells me that Mr. Thayer tried to sell the common stock to them at $100 per share.

In regard to the packers removing from the Kansas City location, he informed me that Swifts and the Armours have purchased all available property on the other side of the river, and did probably intend to locate their yards over there. He also said that the only parties that Mr. Thayer could get interested were Morris & Co., who did not own any land across the river, and could not obtain any, as the Swifts and Armours had acquired all of it. He said that old P. D. Armour originally held a very large block of this stock, but had sold a considerable amount, and had distributed a very large amount among his relatives; and it is a part of this latter lot that they now hold. He can not see any reason whatever for depositing his stock, as he feels that he will be as well, if not better off, with the present company.

V. D. Slipworth, who wrote the following letter to the president of Sulzberger & Sons Co., was then associated

with that company. He is now vice president of its successor, Wilson & Co., Inc.:

Executive Department
Chicago, January 23, 1913.

Personal.

Mr. G. F. Sulzberger,
New York, N. Y.

Dear Sir: Referring to your letter of January 18, regarding Kansas City yards situation. You no doubt received my letter written the same day in regard to my interview with the Cudahy people. I was talking to Mr. McNaughton today and he told me there have been no developments since our conference but he expected a party in Chicago tomorrow who is coming direct from Thayer and he, in all probability, would have some news to give me next Saturday. I would not be surprised but that they would be made a proposition similar to the one as outlined in your letter. It of course gave Mr. McNaughton no information that any proposition had been made us, but in line with my conference with him last week he spoke of the probability of our working together on an independent [fol. 1773] proposition which I feel is a logical thing to do if we consider it necessary to bring pressure to bear upon the interests now controlling the Kansas City yards.

I have been negotiating quietly for a suitable tract of land, south of our Kansas City plant for some time. I have two tracts in mind; one not so very desirable and one which I consider very adaptable for the purpose. I have been over the ground myself, have blue prints and descriptions of all available property in that locality. I am having Harry Friedberg, a Kansas City lawyer, who is absolutely reliable and very capable, working out the real estate feature. Fortunately he is intimate, personally, with the agent who controls the sale of these lands. This agent, of course, does not know what Friedberg wants the land for. The interesting part of it is that a portion of the land is now owned by a subsidiary corporation of the Kansas City Stock Yards Co.

The tract that I am figuring on as being most desirable is about one-half to three-quarters of a mile south from

our plant and comprises about twenty acres. I am endeavoring to get an option. The asking price is around $2,250 per acre. I quote you below wire just received from Mr. Friedberg:

"Doing everything to carry out your wishes, two parties interested are out of city. Rumor that railroad people desire all property in vicinity has caused temporary boom. If I could take few days time and not crowd matters too much I know I can make better terms. Wire me what is my limit in price and whether or not I can put up any cash money for option. Have already lined up all parties but I would advise going slow in order to save money. Delayed wiring as people out of town expected back yesterday. I learned this morning they will be back Saturday. Have talked to their agents. Am still following it up."

I am writing Friedberg today to use his judgment as regards the opportune time to work out a satisfactory option proposition and telling him that I think he ought to be able to option the property not to exceed $2,000 per acre.

The question of the driveway from this tract to our property and thence to the Cudahy plant is one that may be somewhat difficult to work out, but I believe that it can be done. For instance, from the property to our plant I expect to get authority from the drainage board to construct a driveway on the top of the dike.

I fully realize that if we feel it necessary to take any steps towards organizing a competitive yard that it must be done in a manner that will leave no doubt as to the seriousness of our intentions. In other words, it will be carried out without any element of a bluff. If we are successful in getting the land that I have in mind I do not know of any condition that will prevent us from working the thing out along practical lines.

I feel that now or the immediate future is the opportune time to put this proposition through with the maximum effect, as the interests now in control (particularly the Boston people, who are not practical) would undoubtedly look upon any demonstration of a competitive yard as a [fol. 1774] very serious matter, especially if it leaked out that the same was backed up by two large packing con-

cerns who have heretofore drawn their live-stock supply from the Kansas City yards.

My method of procedure would be for us to acquire the land and right of way, then organize a corporation, ourselves and the Cudahy interests keeping entirely in the background, leaving it to the Kansas City Yard. Co. to find out who was really engineering the deal, which they would have no difficulty in doing, and I believe that before we got very far we would be well paid for our trouble and would be offered satisfactory terms for participation in the Kansas City Stock Yards Co.

I am keeping close to the situation and hope in a few days to be able to advise you of successful negotiations for desirable lands.

I am also in close touch with the Cudahy people, who, I think, are sincere in their desire to work with us, which I am very glad of for the reason that if it should become necessary to take up the independent stockyard proposition it is only naturally that the matter would carry considerably more strength by the fact of two concerns being behind it rather than one. In fact, I do not believe that a proposition backed by only one concern would be taken very seriously by the Kansas City yard people.

Yours very truly, (signed) V. D. Skipworth.

VDS'IW

It is interesting to note from this letter that Sulzberger & Sons Co. was not aware that the reorganization which had just taken place marked the passing of control of the Kansas City yards to the Morrises. Skipworth refers to "the Boston interests now controlling the company," apparently not knowing that the principal Boston stockholders were dummies for Morris (see p. 49).

The following two letters were written by E. A. Cudahy at Chicago to Mr. M. R. Murphy, superintendent of the Cudahy Packing Co. at Omaha:

June 24, 1912.

Mr. M. R. Murphy,
South Omaha, Neb.

Dear Sir: Some time ago, before Swift started his new improvements at South Omaha, he bought a tract of land,

it was reported, on the Iowa side of the river, near the drawbridge. It was not purchased in his name, still it was reported that it was purchased by Swift & Company. There was never anything heard about it, and it may be possible Swift & Company had a bonus from the stock-yard company for putting up improvements. I wish you would see John D. Creighton, or, if McPherson is a director, see if you can learn from either of these men if Swift [fol. 1775] did get a bonus. I think this is the first thing we want to find out.

I wouldn't send off any fireworks about it or talk to any outside people at all. Whatever we do we ought to do in a very quiet way. We might need some fireworks to help us in the end, but we don't want to start them now.

I don't think there is any use of saying anything to Mr. Buckingham at the present time—not until we take it up with the president of the yards; and I will do that after I have had a talk with Mr. McNaughton, after he returns from looking the ground over with you.

Yours truly, ——— ———.

June 24, 1912.

Mr. M. R. Murphy,
South Omaha, Nebr.

Dear Sir: I have your several letters and note what you say in reference to your talk with Mr. Buckingham.

I hesitate about going to the Stock Yard Co. and asking them for a bonus, because I think the policy of the yards is controlled by Armour & Company, and of course they understand the situation thoroughly, and you can't get anything out of them unless you can do it by force. I could never see our way quite clear so that we could really force them to give us a bonus.

I understand you have stopped the work of tearing down and getting ready for grading, and you had not better do anything on it until you hear further from me.

I will make arrangements to see Mr. Dunham some time this week, and in the meantime I wish you and Mr. McNaughton would look over the ground thoroughly and see whether it is possible for us to unload hogs from the tracks that are in at the present time, weigh them and yard them,

and handle them in a way that would be satisfactory to us and to the shipper, and to be able to take care of a part of our supply, if not our entire requirements.

To start a new stockyard and build an entire plant is almost too big a proposition to undertake alone; still, if we could get another packer, like S. & S. and Morris to go in with us, I would be very glad to undertake the establishment of a new market in Council Bluffs, or somewhere on that side of the river.

I wouldn't figure on taking any small amount from the Stock Yard Co.; if we can get anything, we can probably get quite a nice-sized bonus.

If the Government men want to know why you have stopped, tell them we have under consideration the plan of building an entire plant somewhere else.

Yours truly, —— ——.

[fol. 1776] The following letter was writen by G. C. Shepard, vice president of Cudahy Packing Co., to another Cudahy official:

January 31, 1916.

Mr. F. S. Hatch,
The Cudahy Packing Co., Los Angeles, Cal.

Dear Sir: We have your letters of January 26 and 27 with regard to the inter-mountain proposition. We also have your letter of January 28 with regard to the Ogden Packing Co. proposition.

Since we last wrote you we have received a telegram from some bankers at Pocatello, who represent a large body of live-stock men, and in this telegram they have offered us a bonus of $250,000 if we will put up a plant at that point. We are now in correspondence with them to get full details as to just what they expect and what they can offer in the way of live stock, what power would cost, etc., etc.

Pocatello is not as good a location as Salt Lake, but they certainly know how to come through with a bonus proposition. What Mr. Cudahy would like to know is, How much of a bonus do you figure the commercial interests in Salt Lake would be willing to give us if we were to either take the intermountain plant over and operate it or build another plant in Salt Lake? If we could get a bonus of, say,

$250,000 we do not think there would be any hesitation whatever in going ahead with that intermountain proposition.

We would like to have your opinion on this subject. In the meantime we will be compelled to give these people at Pocatello some sort of answer. At the same time your opinion as to the possibility of raising a bonus in Salt Lake would go quite a long ways with us. If you think it would be raised without any difficulty there we might be inclined to string the Pocatello people along a little further until you could advise us with some degree of definiteness.

Kindly let us hear from you.

Yours very truly, The Cudahy Packing Co., G. C. Shepard.

GCS H

Section 10.—Methods of acquiring control of yards.

The following are the chief methods by which the big packers acquired control of the principal stockyards companies:

Receipt of shares of stock as gifts for locating or expanding packing plants at the yards; receipt of stock dividends on stock already held; and occasional cash payment for small amounts of stock.

[fol. 1777] Organization of new companies to acquire control over established stockyards.

These two methods of acquiring stockyards are best explained by giving the history of how they acquired control over certain important stockyards companies.

Through Capital Stock Gifts and Bonuses.—Examples illustrating this method of acquiring control over certain important stockyards are given below.

Union Stock Yards Co. of Omaha.—The Union Stock Yards Co. of Omaha was organized in 1884 with a capital stock of $1,000,000. In 1886 this stockyards company gave to Fowler Bros. (subsequently absorbed by the National Packing Co.) as a bonus for locating a plant at the yards $100,000 of its stock and sold to Fowler an additional $100,000 of its stock for $75,000. The capital stock of the stockyards was thereby increased to $1,200,000, $125,000 of

which was represented as appreciation of assets without the addition of cash receipts.

In 1887 the yards company gave to Swift & Co.[1] as a bonus for establishing a plant there $100,000 of its stock and agreed to sell it $100,000 additional stock of the yards company at par. The Swifts [1] bought $23,200 of the $100,000 additional stock offered. The same year the yards company gave as a bonus to the Armour-Cudahy Packing Co. $150,000 of its stock (of which the Cudahys received $103,100 and Armour $46,900), and agreed to sell the packing company $100,000 additional stock at par. In order to pay these gifts to the packers, and to sell them additional stock the authorized stock of the yards company was increased from $1,200,000 to $2,000,000 and the property assets of the company written up $250,000—the amount of the gifts.

From 1887 to 1889 Armours' holdings of stock in the Omaha stockyards increased from $46,900 to $166,900. In the same period the Cudahys' holdings increased from $103,100 to $159,400. The Swift holdings remained stationary.

In June, 1890, a stock dividend of $1,800,000 was issued by the company, which was a dividend of 90 per cent. In December, after the stock bonus, Armour held $407,900 of the stock. He probably, before the declaration of this dividend, bought an additional $47,800 of the stock, which, [fol. 1778] together with his $166,900 already held, would have given him a stock bonus of $193,200. Or he may not have bought until after the declaration of the dividend, in which case he would have received a dividend of $150,200 on his $166,900 and brought $90,800 stock to make his total holdings $407,900.

The Swifts sold some of their stock in 1890, either before or after the declaration of the 90 per cent stock dividend,

---

[1] From the records available in most cases it is impossible to tell whether the gifts and bonuses by the yards were received by the packer families or the packing companies. Hence, where "Swift & Co." is used it may mean "the Swifts," and vice versa. The same is true for the other packer families and companies.

because in December, 1890, they had on the books $195,800, whereas a 90 per cent dividend on their $123,200 holdings of 1889 would have given them a dividend of $110,900, or a total of $234,100. They may have sold $38,300 stock after the declaration of the dividend. Or they may have sold $20,200 of their $123,200 before the declaration of the stock dividend, in which case they would have received $92,800 stock dividend on their holdings of $103,000, which would have given them the $195,800 which stood to their credit on the books at that date.

The Cudahys also sold a large part of their holdings in the Omaha yards in 1890 either before or after the declaration of the stock dividend. A 90 per cent stock dividend on the $159,400 holdings of 1889 would have given them a dividend of $143,500, or a total holding of $302,900. So they may have sold $192,500 after the dividend so as to decrease their holdings to $110,400 in December, 1890. Or they may have sold $101,300 just before the dividend, so that they received a 90 per cent dividend on only $58,100, or $52,300 as a dividend. This would make their holding $110,400 as it was in December, 1890.

In December, 1891, the Armour holdings of stock had increased to $535,400, which was an increase of $127,500 over the previous year. This additional stock was probably bought in the open market. At the same time the Cudahy holdings were reduced to $57,700, which was a reduction of $52,700. This stock was probably sold in the open market.

In 1893 the Omaha yards declared a stock dividend of 25 per cent which on Armours' holdings of 1891 would have given them an additional $133,800, making a total holding of $669,200. In 1897 the stockyards company gave to the Armours as a stock bonus an additional $750,000, which would have given them a total holding of $1,419,200. In 1898 the records show that the Armours held $1,511,100 of the stock; so they must have bought a little additional stock. In 1903 a 25 per cent stock dividend was declared, which would, on the basis of the Armour holdings in 1898, give them a stock dividend of $377,800, which, together with the $32,800 stock bonus which was given the Armours in November of that year, made their holdings $1,921,700.

The Commission ascertained that in 1916 the Armours (excluding the Allertons) had a holding of $2,080,800 of stock in the Omaha Yards.

[fol. 1779] If the Armours now own only $2,080,800 of the capital stock of the Omaha yards, certainly less than 25 per cent of their holdings represents stock which was actually purchased. More than 75 per cent of it represents stock gifts and stock dividends.

Some time after 1891 the Cudahys disposed of all but 45 shares of their interest in the Omaha yards, and the Swifts disposed of a part of theirs. The two 25 per cent stock dividends—one in 1893 and the other in 1903—would have increased the Swift holdings of 1890 to $305,900 in 1903, providing none of their stock had been sold up to that time. But in 1916 L. F. Swift is found holding $73,600 and E. F. Swift $102,000, a total of only $175,600. The exact extent to which they realized on their gifts and stock dividends in this company is not known. However, it is evident that practically their entire holdings in the Omaha yards were a result of stock gifts and did not represent cash investment.

Fort Worth Stock Yards Co.—In 1893 the Fort Worth Stock Yards Co. was incorporated in the State of West Virginia with an authorized capital stock of $1,000,000. By 1900 the largest stockholders in the company were J. R. Hoxie, of Chicago, and L. V. Niles and G. W. Simpson, of Boston. They together owned about two-thirds of the stock, while the rest of it was held by local investors at Fort Worth. At that time there were only a few small packing plants at Fort Worth and the yards attracted little live stock. The local owners in the yards together with the Fort Worth Chamber of Commerce decided to induce some of the large packers to locate packing plants there. So in January, 1902, they made agreements with Armour & Co. and Swift & Co. whereby in consideration of these two packers establishing packing plants at Fort Worth the two packing companies were to be given as bonuses about two-thirds of the stock in the stockyards company, $600,000 of 5 per cent bonds of the stockyards company, and $100,000 in cash.

In order to carry out the above agreement with Armour & Co. and Swift & Co., in 1902 the capital stock of the Fort

Worth Stock Yards Co. was increased from $1,000,000 to $2,000,000 and the company issued $1,200,000 of 5 per cent bonds. Of these stockyards securities the two big packers were given as bonuses $1,320,000 ($660,000 apiece) of the stock, or 66 per cent of the total, and $600,000 ($300,000 apiece) of the bonds. Messrs. Niles and Simpson retained the balance of the stock ($680,000). The packers were paid the additional $100,000 by the citizens.

In 1903 the authorized capital stock of the Fort Worth Stock Yards was further increased from $2,000,000, to $3,000,000. From that date to 1917, the outstanding capital stock was increased from $2,000,000 to $2,750,000. As to whether this increase of $750,000 was declared as stock [fol. 1780] dividends or represents investment of outside money the Commission is unable to state. Since 1902 Swift & Co. and Armour & Co. have bought on the outside little or no stock of the stockyards company, as their reported holdings in 1916 were 66⅔ per cent of the total.

Oklahoma National Stock Yards Co.—As an inducement to get them to locate packing plants at Oklahoma City the chamber of commerce of that city in 1909-10 gave to the Morrises and the Sulzbergers a cash bonus of $600,000 ($300,000 each) and sold to the Morrises at a low price from 1,000 to 1,100 acres of land just outside the city which they paid for by selling off a small part of the lots. The City council exempted the packers from all city taxes on their property for a period of five years, gave them free 4,000,000 gallons of city water per day for their plants, and agreed to build a boulevard direct to their property. The street railway company also agreed to build a double-tracked car line to their property.

These packers at that time (1910) organized the Oklahoma National Stock Yards Co. with a capitalization of $1,000,000, of which the Morrises got $750,000 and the Sulzbergers $250,000. They gave to the stockyards company 140 acres of land which they got from the chamber of commerce and the balance of the land (after selling a small part of it) was turned over to the South Oklahoma Town Co., which was organized with a capitalization of $1,000,000 based on the land value. It is not known just how much cash these packers paid into the yards company

to build the pens and other yards equipment, but it was probably less than $500,000. They evidently received in cash from the people of Oklahoma City more than they paid into the stockyards company.

St. Louis National Stock Yards Co.—The St. Louis National Stock Yards Co. was organized in 1872 with a capital stock of $1,000,000. Morris & Co. located a plant there in 1889. Morris & Co. and Swift & Co. by 1893 had secured control of the stockyards company, but owing to the fact that the Commission was able to locate only a few of the records of the yards company it is unable to say just how these two packers secured control of the yards. Early in 1893, of the $1,250,000 of the stock outstanding the Morrises held $496,800 and the Swifts $370,200. That year the stockyards company gave to Swift & Co. $100,000 cash as a bonus. Later that year the capital stock of the yards was increased to $2,500,000, that is doubled.

In 1896 the capital stock of the yards was increased to $4,000,000. This increase in capital stock, as well as the previous one in 1893, was a stock bonus based on appreciation of the earning power of the yards, as were most of [fol. 1781] the stock increases at other yards. Then in 1900 the capital stock of the company was further increased to $5,000,000. In 1901 Armour received 20 acres of land from the yards, and at that time Armour & Co. acquired $300,000 of the company's stock, and in 1903 the yards gave Armour & Co. a cash bonus of $388,000.

The packers (excluding the Allerton interest) in 1916 held 70.1 per cent of the stock in the St. Louis National Stock Yards Co.—Morris, $1,503,600; Swift, $1,195,500; Armour, $300,000; and Wilson, $[illegible],500.

St. Joseph Stock Yards Co.—In 1895 a small stockyards and two small packing plants were in operation at St. Joseph. The parties interested in the stockyards succeeded in inducing Swift & Co. to establish a larger packing plant there. So in 1896 the St. Joseph Stock Yards Co. was organized and incorporated with a capitalization of $500,000, with Swift & Co. the majority stockholder. It is not known whether this stock was in whole or in part a gift to Swift & Co.

In 1897—the year after its organization—the stock of the yards was raised $750,000 by cash subscription, and in 1899 it was raised an additional $250,000 by cash subscription. Swift & Co. contributed its pro rata share to these cash subscriptions—about $540,000. But about the same time Swift & Co. received $480,000 cash bonuses from the stockyards company, which would make Swift & Co.'s net cash subscription to the stock only about $60,000. In 1901 the capital stock was raised an additional $150,000 by cash subscription, of which Swift & Co. paid its share. In 1907 the stockyards company declared a stock dividend of $850,000, of which Swift & Co. received about $459,000. So Swift & Co. paid only a small net amount for its $1,324,500 stock in the St. Joseph Stock Yards Co., besides having its packing-house site given to it by the yards company.

In 1897 the St. Joseph Stock Yards Co. gave to Morris & Co. $260,000 cash, part of which was probably invested by Morris & Co. got its pro rata share of the $850,000 stock dividend. So Morris & Co.'s $739,000 stock in the St. Joseph Stock Yards Co. cost little net cash.

St. Paul Union Stock Yards Co.—In 1897 the owners of the St. Paul Union Stock Yards Co. gave to Swift & Co. as an inducement for locating a packing plant there $1,000,000 stock in the stockyards company. This was done by increasing the capital stock of the yards from $1,000,000 to $2,000,000 through a declaration of a stock dividend.

[fol. 1782] In 1916 the owners of the St. Paul Union Stock Yards Co. gave to Armour & Co., as an inducement for locating a plant there, $500,000 of the yards company's stock. This was done by declaring a 25 per cent stock dividend, which through the stockholders was turned over to Armour & Co. At the same time Armour & Co. received an additional bonus of $100,000 of the yards stock and $400,000 in cash from the citizens of St. Paul, part of which stock the citizens bought from Swift & Co.

So Swift & Co. did not pay anything for the $974,500 stock which it holds in the St. Paul Union Stock Yards Co. Armour & Co. bought only $9,000 of the $609,000 which it holds in that yards company, but Armour & Co. received an additional $400,000 cash bonus from the citizens of St. Paul.

Sioux City Stock Yards Co.—The $400,000 of stock of

the Sioux City Stock Yards Co. owned by Armour & Co. was given as a bonus in 1903. In 1893 the Cudahy Packing Co. was given a bonus of $200,000 of the stock of the Sioux City Yards, and since that date has apparently sold $65,900 of that stock and still holds $134,100. In addition to receiving all their stock in the stockyards gratis, both Armour and Cudahy were given packing-house sites at Sioux City. The Swifts own $1,693,900 of the voting stock of the Sioux City yards, which was apparently bought. The stock has proved to be a good investment for the Swifts, and it was evidently acquired as an investment because Swift & Co. at the time of the acquisition of the stock had no packing plant at Sioux City.

Milwaukee Stock Yards Co.—The Milwaukee Stock Yards Co. opened for business in 1905. Originally these yards were owned by the National Packing Co. In 1912 they were conveyed to Swift & Co., together with the Plankinton Packing Co., as a result of the liquidation of the National Packing Co. The Milwaukee Stock Yards' capital was increased from $10,000 to $200,000 in 1916 through a stock dividend of $190,000.

Salt Lake Union Stock Yards Co.—In September, 1916, the Salt Lake Union Stock Yards Co. gave to the Cudahy Packing Co. as a bonus for locating a plant at those yards $25,000 of its capital stock. As an additional inducement for locating a plant there the citizens of Salt Lake City, associated under the name of the "Industrial Co.," gave to the Cudahy Packing Co. a packing plant valued at about $100,000 and a $25,000 bonus, $14,000 of which was paid in stock of the stockyards company by the stockholders of the yards company.

The Salt Lake Union Stock Yards Co., in order to fulfill its obligation to the Cudahy Packing Co., increased its authorized capital stock from $100,000 to $250,000 and declared the additional capital stock "fully paid-up treasury [fol. 1783] stock," to be sold by the company or to be given to the stockholders as stock dividends. It was out of this additional capital stock the $25,000 was given to the Cudahy Packing Co., and $50,000 to the old stockholders, $14,000 of which the stockholders gave to the Cudahy Packing Co. In addition, the yards company sold stock to the

amount of $19,600 for cash at par, making a total outstanding capital stock of $194,600.

Wichita Union Stock Yards Co.—The Wichita Union Stock Yards Co. opened for business in 1887 with a capital stock of $200,000. In November, 1906, it had an authorized capital stock of $600,000.

The following extract from a contract between the Wichita Union Stock Yards Co. and the Cudahy Packing Co. illustrates the method and negotiations by which the Cudahy Packing Co., in November, 1906, acquired its first interest in these yards:

First party (Wichita Union Stock Yards Co.) further agrees that it will transfer on the corporate books of first party and deliver to second party one-sixth of its entire capital stock. Said transfer to be made and said stock dividend to the Cudahy Packing Company on the 17th day of November, 1906, or in a reasonable time thereafter.

In consideration whereof

The second party—The Cudahy Packing Co.—on its part agrees:

(a) To continue the operations of said packing plant for a period of ten years from the date on which it shall take possession of said plant under the said contemplated purchase.

(b) Second party further agrees that for the period of ten (10) years in which the second party agrees to continue the conduct of said packing business in Wichita, Kansas, at said packing plant, and for a further period of ten years thereafter all purchases of hogs, cattle, or sheep made by the second party for use in connection with the conduct of the business of said packing plant at Wichita, Kansas, shall be made from the stockyards of said first party, and shall be delivered and weighed through said stockyards of first party at Wichita, Kansas, provided, however, that a sufficient supply of stock of the proper grade and quality for the operation of said packing plant can be procured at the yards of said first party at Wichita, Kansas. In case said second party shall purchase stock for use in its packing plant at Wichita from other stockyards while there is an adequate supply of stock of the proper grade and quality at the yards of first party in

Wichita, Kansas, then said first party shall be entitled to its regular charge for handling said stock, whether same is delivered through its yards or not. * * *

[fol. 1784] As a result of this contract with the Cudahy Packing Co. the Wichita Union Stock Yards Co. increased its authorized capital stock to $700,000 and gave to the Cudahy Packing Co. $111,566.66 of its stock.

In November, 1908, the yards company gave to the Cudahys in consideration for increasing their packing plant capacity an additional bonus of $300,000 of its capital stock which was made by increasing its capital stock to that amount—making an outstanding capitalization of $1,000,000. At this time the city of Wichita also gave to the Cudahy Packing Co. free water and sewerage facilities.

In November, 1909, the yards company again increased its outstanding capital stock $400,000—making the outstanding capitalization $1,400,000. Of this $400,000 there was distributed as a stock dividend $150,000 and $250,000 was sold to the stockholders for $130,000 in cash—an average of $52 per share.

The Cudahys admit that they now own $584,100 of the stock of the Wichita Union Stock Yards Co. At least $473,300 of it was given to them free of cost and the balance if bought, was secured for much less than par. The yards company now carries on its books as an asset "packing-house contracts" $516,666, which are the contracts it has with Cudahy Packing Co. and with the Jacob Dold Packing Co. It is not known whether or not Dold received any of the stock in these yards in return for the contract.

Through Organization of New Companies.—In three instances the big packers have used the method of organizing new companies to acquire control of stockyards which are already in operation. It is an inexpensive method of acquiring control of yards as the examples here given show.

Kansas City Stock Yards Co.—The Kansas City Stock Yards Co. of Missouri was organized in 1871 with a capitalization of $100,000. Up to 1887 its capitalization had increased to $2,500,000. In October of that year its capital was increased to $4,040,000 of which $1,515,000 was a stock dividend, $505,000 was new subscription. In 1890 a stock dividend of $404,000 was paid. In 1892 Armour was given

a stock bonus of $500,000 and the real estate of the yards company was appreciated that amount. In 1907 a joint legislative committee of Kansas made the following statement in reference to the increase of the capitalization of the Kansas City Stock Yards Co.:

The records show that during twenty-six years of consecutive business the company paid on the capital actually invested in the business an average of 32½ per cent annually in cash dividends to stockholders and 34½ per cent in stock and real estate dividends to stock holders, or a total of 67 per cent in dividends was paid each year for twenty-six years. At various times during the twenty-six years the company was recapitalized, and in each instance two shares of new stock were given for one of the old. [fol. 1785] This record also shows that hardly two and one-half million dollars has been paid by the stockholders in cash to the treasurer of the company; that the balance of the outstanding stock (or five million dollars) is the capitalization of earnings, or the amount that the real estate is presumed to have increased in value during this time.

The testimony shows that since the last reorganization the company has issued $1,500,000 in bonds, and during this time its capitalization has been raised one and one-half millions, or to $9,000,000, and that the bonds are being retired and stock substituted in their stead.

By 1912 the Kansas City Stock Yards Co. had increased its outstanding capital stock to $8,160,000. Up to that time each of the Big Five had a little interest in the yards company but their combined interest was comparatively small. At that time Edward Morris, Sr. conceived a plan whereby he succeeded, at little cost to himself, in gaining control of the Kansas City stockyards property. His plan is fully set forth in the following letters which, October 24 and 30, 1912, passed between him and Kidder, Peabody & Co.:

October 24, 1912.

Messrs. Kidder, Peabody & Co.,
115 Devonshire Street, Boston, Mass.

Dear Sirs: I am proposing to organize a corporation under the laws of the State of Maine under the name of "Kansas City Stock Yards Company of Maine," for the purpose of acquiring all or a substantial majority of the

stock of the Kansas City Stock Yards Company of Missouri.

The new corporation will have an authorized capital stock of $11,500,000 of which $9,000,000 par value will be preferred stock and $2,500,000 par value will be common stock; both the common and preferred shares to be of the par value of $100 each.

The preferred stock will be entitled to 5% cumulative dividends, payable quarterly, the first dividend to be payable February 1st, 1913. The preferred stock will also be preferred to the extent of par and accrued dividends in case of liquidation but will have no voting power, except in case of failure to pay two consecutive dividends on the preferred stock, in which event it shall thereafter have full voting powers until all accrued and unpaid dividends have been paid in full. No mortgage or other encumbrances shall be placed upon the property of the new corporation without the consent of at least two-thirds in interest of the preferred stockholders.

[fol. 1786] I propose to offer to the stockholders of the Kansas City Stock Yards Company of Missouri the opportunity to exchange each share of stock which they own in the Missouri corporation for one share of the preferred stock of the new Maine corporation, and I propose to pay to each stockholder of the Missouri corporation, who elects to make such exchange, the sum of $10 in cash for each share so exchanged. This offer is to be conditional upon not less than seventy-five percent. in interest of the stockholders of the Missouri corporation exchanging their stock in accordance with this offer, provided, however, I may at my option make the exchange if a less number of stockholders elect to exchange their stock.

The amount of preferred stock of the Maine corporation to be issued in the first instance will be limited to the amount of stock of the Missouri corporation which is exchanged in accordance with the above offer.

Of the $2,500,000 of common stock to be issued by the Maine corporation, I propose to take and pay for $1,250,000 par value at $50 per share in cash, and will cause the remaining $1,250,000 par value to be offered for subscription at $50 per share to such of the stockholders of the Missouri corporation as elect to exchange their stock for preferred stock of the Maine corporation on the basis of

one (1) share of the Maine corporation for every seven (7) shares of the Missouri corporation. Where the number of shares owned by any one individual is not divisible by seven, if the excess number of shares owned by him is four or more he shall have the right to subscribe for one (1) additional share of stock. If the excess number of shares is less than four (4) he shall have no right to subscribe in respect of the excess number of shares. I propose that the taking of this remaining $1,250,000 par value of common stock at $50 per share shall be underwritten, for which I propose to pay an underwriting commission of $62,500.

I desire to secure your services in procuring the consent of the stockholders of the Kansas City Stock Yards Company of Missouri to the exchange of stock herein proposed, and if you will undertake the matter, I will pay to you the sum of $25,000 in case not less than seventy-five per cent in interest of the stockholders elect to make the exchange, or if I elect to make the exchange with a less percentage of the stockholders consenting thereto, and I will pay you in addition the sum of seventy-five cents per share for every share of the stock of the Missouri corporation which is exchanged in addition to the seventy-five per cent hereinbefore mentioned.

The proceeds of the common stock of the Maine corporation will be used by me for the following purposes:

To pay the sum of $10 to each of the stockholders of the Missouri corporation who elects to make the exchange; to the payment of the underwriting commission of $62,500; to the payment of your compensation, and to the payment of all legal and other expenses incurred in connection with the carrying out of this proposition, and the balance remaining will be paid into the treasury of the Maine cor- [fol. 1787] poration, so that the entire amount of common stock of the Maine corporation and the entire amount of preferred stock to be issued in the first instance will be issued as fully paid in exchange for the stock of the Missouri corporation which is exchanged in accordance with this offer, and in addition the net amount of cash remaining from the proceeds of the common stock which is to be paid into the corporation as hereinbefore stated.

The opportunity to exchange the stock hereinbefore pro-

vided for will remain open until December 2nd, 1912, unless the time for such exchange is extended by me.

If you undertake to arrange for the exchange of the stock on my behalf, I agree from time to time to provide you with such preferred stock of the new Maine corporation, such amount of cash and such amount of common stock of the new Maine corporation as may be required to be issued and paid to the stockholders of the Kansas City Stock Yards Company of Missouri.

If the foregoing plan should not be carried out because a sufficient number of stockholders of the Kansas City Stock Yards Company of Missouri fail to consent thereto I will reimburse you for all legal expenses which you may have incurred in the premises.

Yours very truly, Edward Morris.

October 30, 1912.

Edward Morris, Esq.,
Chicago, Ill.

Dear Sir: We acknowledge the receipt of your favor of October 24, relative to our acting in connection with the proposed exchange of stock of the Kansas City Stock Yards Company of Missouri for stock of the Kansas City Stock Yards Company of Maine and will act for you in the matter upon the terms stated in your letter.

We understand that since your letter of October 24 was written, the following modifications have been agreed to by you:

First. Stockholders in Kansas City Stock Yards Company of Missouri shall have the right to subscribe for fractions of a new share of common stock and the right to subscribe to fractions of the new shares shall be assignable.

Second. As we are to act as depositary, we are to be paid the usual fees of a depositary in addition to the other compensation provided for in your letter of October 24.

Third. If not less than 75 per cent in interest of the stockholders of the Kansas City Stock Yards Company of Missouri have deposited their stock with us on or before December 2, 1912, you will, at our request, extend the time

for making exchanges of stock for a period of not exceed-
[fol. 1788] ing six months.

Very truly yours, —— ——.

October 31, 1912, Kidder, Peabody & Co. issued to the stockholders of the Kansas City Stock Yards Co. of Missouri the following circular:

To the stockholders of the Kansas City Stock Yards Co. of Missouri:

The directors of your company have unanimously approved the following plan for the exchange of stock in your company for the stock of a proposed new company to be known as the "Kansas City Stock Yards Company of Maine," having a capitalization of $11,500,000, divided as follows:

Common Stock (par value of $100 each)	$2,500,000
Preferred stock (par value of $100 each)	9,000,000

Entitled to 5 per cent cumulative dividends quarterly, the first dividend to be payable February 1, 1913. The preferred stock will also be preferred to the extent of par and accrued dividends in case of liquidation, and will have no voting power except in case of failure to pay two consecutive dividends on the preferred stock, in which event it will thereafter have full voting powers until all accrued and unpaid dividends have been paid in full. Provision will be made to the effect that no mortgage or other encumbrance shall be placed on the property of the Maine corporation except with the consent of at least two-thirds in interest of the preferred stockholders.

Stockholders of the Kansas City Stock Yards Company of Missouri may exchange each share of stock in the Missouri corporation for one (1) share of the preferred stock of the new Maine corporation and $10 in cash, and such of the stockholders of the Missouri corporation as elect to assist this offer may subscribe to one share of the new common stock of the Maine corporation at $50 per share for each seven (7) shares in the Missouri corporation owned by them and deposited.

Rights to subscribe for new common stock will not be assignable, except that rights to subscribe to fractions of one new share may be purchased or sold so as to enable the holder to subscribe for one full share.

The amount of preferred stock of the Maine corporation to be issued in the first instance will be limited to the amount of stock of the Missouri corporation which is exchanged in accordance with the above offer.

We mention that the entire issue of common stock has been subscribed for and underwritten, payable in cash at $50 per share, which insures the successful placing of the common shares in case the present shareholders do not avail of the offer.

The cash proceeds of the common stock will be applied in the first instance to the payment of the $10 per share to be paid to the stockholders of the Missouri corporation, to the payment of an underwriting commission of 5 per cent on the $1,250,000 of common stock which is offered for [fol. 1789] subscription as above stated, and to the payment of the other expenses of carrying out the proposed plan, including the compensation of the bankers, and the balance will be paid into the treasury of the Maine corporation.

The entire amount of preferred and common stock of the new Maine corporation to be issued in the first instance will be issued as fully paid for the stock of the Missouri corporation which is exchanged and the cash to be paid into the Maine corporation, as above stated.

The directors of the Kansas City Stock Yards Company of Missouri and the largest stockholders of that Company have already agreed to deposit their holdings in exchange for the preferred stock of the new Maine corporation and to subscribe for the full quota of common shares to which they are entitled.

We enclose herewith form of consent to exchange of stock and subscription to common stock of the Maine corporation. Stockholders who desire to avail themselves of the opportunity to exchange their stock should sign the enclosed assent and forward it to the undersigned, together with their certificates of stock of the Missouri corporation indorsed in the blank. They will receive in exchange there-

for our negotiable receipt. Such of the stockholders as elect to exchange their stock and desire to subscribe for the new common stock, should also fill out the subscription agreement.

Unless at least 75 per cent in interest of the stockholders of the Missouri company have deposited their stock for exchange with us on or before December 2, 1912, we may, at our option, be relieved from all liability hereunder by returning to the depositing stockholders the stock deposited by them.

In case the plan is declared operative we shall, upon receipt of the stock of the Maine corporation, be prepared to retire our receipts, issuing therefor such an amount of preferred shares and such an amount of common shares in the Maine corporation, plus balance due in cash, to respective depositing shareholders, as receipts call for.

No charge will be made to depositors.

Kidder, Peabody & Co.,
115 Devonshire St., Boston, Mass.

Boston, Oct. 31, 1912.

Accompanying and printed as a part of the above circular was the following statement:

We, the undersigned, directors of The Kansas City Stock Yards Company of Missouri, having carefully considered the offer of Kidder, Peabody & Co., set out in their circular under date of Oct. 31, 1912, and being unanimously of the opinion that is for the best interests of our shareholders [fol. 1790] to accept the same, have agreed to deposit our shares (except qualifying shares) and have subscribed to such shares of the common stock of the Kansas City Stock Yards Company of Maine as we are entitled to; and we recommend the same action on the part of all stockholders.

Charles F. Adams, Charles F. Morse, Walter Nunnewell, Francis L. Higginson, Eugene V. R. Thayer, C. Minot Weld, Frank H. Damon.

Some of the stockholders of the Missouri company objected to reli-quishing their proportion of control of the

yards property. Below is a sample of Kidder, Peabody & Co.'s reply to such objectors:

November 29, 1912.

John A. Chapman, Esq., Agent,
1212 Chicago Stock Exchange Bldg.
Chicago, Ill.

Dear Sir: Acknowledging your letter of November 27, and replying categorically to your questions, we are informed by interests identified with the board of directors.

1. The assets of the Maine corporation in the beginning will consist of the deposited stock of the Kansas City Stock Yards Co. of Missouri and some cash in bank derived from the sale of common stock. The stock of the Missouri corporation deposited in exchange for stock of the Maine corporation will, we understand, be transferred to the Maine corporation.

2. You are correct in stating that each seven shares of the old company is to have the right to subscribe to one share of the common stock of the new company, and that this provides for the issuance of slightly more than one-half of the proposed issue of common stock of the new company. The balance has been sold at $50 per share on the same terms to new interests, which the management firmly believe will stimulate the business and make it certain that the property will earn a sufficient amount to insure dividends on the new preferred and common shares equal at least to the rate of dividend you are receiving on your present holdings. They inform us at the present time that they have heretofore earned a 6 per cent dividend on the stock, except that for the six months ending June 30, 1912, the earnings were $30,000 less than the amount of dividend paid. Since that time the earnings have been showing a little better.

[fol. 1791] 3. The only basis on which a depositing shareholder can subscribe to the new issue of common stock is that outlined in our circular, namely, one share of common for every seven shares of old stock deposited.

4. The cash proceeds of the common stock—$2,500,000 at $50 a share—amount to $1,250,000. The first charge of $10 a share to the present outstanding shares of the Kansas

City Stock Yards Co. of Missouri amounts to some $880,000, the second charge (an underwriting commission of 5 per cent to underwrite approximately one-half the common capital to be offered to the depositing shareholders, amounting to about $1,250,000 par value) amount to $62,500. In addition to that our counsel fees, bankers' fees, and expenses incident to deposit of the stock, it is expected all of this is accomplished that approximately $250,000 would be paid into the treasury of the Maine corporation.

5. Regarding the position of a nondepositing stockholder, a stockholder in the old company is, of course, under no obligation to deposit his stock, but the management believe that under the proposed arrangement the old stock represented by the new preferred will be on an absolutely permanent 5 per cent basis, and the stockholders who avail themselves of the privilege of taking the new common stock to which they are entitled will eventually receive more than their present dividends on the old stock in dividends on both classes of the new stock and be able to dispose of their new shares (should they so desire) in a broader market than they have had for the old stock. Should these conditions materialize, there may be some question as to the future basis of exchange for the stock of the old company.

6. We are informed that the reasons for this proposed exchange are similar to those in respect to the Chicago Junction and Union Stock Yards Co. of Chicago, namely, to cement with the company large interests active in using the property and insuring their being domiciled at this particular point for the transaction of their business in the future as in the past.

Very truly yours, (Signed) Kidder, Peabody & Co.

In accordance with Morris's plan the Kansas City Stock Yards Co. of Maine was incorporated on December 26, 1912. By April 5, 1913, through Kidder, Peabody & Co., the holders of $7,930,400 of the common stock of the Missouri company had exchanged their holdings for $7,930,400 of the preferred stock in the Maine company plus $793,304 in cash. In this exchange the holders of the Missouri company's stock could have bought $1,132,900 (one-seventh of $7,930,400) of the common stock of the Maine company for $566,450 ($50 per share), but they actually bought only

$1,055,900, for which they paid $527,950 ($50 per share). For its service in this matter Kidder, Peabody & Co. was paid $39,328.

[fol. 1792] Subsequent to April 5, 1913, there was an additional $61,100 of the common stock of the Missouri company exchanged for the same amount of preferred stock of the Maine company plus $6,110 cash. This made the outstanding preferred stock of the Maine company, $7,991,500 and left $168,500 of the common stock of the Missouri company yet unacquired by the Maine company. This remaining $168,500 common stock of the Missouri company was bought for cash by the Maine company, for part of which it paid $125 per share.

Edward Morris and others bought $1,444,100 of the common stock of the Maine company for $722,050 ($50 per share), which, together with the $1,055,900 of stock given in exchange for stock in the old company, brought its outstanding common stock up to $2,500,000. On May 1, 1916, the Kansas City Stock Yards Co. of Missouri was liquidated and its property was taken over by the Kansas City Stock Yards Co. of Maine. The bonds of the old company were assumed by the new company.

Thus the Morrises succeeded in gaining control of the Kansas City Stock Yards Co. It is known that Edward Morris personally bought $1,250,000 of the common stock of the new company (50 per cent of the total voting stock) at a net cost of $562,500—he paid $625,000 and received an underwriting fee of $62,500. Morris & Co. also received some of the common stock in the new company by exchanging its holdings in the old company. This gave the Morrises control of the new company.

The list of the holders of the common stock of the Kansas City Stock Yards Co. of Maine furnished the Commission by the company as of June 30, 1917, disclosed very little direct holding of the stock by the Morrises. Practically all the Morris holdings stood on the books in the names of others, such as E. V. R. Thayer, of New York; R. A. Hitchings, of Boston; and Martin H. Foss, of Chicago. The Commission was able to find only $1,065,800 (or 42.6 per cent of the total) of this stock accredited to the Morrises, so it is doubtful if all the Morris holdings were identified.

From the viewpoint of the yards company the reorganization increased the outstanding capital stock $2,331,550—from $8,160,000 to $10,491,500—and placed less than $250,000 cash in the company. From the $1,250,000 which was paid for the common stock of the new company was deducted: the $799,414 paid to the holders of stock in the old company, who exchanged for preferred stock in the new company; the organization expenses of the new company as well as the Morris $62,500 underwriting commission; the $39,328 Kidder, Peabody & Co. fee; and the $185,000 or more paid for the stock in the old company, which was bought by the new company.

[fol. 1793] Jersey City Stock Yards Co.—The stockyards at Jersey City, N. J., are a part of the terminal equipment of the Pennsylvania Railroad Co., and the yards facilities are owned by that railroad. The yards are leased by the railroad company to the Jersey City Stock Yards Co., an operating company.

The first Jersey City Stock Yards Co. was organized February 27, 1873, by Samuel W. Allerton and George W. Gregory. This company leased the yards for a period of 30 years. February 12, 1903, the lease was renewed for an additional 10 years.

Before the expiration of this second lease in 1913 the Pennsylvania Railroad through Allerton made an effort to identify Armour & Co. and if possible Swift & Co. with its yards at Jersey City in order to increase the business of that railroad by getting these two packers to ship their live stock to the East over the Pennsylvania. At the same time that Allerton was negotiating with Armour & Co. in reference to these yards, Morris & Co. through A. W. McLaren was endeavoring to lease the yards. The Pennsylvania Railroad had been getting $25,000 a year rental for its Jersey City stockyards and this was the figure at which they were offered Armour & Co. Morris & Co. offered $50,000 a year for the lease, but its offer was not accepted, and the yards went to Armour & Co. at $25,000.

The reason the Pennsylvania Railroad leased its yards to Armour & Co. instead of Morris & Co. although the latter company offered double the rent paid by Armour & Co. is set forth in a number of letters that passed between these

parties at that time. These letters are given as Exhibit 3, pages 282-296.

Having completed its arrangement with the Pennsylvania Railroad, Armour & Co. incorporated the Jersey City Stock Yards Co. for $500,000 and opened the yards for business under the new control February 12, 1913. The entire $500,000 capital stock was issued to the following:

R. C. Bonham, Ridgewood, N. J. (president)	$ 20,000
R. C. Bonham, trustee	296,900
Kate Allerton Johnstone, Chicago	50,000
H. A. Chetham, Chicago	90,000
Ira F. Brainard, Pittsburgh, Pa.	32,500
Thomas A. Hughes, Jersey City, N. J.	10,000
Lee S. Harvey, Jersey City, N. J. (secretary)	300
L. H. Hersey, Jersey City, N. J. (treasurer)	300
Total	500,000

[fol. 1794] Armour & Co. admit owning $297,500 of this stock and Swift & Co. admit owning $90,000 of it. The Armour stock stands in the names of Bonham, Harvey, and Hersey; the Swift stock in the name of Chetham.

After the beginning business the Jersey City Stock Yards Co. operated six months before any money was paid for capital stock. At the expiration of six months the earnings were sufficient to pay a dividend of $42,000. Following the declaration of this dividend $100,000 was paid the company for capital stock and the additional $400,000 capital stock was issued for "property" which property was the contract with the railroad company.

Armour & Co.'s $297,500 stock cost a net investment of only $34,500, which is 11.6 per cent of its holdings. Swift & Co.'s $90,000 required a net investment of only $10,440.

The net earnings of the Jersey City Stock Yards Co. from February 12, 1913, to December 31, 1916, four years, were $594,764. During these four years dividends amounting to $342,000 were paid to stockholders and the other

$252,746.14 of earnings remained in the business. Of this dividend Armour & Co. received $178,500 (exclusive of the first dividend, which was used as part payment for the stock) and Swift & Co. received $54,000 (exclusive of the first dividend). In other words, within four years after these two packers obtained control of the yards they realized in dividends their original investment of $44,940 and $187,560 in addition.

Chicago Stock Yards Co.—The history of the Chicago yards and of the deals by which the packers secured their bonuses and by which Armour & Co. acquired a stock interest in the Maine company is so remarkable that a separate chapter (Chapter V) is given to this subject.

Direct Results of Big Packer Control of Stockyards

Section 11.—Packer yards' services, charges, and profits.

Yards Services.—The big packers' assertion that they offer superior facilities and services at the stockyards controlled by them is not sustained by evidence. The yard facilities of their stockyards have generally been expanded since acquisition by them, but the expansion in facilities have been in most cases only to the extent absolutely necessary to take care of the increased live-stock receipts, in other cases the expansion of facilities has been totally inadequate. There has been much dissatisfaction and criticism on the part of live-stock commission men and shippers as to the poor facilities and services which are given at the stockyards controlled by the big packers.

At virtually all the large stockyards there is complaint on the part of the live-stock producers and commission [fol. 1795] men that the stock-yards companies do not employ a sufficient number of employees to unload and handle the animals through the yards. At some of the yards, as at Omaha, a part of this work has to be done at the expense of the commission firms. The stockyards company receives its regular yardage charges for the work, even though the services are not performed by it. Also, at the large yards there is a wide complaint on the part of both producers and commission men that the stockyards do not have adequate weighing facilities to take care of the heavy business. As a result, the producers suffer losses

because of the long wait of the animals before they can be weighed up to the buyers.

A complaint which is found at practically all stockyards is that the yards are not kept clean. No doubt this condition in the past two years has been partly due to the general shortage of labor. But the complaint runs back for several years at Denver, Omaha, St. Louis and Chicago. Another complaint at some of the packer controlled yards is that there are not a sufficient number of pens to take care of the incoming animals.

The following report of a committee of the Omaha Live Stock Exchange sets forth the complaints of the exchange against the facilities and services of the Omaha stockyards which is controlled by Armour:

Omaha Live Stock Exchange Committee Report

At the regular October meeting of the exchange held Friday, October 5, 1917, the following resolutions were unanimously adopted and were immediately presented to Mr. Buckingham:

"Moved that the railroad and stockyards committee be instructed to see Mr. Buckingham and demand immediately relief from the congested conditions in the cattle yards. If such relief can not be obtained immediately, the committee shall take up the situation with Mr. Dunham at Chicago at once."

No reply having been received from Mr. Buckingham, and no particular improvement in service, your committee instructed Secretary Stryker, who was then in Chicago, to arrange with Mr. Dunham, president of the Omaha Stock Yards Co., for a conference with him in Chicago at his early convenience. This conference was arranged for Saturday, October 13. Mr. Dunham called Vice President, General Manager Buckingham and Traffic Manager Shellberg of the stockyards into Chicago to be present.

At the outset President Tagg outlined in a general way the desire of the exchange and its membership to work with the stockyards company in the upbuilding of the Omaha market. He showed that for 12 months period beginning [fol. 1796] September 1, 1916, and ending August 31, 1917, exchange members spent 9,191 days in the country solicit-

ing for the Omaha market. This would be equivalent to 25 men out every day in the year above mentioned. He suggested the stockyards company employ solicitors with the view to protecting the interests of this market and preventing if possible much live stock being diverted to other competitive markets. He pointed out to Mr. Dunham that our yards were not large enough for the runs we are attempting to handle and the shippers to this market were losing large sums of money on account of delays in the yards. Another point made by Mr. Tagg was that we need more buying competition and suggested securing another packing house in addition to those already at Omaha. He mentioned also the serious harm which had been done the Omaha market by semiembargoes placed upon this market by representatives of the stockyards company within the past few weeks, explaining that much business had been diverted from the Omaha market to other markets on this account.

Mr. Anderson, chairman of the railroad and stockyards committee, following Mr. Tagg, outlined briefly the work of his committee during the past eight months, the agreement made between the committee and the yard company, and the changes to be effected in the service. He suggested that commission men had done their part in effecting these changes but that the yard company had seemed unable to take up their share of the burden. He pointed out benefits to all concerned (on) account of the new system of weighing in the cattle yards, suggesting at the same time, however, that unless the yard company shall make arrangements to take live stock away from the scales after weighing, the improvement effected by the commission men would be of little of no avail.

At about this state of the conference Mr. Dunham made the statement that the Omaha yards represented a personal investment of Mr. J. O. Armour, who realizing the importance of Omaha as a market center, invested his money in the Omaha house and yards as a personal venture. He, Mr. Dunham, stated perhaps he had been partially to blame in not having kept up with the growth of this market; that it was his intention not to jeopardize the interests of the Omaha market in favor of another market.

He mentioned the difficulty of securing labor and touched strongly on suggestions of the Government that no large sum of money be spent at this time in promoting projects that could very comfortably wait until the conclusion of the war. He again stated in this connection, however, that it was not his intention to hamper the growth of this market and that if mistakes had been made in the past they must be remedied. He mentioned among other matters that commission men continually employed the yard company's best employees. This was answered to the effect that if the yard company paid its employees more money they would be able to keep them.

Mr. Will H. Wood next took up the conditions at the several cattle scales during the week just past, showing in detail when these scales were opened in the morning, when [fol. 1797] the first draft was weighed, when the first men showed up at the scales, the delays during the day, and, in fact, a pretty complete report of the several scales performances. He laid particular emphasis on the fact that we must have more men and more pens at the Omaha yards.

Mr. H. H. Roberts, of the committee, suggested that not only were there delays now, but that there was congestion and delay in the winter time; that they were serious delays in delivering cattle to commission men. He made the further point that if there were more pens in the yards it would require less labor to handle the stock. At this point Mr. Buckingham suggested there would be less delay if commission men would get their cattle from the chutes, which was their plain duty.

In answer to a question of Mr. Tagg the secretary made the statement that while there were a number of pens in the sheep barn, which had been cemented for hog yarding, there were not as many pens in the present hog yards proper as were used for hog purposes in 1890 and 1891.

Secretary also mentioned a number of improvements which could be temporarily installed; more pens on the south side of the yards, more pens to the west of the yards, temporary cattle pens in the hog yards, and the construction of additional chutes, pointing out that Omaha was not as well supplied with unloading chutes as many of its competitors.

Taken as a whole your committee feels considerable good was accomplished. Mr. Dunham met the committee in a very pleasant manner, intimating very plainly he wanted to know if things were not going satisfactorily at Omaha. He stated that if he heard no complaints from Omaha, he might consider the market was on the down grade, but as long as complaints were coming in he knew the business men at Omaha were alive to the situation. In answer to this particular phase of the situation, Mr. Anderson explained, somewhat in detail, the position of our people. He stated that every member of the exchange was back of the complaint at hand, that the membership was in earnest and intended ascertaining, if possible, if there was any remedy for the serious losses to our shippers and our membership (on) account of inadequate facilities and the lack of cooperation on the part of the stockyards company's management.

Mr. Dunham, in conclusion, stated that it was exceedingly difficult to do any kind of work this year, but that he expected to remedy any defects which might develop. Your committee feels that no efforts must be left neglected in bringing about a decided increase in facilities at this market and that Mr. Dunham's suggestion *be* desired to be kept informed of conditions at this point be taken advantage of.

Respectfully submited, W. B. Tagg, Frank Anderson, Will H. Wood, H. H. Roberts, A. F. Stryker, Sam Wertheim.

[fol. 1798] The things thus complained of were not remedied as is shown by the following subsequent report of the railroad and stockyard committee of the Omaha Exchange:

March 13, 1918.

Omaha Live Stock Exchange.

Gentlemen: Your railroad and stockyard committee had a meeting with the manager and superintendent of the stockyard company on March 9 regarding their service, prospective improvements, etc. Your committee maintained the position of mutual interest and desires to work in harmony, but that our members were insisting upon

something tangible being done at once, and assurance given that necessary improvements would be made during this spring and summer. The manager stated that the company was doing all they could do, expressed himself as being desirous of giving good service, but at the same time said it was only a question of time before the commission men would be obliged to take all of the stock from the chutes in order to have proper service.

The stockyard company admit they do not deliver any of the hogs, but do deliver between 50 and 60 per cent of the cattle and 90 per cent of the sheep to the pens of the commission men.

The manager would not say what improvements would be made and refused to give an opinion until after his return from the western live-stock meeting in April.

We told him these conditions had prevailed for years and the business interests and patrons of this market had been put off in this and similar ways for years until the range season was upon us when it was impossible to do anything, and after admitting that the company had ample funds, land, etc., and that he did not believe the Government would interfere with any needed improvements, he still refused to give us any satisfaction. Your committee told him of their meeting with the railroad representatives in Omaha on the 2d when arrangements were made for the earlier arrival of the live stock at the yards. He agreed this would help them very much; however, he would not agree to deliver all of the cattle but would do the best he could.

Your committee presented facts, figures, and statements that did not admit of argument, showing there was sufficient stock in the States actually tributary to the Omaha market to supply 50 to 100 per cent more stockyard, packing-house, and buying facilities than we now have, and that because of their failure to provide these necessities this trade has been and still is diverted to other markets where the supply is not equal to their demand, creating higher prices and giving the four packers doing business at Omaha a decided, unwarranted, and unnecessary advantage.

After your committee has again gone over the situation with Mr. Buckingham we expect to take this matter up with

the president of the stockyard company, and if we do not receive the actual and bona fide relief we ask and know [fol. 1799] this market should have we ask permission to go to the State Railway Commission, Government authorities, or take such other action as may seem right or necessary to secure the rights and justice for the patrons of this market and ourselves.

Very respectfully submitted.

C. A. Mallory, F. Anderson.

The following letters and reports show that the service and facilities of the Denver Union Stock Yards Co. in 1917 were very bad:

Chicago, February 2, 1917.

Mr. L. F. Swift,
Office.

In recent conversation with Mr. de Ricqles at Denver, regarding stockyards matters generally, my attention was called unofficially to a condition at the Denver stockyards which contributed to the death of four steers, the property of the American Live Stock & Loan Co., resulting in a claim for the value of the animals and an unnecessary feed at Cheyenne, which was declined by Mr. Shoemaker.

I requested Mr. de Ricqles to give me his office file, which I promised him would not be allowed to pass out of our possession.

Mr. de Ricqles can prove by competent testimony that the yards were in such a condition that the cattle could not lie down and rest for a period of more than 24 hours. When the cattle were finally loaded in clean, dry cars they attempted to lie down from exhaustion, trampling one another to the extent that four head were killed.

He can prove by additional testimony that the cattle were in bad condition passing Wellington, only a few miles distant from Denver, and that their condition was such they had to be unloaded at Cheyenne, incurring an unnecessary feed bill of $53.95.

Mr. de Ricqles made claim against the stockyards company but his allegations were denied and the claim declined. The file was turned over to counsel for the American Live Stock & Loan Co., with instructions to file suit for

the recovery of the actual value of the steers and injury to the balance, not claimed in the original demand. The suit will not be prosecuted, Mr. de Ricqles feeling that the controversy with the Denver Stock Yards Co. and the financial loss involved has become submerged in the larger questions now before the stockyards and packing interests and the live-stock people. He will always feel, however, that the Denver Stock Yards Co. have not given the consideration his claim deserves.

As a claim officer of the Santa Fe I can say that Mr. de Ricqles was the largest individual shipper of live stock on the Santa Fe System, handling more than 1,000 cars per [fol. 1800] annum, and yet I do not recall to exceed two claims filed by his company during the past five years. He is always found to be fair and, in my judgment it would be a mistake for the Denver Stock Yards Co. not to pay the claim referred to herein. Pursuant to instructions regarding live-stock matters at yards such as Denver, I recommend that you request Mr. Armour to instruct the immediate payment of the claim as filed, $219.95.

F. S. Brooks, (Transportation Department of Swift & Co.).

FSB: GB

The American Live Stock and Loan Company
Union Stock Yards,

Denver, Colo., June 19, 1917.

Mr. J. Ogden Armour,
208 South La Salle Street, Chicago, Ill.

Dear Mr. Armour: In connection with the situation here at the stockyards during the month of May. I feel that it is of the utmost importance that some action be taken so as to prevent a recurrence of the conditions that existed during May and also so that the details of operation be improved.

For your information I am inclosing herewith a copy of a letter that was written to me by the manager of our commission company at the stockyards. That company handles our cattle while in transit, and I have read this

letter carefully and it is correct. Possibly some other matters could be added to it, such as the trouble we have about getting a correct in-and-out count on our cattle, which should not exist, and other details that I will not trouble you with. Such complaints as this includes have in the past been the basis of a great deal of the trouble that we have had with shippers, and it results in sentiment being created against the enterprise and, as we have often talked, much of the animosity of shippers can be directly traced to bad conditions in the stockyards or thoughtless action on the part of the buyers, and I am sure of your earnest desire to eliminate these things. I am writing to you in the nature of an appeal to secure your assistance in making it impossible for such conditions to again exist in Denver as we have just been through.

[fol. 1801] For your information I am attaching three little photographs that I took myself on Sunday, May 27, in the active part of the stockyards where cattle were constantly being unloaded, loaded and handled generally in the alleys and so forth. These photographs will show you without any further remarks just what it looked like at the end of the month. As these alleys and pens were all paved, you can realize what the conditions were. I have talked to the management about these things quite often, but their point of view and idea of what proper service consists of is so entirely different from my point of view that I do not believe that anything is gained by my going to them about it further.

I understand that something over 300 cattle were turned over to the Union Rendering Works during May in Denver, and while, of course, some of these cattle were crippled or dead on arrival, others died in the yards because of their failure to get an opportunity to rest and of the abuse they received.

I hope you will feel that I am writing this letter in the most friendly and sincere way and that these frank statements are not meant to be unkindly, but simply to put the matter in such shape that its seriousness will be fully understood. As you know, the Federal Trade Commission will commence its investigation about July 2 and it is just this sort of stuff that gives some of our radicals ammunition to shoot at the packers. I have commenced

to feel that some of those in charge of this investigation are not seeking constructive results, but rather looking for fireworks and advertising. To date it has not been suggested by the attorney of the market committee that I appear as a witness.

I have absolute confidence in the promises that you and Mr. Swift made about taking care of the defaults in the management and I feel that there is no occasion for me to do more than call your attention to these things and, in view of the fact that Mr. Swift has mentioned this matter in Denver to you, I am taking the liberty of sending him a copy of this letter that I am writing to you and also a copy of the letter from Mr. Monson, the manager of our commission company.

Yours truly, A. E. de Rieqles.

Enclosures.
AEdeR-W.

[fol. 1802] J. Ogden Armour, Chicago

November 8, 1916.

L. F. Swift, Esq.,
Swift and Company, Chicago.

My Dear Mr. Swift: I have your favor of even date. Yes; this is a very serious complaint and I have forwarded your letter out to Shoemaker. We had Shoemaker here the other day and we told him to go over the stockyards and see how much it would cost to enlarge them, as we think this has to be done. But, of course, this complaint is one of many and I will see that the matter is taken up with Mr. Shoemaker. I don't know whether Shoemaker is big enough to run this job or not, but I think we should give him an opportunity, and if he isn't we ought to get somebody who can run it. I agree with you that we should not have these complaints. Of course, we have to enlarge the yards out there and when we get the estimate the matter will be taken up with you. But Colorado is growing and I think the yards should be put in shape to take care of all the stock that comes into it and in a proper manner, too.

Yours very truly, J. Ogden Armour, B.

The following letters from Swift & Co.'s files show that the facilities at the St. Paul Union Stock Yards were inadequate to take care of the business:

South St. Paul, Minn., Oct. 19, 1916.

Mr. W. Leavitt, Chicago, Illinois.

Dear Sir: Answering your letter of October 13, the yards are badly congested on Mondays. Commission men have no room to sort and their cattle are yarded all over the stockyards, any place they can find an empty pen. They have to turn a bunch of cattle into the alley and sort them, and after selling let them run back together again.

We have not enough scales to handle weighing, commission men often waiting hours after their cattle are sold to get a turn.

The Stock Yard Co. have put a rule in force not to unlock any cattle on Sunday for commission men owing to the commission men wanting to sort and taking up more pens.

[fol. 1803] The reason for the weighing being so low is on account of so many different owners to a load of cattle.

Cattle are yarded here Monday in chute pens and other pens without mangers, some loads of cattle being yarded in pens that would not comfortablly hold a dozen cattle.

Hoping this answers your letter fully,

(Signed) L. E. Daubney.

LED-N

(Pencil note:) All the above has been corrected.

St. Paul Union Stockyards Co.,
So. St. Paul, Minn., 10/13/1916.

Mr. Louis F. Swift,
Union Stock Yards, Chicago, Ill.

Dear Sir: I have your telegram directing me not to turn away any stock from these yards.

On Sunday, Sept. 24th, we had reports of 967 cars to come in here. We took in 855 cars and were badly overcrowded as a result. The balance of the cars were fed

at New Brighton or the Twin City Yards. We felt it would be better policy at that time to ask the lines to hold out the stock billed to Chicago commission firms for fear that the last stock to arrive would be billed to So. St. Paul firms and we would not have any room for it. We will not divert any more. We did not divert any except Sundays, when reports showed more in sight than we were able to handle. I hardly think we will have any trouble the balance of the season in that respect.

Yours respectfully, (Signed) St. Paul Union Stockyards Co., By Wm. Magivny, President.

WM-A

Yards Charges.—That the large stockyards companies charge more for the services they perform than is necessary is shown by the large profits these yards companies make. The charge which seems most exorbitant is that for feed. Stockyards companies have a monopoly in supplying shippers and traders with hay and grain at the yards. The prices they charge for this feed are generally in excess of the market prices outside the yards. For example, on April 1, 1918, the St. Louis National Stock Yards Co. was charging $2.25 per bushel for corn, while [fol. 1804] on that date the same quality of corn could be bought outside the yards for $1.41 to $1.45 per bushel.

The high feed charges make it very costly for shippers to hold their animals in the yards from one day to another for better prices.

The following letters taken from the files of Armour & Co. in reference to the charges by the Omaha stockyards shows the packers' attitude toward stockyards charges:

March 21, 1917.

Mr. Buckingham: Saw Mr. U. G. Powell, rate expert of the Nebraska State Railway Commission, at Lincoln yesterday. Talked with him regarding an increase on our corn rate, with the understanding that such increase was to be but temporary, our rate to be put back to $1 per bushel just as soon as these high prices subsided. He told me that with the present commission, with Hall as chairman and the new man, Vic. Wilson, both of a similar character, so far as "protection for the general public," that

he felt that if we asked for such increase we would simply be opening up a channel for these two gentlemen to insist on valuation of the yards proper, and, in other words, to go into every detail of the operation of the stockyards as a whole.

He stated that the commission, as they now stand, are absolutely against any sort of temporary relief, and that if anything whatever was done, that it was certain to be worked out on the basis of an arbitrary amount, say 25 cents per bushel over cost, and that this arbitrary would have to be used at all times in the future, even though the cost plus the arbitrary brought the selling price below $1.

Mr. Powell intimated that the new commissioner, Wilson, seemed to have two corporations in particular on his mind, they being the Union Pacific and the stockyards, and that an application from us would simply give him an opportunity to initiate us with his idea of stockyards regulation.

I spoke of the prevailing feed charges at other stockyards, and also the price we were now paying for corn, and Powell said that on the face of it, there was no question but what we were entitled to more money for this commodity, but, on the other hand, said that if the matter was brought up it would be for the purpose of ascertaining whether or not an excess profit was not being made from some other commodity, or through some other department of the yards. He rather felt that from the fact that during 1916 we were enabled to pay an additional two per cent dividend that an investigation would show that while corn was showing a loss that some of the other departments were showing too great a profit, and that the investigation would have a tendency to cut down revenues from some departments and increase the corn revenue, but [fol. 1805] in the end would give us no greater net revenue. In other words it has been the contention of the commission that our accounts should be so outlined that they might be able to determine just what net revenue we are deriving from each department, and in this manner determine whether or not the charges we make for any specific commodity or service is giving a proper return on the investment of that particular department. The commission insists that owing to the net showing from the entire stockyard operation in 1916, that if we are showing a loss in

corn that some other department must be contributing too greatly and should be regulated as to charge.

Also talked with Powell regarding making our State switching rates the same as our interstate rates. Said he could see no particular reason for not having them the same, but rather felt that there would be considerable opposition from the grain men if an attempt was made to increase the rate from $2 to $3 unless the railroads would agree to absorbing the entire charge. He seemed very much concerned as to whether it would be our intention to increase the switching on live stock, but I informed him that such a change was not contemplated at this time.

You probably know that just at this time the Nebraska commission are fighting out a decision of the Interstate Commerce Commission through the Supreme Court, and Powell intimated that from the showing made that the decision in this case by the Supreme Court would straighten out the matter of jurisdiction of these two regulating bodies, and that the Nebraska commission would be successful in the case at the final outcome. Powell and the commission have been spending considerable time in this particular case and naturally feel a little bit unkindly toward any orders of the Interstate Commission. I noticed that he did not feel inclined to place very much credence to the fact that the rates were given us by order of the commission.

Just as I was getting on the train at Lincoln for Omaha, I noticed the chairman of the commission, Hall, running around the Burlington passenger depot, making various notes regarding trains. He was evidently gathering information which any of his clerks could have picked up for him, but you probably know his peculiarities and desire to have "first-hand" information.

After talking this matter of corn rates over with Powell, unless we wish to open up the subject of investigation and valuation of the entire yards, and also the changing of our accounts to coincide with the views of the commission, I gathered from Powell that he really felt the best thing to do was to allow things to stand as they are.

W. H. Schellberg.

[fol. 1806] South Omaha, Nebr., December 26, 1916.

Mr. R. J. Dunham,

President of Omaha Union Stock Yards Co., Chicago.

Dear Sir: We have withdrawn our application to the railway commission for an increase in the price of corn, this after conference with the rate expert, Powell, who seemingly felt that to press the application at this time was inadvisable. Henry Clarke leaves the commission January 1st, his place being taken by Vic Wilson, of Stromsburg, an extremist, who will probably insist on the physical valuation of all public-service corporations before increases of any kind are permitted. It was felt that if we insisted on the increase that the order would be based on a sliding scale, allowing us about twenty-five cents over and above the cost of the corn. We probably could prevail on the commission to make this as high as thirty cents, but at that in the long run we would lose by the arrangement. For the eleven months ending November 30th the average cost of our corn was 72 cents and our gross revenue was on the basis of $1.10 because of the "creep." This latter figure, of course, the commission knows nothing about, but in the event of a check of our books to arrive at the actual expense of the handling of the corn would bring it out, and this check Powell had been instructed by the chairman of the commission to make.

Last year's crop of corn was unusually light and bulky, which explains the "creep."

Between the new commissioner, Mr. Wilson, and Edgar Howard, the new lieutenant governor, who has always been unfriendly to the stockyards, we may have more legislative trouble than usual, although the high prices, not only of live stock but all farm products, will probably have the effect of making the farmers more lenient toward the yards, than otherwise.

Yours truly, E. Buckingham, Vice President & General Manager.

The Denver Union Stock Yards is an Armour-Swift company, but Armour runs the yards. The following letter from the files of Swift & Co. shows that in August, 1917, when Armour increased the charge for corn for $2 to $2.75,

Traynor, the assistant to Louis F. Swift, was apprehensive that such action might arouse criticism:

[fol. 1807] Chicago, August 11, 1917.

Mr. F. S. Brooks: I notice that on August 13th the Denver Stock Yards will increase its price for corn from $2.00 to $2.75. Think that large increases like this are inadvisable. It would have been much better to have gradually worked price up in advance of 25c. Were we consulted by the Armour people?

Wm. B. Traynor.

EM

The following letters from the files of Armour & Co. indicate that the big packers work together in reference to stockyards charges:

South Omaha, Nebr., November 13th, 1916.

Mr. R. J. Dunham, President,
Chicago, Illinois.

Dear Sir: Returned home this morning. Put in one day last week at St. Joseph yards; one day at Kansas City, and spent the latter part of the week at Excelsior Springs. I have yours of November 7th about the price of corn:

At Sioux City they are charging $1.25; at St. Joseph they are charging $1.25, and Barkley thought unless the price of corn went about $1 he was not inclined to increase over $1.25. Collett is charging $1.25, and would like to increase to $1.50, but is not inclined to do so at present. I think he would be glad to do so if St. Joseph would increase to $1.50. We will make application to the commission one day this week for the increase to $1.50—rather doubt their granting this, but feel sure they will give us $1.25. If I could say to the commission the other markets are charging $1.50, it would no doubt make them more willing to give us the higher rate.

Yours truly, E. Buckingham, Vice President and General Manager.

November Twenty-Fourth, 1917.

Mr. E. Buckingham,
Union Stock Yards Co., Omaha, Nebs.

Dear Sir: For your information, we have authorized Mr. Shoemaker, at Denver, to raise his price on hay from $30 to $35, effective December 1st.

[fol. 1808] In this connection, I was talking with Swift & Company this morning, and they tell me they have raised their price at St. Joseph to $35, and although Sioux City is still on a $30 basis, they expect to raise the price there very shortly. You of course know that Chicago charges $35 for hay and $40 for alfalfa.

Very truly yours, G. S. Bailey, (Private secretary to J. O. Armour.)

Yards profits.—It has already been shown that the yards now controlled by the big packers, aside from giving large cash gifts to the packing companies, donated to the packers large blocks of their capital stock and have from time to time increased their capital stock by declaring large stock dividends. Moreover, it would appear that all these yards have charged a sufficient amount for their services to pay regularly reasonable dividends on their increased capital and in addition to put aside considerable surpluses.

Section 12.—Packers' use of yards' monopolies.

Control of the stockyards by the big packers gives them the full use of all the yards' monoplies described on page 20 of this chapter. The most important of these yards' monopolies are: Control over the dead-animal rendering business; power over the yards' banking business; power over packing-house sites and appurtenances thereto; and power over facilities used by the livestock commission men and traders. These powers are derived from their control over the stockyards companies, and they make use of each of them either to gain large profits or to maintain their direction of the meat-packing industry.

Dead-animal-rendering business.—Among the monopolies found at practically all the big packer stockyards is that of yard rendering companies, which take all the animals that arrive dead at the yards or die after arrival. The

rendering done at the yard plants consists in cooking dead animals, after the removal of the hides, in kettles or tanks and recovering therefrom tallow, grease, and tankage, products which are important material for use in the manufacture of soap and fertilizer.

These rendering companies are usually owned by the big packing corporations or individual members of packer families and their more important employees. Thus the Union Rendering Co., of St. Paul, is owned by Swift & Co. The St. Joseph Rendering Co. is not incorporaated, but is operated as a division of the St. Joseph Stockyards Co., [fol. 1809] which is controlled by Swift. At the other large packing centers—Sioux City, Omaha, St. Louis, Kansas City, and Chicago—members of the packer families and their employees hold all or nearly all the stock.

These companies are:

At Chicago—The Globe Rendering Co., capital stock $2,000,000, owned as follows: Morris interests, $1,157,700; Swifts; $225,300; Arthur Meeker, vice president of Armour & Co., $200,000; Wilson, $50,000; and most of the balance held by those affiliated with or employed by the big packers.

At Kansas City—The Standard Rendering Co., capital stock, $1,000,000, owned as follows: Morris interests, $606,300; Wilson, $175,000; Swifts, $75,000; Arthur Meeker, vice president of Armour & Co., $50,000; Cudahys, $50,000; and the balance ($43,700) held by those affiliated with these packers.

At Omaha—The Union Rendering & Refining Co., capital stock, $100,000, owned as follows: Swifts, $34,000; Morris, $20,000; Armours, $8,000; Cudahys, $15,000; and most of the balance ($23,000) held by employees of these packers.

At East St. Louis—The East St. Louis Rendering Co., capital stock, $240,000, owned as follows: Morris interests, $179,500; Swifts, $60,000; and the balance ($500) held by five qualifying directors of the company.

At Sioux City—The Iowa Rendering Co., capital stock $25,000, owned as follows: Swifts, $6,200; Armour interests, $6,200; Cudahys, $5,900; and the balance held by those affiliated with these interests.

Globe Rendering Co.—The Globe Rendering Co. gets all dead animals in the Chicago stockyards. This company was incorporated August 10, 1908, under the laws of Maine. On September 1, three weeks after incorporation, the rendering company entered into a contract with the Union Stockyards & Transit Co. by which the rendering company received "the sole and exclusive right to collect all dead animals found upon the premises and within the limits of the property and plant of the transit company aforesaid." The contract is for 15 years and expires Sep- [fol. 1810] tember 1, 1923.

The schedule returned by the company shows that of the $2,000,000 outstanding only $200,000 was issued for cash. The balance ($1,800,000) was given to the stockholders, issued against "property." In the schedule as returned, real estate, machinery, and fixtures, motor trucks, and inventory all appear under these heads in the statement of resources and liabilities as of date of December 29, 1917. Aside from these, the statement of resources has an item listed as "property," the amount of which is $1,835,191.93. A letter was sent to the Globe Rendering Co. for a statement of what was represented by this "property" item. The property item of $1,835,191.93 does not include any tangible "property" but represents only "good will," as shown by the following correspondence:

May 22, 1918.

Globe Rendering Co.,
357 Exchange Building, Union Stock Yards, Chicago, Ill.

Gentlemen: The receipt of Schedule A of the Federal Trade Commission, duly filled out by officials of the Globe Rendering Co., is duly acknowledged. The commission desires further information in regard to certain items covered in the schedule. You are therefore requested to furnish list of real estate acquired during the last five years and cost thereof, also buildings erected and cost thereof. It is also desired that the item "Property," which amounts to about $1,800,000 in round numbers for several years, be further explained as to what it covers. The form of statement submitted indicates that it does not include real

estate, machinery and fixtures; or inventory, as those items appear separately. The commission directs that the information be mailed not later than May 27.

Yours very truly, Federal Trade Commission, Francis Walker, Chief Economist.

Chicago; June 3, 1918.

Mr. Francis Walker,
Federal Trade Commission, Washington, D. C.

Dear Sir: In reply to your letter of May 22, wish to say that on September 14, 1917, we acquired from the Union Rendering Co. 444.18 acres farm and pasture land surrounding plant, at a total cost of $66,627. No new buildings have been erected on this property. [fol. 1811]

The "Property" item shown on our statement, amounting to $1,800,000 represents good will and does not include any tangible property.

Yours truly, Globe Rendering Co., Paul A. Dett, Secretary.

On the books of the board of assessors of Cook County, as of May 1, 1917, the land of the Globe Rendering Co. is carried at $32,652; improvements on land, $1,800; and personal property, $3,500; or a total of $41,956 for total real estate and personal property. The law requires such returns to be at full value. The company has acquired real estate costing $66,627 since May 1, 1917. On the books of the company the real estate is carried at $77,534.10; the buildings at $1,171.26; and machinery and fixtures, $66,517. It is clear that the $200,000 paid in was enough to cover land, equipment, and a sufficient amount of working capital. The greatest asset of the company is undoubtedly the contract for the monopoly of dead animals, which appears to constitute the $1,835,191 "property" listed in its statement of resources. It seems evident that the capital was increased to make dividends declared seem smaller.

The record of earnings and dividends for the five years (1913-'17) is as follows:

	Earnings	Per cent on cash paid in	Per cent on paper capital	Dividends
1913	$134,360.88	72	7.2	$140,000
1914	101,201.43	51	5.1	60,000
1915	86,517.13	43	4.3	120,000
1916	148,160.38	74	7.4	140,000
1917	222,394.82	111	11.1	140,000

The average annual dividend for these five years was $120,000, which is 60 per cent on amount paid in and 6 per cent on paper capital.

[fol. 1812] Standard Rendering Co.—The Standard Rendering Co. of Delaware, jointly owned by all of the Big Five, has been the monopoly rendering company of the Kansas City stockyards since its organization in 1908. Previously the Standard Rendering Co. of Maine, acquired in 1908 by this new Delaware company, and the Peet Bros. Co. of Kansas City, Kans., had been competing in the purchasing of dead animals, in these yards, and according to commission men at this market this competition resulted in satisfactory prices for dead animals. But in 1908 the rendering business of Peet Bros. was purchased by the new Standard Rendering Co. in connection with which deal a $50,000 good-will bonus was paid Peet Bros.

The present Standard Rendering Co. is capitalized at $1,000,000, owned as follows: Morris family, $606,300; Swifts, $75,000; Cudahys, $50,000; Thomas E. Wilson or Wilson & Co. (Inc.), $175,000; and Arthur Meeker, vice president of Armour & Co., $50,000; the balance being held by employees and others affiliated with these packers.

The following letter and other data secured show that about 90 per cent of the capital stock of the Standard Rendering Co. like that of the Globe Rendering Co. represents the capitalization of earning power based on monopoly and does not represent investment of any kind:

Both Telephones Main 3186

Standard Rendering Company,

850 Live Stock Exchange Bld'g.,

Kansas City, U. S. A.

August 16th, 1918

Federal Trade Commission,
Washington, D. C.

Re Standard Rendering Company, Your W. W. B.

Dear Sirs: Answering your letter, as nearly as the writer can ascertain, the facts are that in January, 1918 (1908) the present company (which is a Delaware corporation) acquired all of the assets, stocks, bonds, bills receivable, merchandise, contracts, contract rights, and all other property, tangible and intangible, of the Standard Rendering Company (a Maine corporation), which had a capital stock of $1,000,000, and the Delaware corporation paid therefor $1,000,000, of which $2,500 was in cash and $997,500 in stock of the Delaware corporation; that from such information as the writer has been able to dig up it would appear that included in the assets acquired were stock and bonds of the value of $1,000; a fund of $20; construction and equip- [fol. 1813] ment items of the value of $90,009.28; horses, wagons, and harness of the value $12,768.89; accounts receivable $7,598.51 less accounts payable $5,976.63, leaving a balance of $1,621.88; inventory $25,444.11, and that the property account is debited with $860,540.04, which the writer believes represented the value of contract rights and of good will. There was also a cash balance received from the sale of stock amounting to $8,595.80, all of which items together made the full capital stock of $1,000,000.

The foregoing is all the information that the writer has been able to get together.

Trusting it will fully answer your purposes, we are,
Yours very truly, Standard Rendering Company,
P. E. Prater, Mgr.

On its $1,000,000 capital stock, $860,540.04 of which its manager admits represents "contract rights and good will,"

the Standard Rendering Co. has paid the following dividends.

		Per cent.
1912	$ 80,000	8
1913	80,000	8
1914	30,000	3
1915	80,000	8
1916	100,000	10

Shippers at Kansas City complain that they are not receiving a fair price for their dead animals. These dividends on stock 90 per cent overcapitalized would seem to justify this complaint.

Union Rendering & Refining Co.—The Union Rendering & Refining Co. owned jointly by the Swifts, Morrises, Armours, and Cudahys—the four big packers at Omaha—has for many years monopolized the dead animals at the Omaha stockyards. The company is capitalized at $100,000, only $20,000 of which was issued for cash. The balance, $80,000, represents stock dividends. The net earnings of the company averaged over $13,000 a year from 1912 to 1917.

Although Swift & Co. has controlled the Union Rendering & Refining Co., the following letter shows the community of big packer interest in its management:

[fol. 1814] October 26, 1915.

H. A. C.

Mr. H. O. Edwards,
Swift and Company,
South Omaha, Nebr.

Union Rendering and Refining Company

Dear Sir: Referring to the results of the Union Rendering and Refining Company.

I do not believe this company shows as good results as some other companies, with the same prospects.

I believe Morris' people as a rule understand the rendering business and have better success than the average. What do you say about having the management turned over to them for the year 1916?

Awaiting your reply.

Yours respectfully, Louis F. Swift.

Dict. LFS.
ED

East St. Louis Rendering Co.—The St. Louis National Stock Yards Co. is controlled by the Morris interests. The dead-animal business is monopolized at this market by the East St. Louis Rendering Co., also controlled by the Morris interests. This monopoly company is another example of noteworthy profits and dividends.

The East St. Louis Rendering Co. was incorporated November 30, 1903, with a capital of $12,000. In January, 1905, a 100 per cent cash dividend was paid. According to a statement made by the treasurer of the company to an agent of the Commission subsequent earnings accumulated until July 12, 1909, when the surplus was sufficient to enable the company to increase its capital stock from $12,000 to $240,000 without the investment of additional cash. It does not appear that the earning in four years could have been $236,000, as is indicated by this explanation of the treasurer. It is more probable that a large part of the $240,000 represents the capitalization of good will or of the earning power of the company based on monopoly as is the case at the Chicago and Kansas City yards, where the Morris interests also control the rendering companies. [fo'. 1815] The East St. Louis Rendering Co. has paid the following dividends on the capital stock thus expanded:

	Per cent.
1911	20
1912	18
1913	21
1914	6
1915	30
1916	30
1917	36

The earnings of the company for the past five years are as follows:

1913	$49,784.00
1914	34,425.03
1915	64,403.76
1916	82,936.84
1917	86,156.69

The surplus on December 29, 1917, was $67,914.

The Swifts own $60,000 of the capital stock of the East St. Louis Rendering Co. The following letter to the president of Swift & Co. from its East St. Louis plant manager is an admission that the prices paid for dead animals by this rendering company are only about 25 per cent of what "they are worth":

Swift & Company,

National Stock Yards, Ill.,

St. Clair Co.

Chicago, July 20, 1917.
May 3, 1916.

Mr. L. F. Swift, President,
Chicago, Ill.

Dead Hogs

Dear Sir: On April 11th, 1912, after some discussion (which was instituted by Mr. Collett, then vice president of the stock yards), you instructed us to let the stock yards company have, for the rendering company, all of our dead hogs which die in our holding pens and those that arrive dead in Sioux City shipments.

The rendering company are allowing us 1¼c. per lb. for the dead, and we figure, on the present grease market, they are worth 4¼ to 5c per lb.

For one year we had 243 dead, weighing 50,300 lbs. On [fol. 1816] this volume and with the present high prices for grease, they are making $1,500 per year on these hogs.

We question if it would be advisable to ask the yards company for more money, as if it were granted to us they would also have to raise the allowing price on the dead

to country shippers, but we wanted to put this matter up to and get your opinion as to whether or not it would now be satisfactory for us to tank our own dead.

Will you kindly advise?

Yours respectfully, Swift & Company, Per F. A. H.

Manager's Dept.
FAH:EN

The letter following shows that Armour & Co. was unwilling to accept these unfair prices and arranged to tank "their own hogs." The producers and shippers, because of the monopoly arrangement, are compelled to accept the prices offered by the rendering company:

Swift & Company,

National Stock Yards, Ill.,

St. Clair Co.

May 26, 1916.

Mr. Louis F. Swift, President,
Chicago, Ill.

Dead Hogs

Dear Sir: Answering your letter of May 15th.

This is to advise Armour & Company, starting to-day, are tanking their own hogs which die in the pens or which arrive dead in direct shipments.

Understand Armour & Company requested the Stock Yards Company to give them more for the dead hogs and the yards company advised they were unable to do so, and accordingly, Armour & Company started to-day to tank their dead hogs.

Yours respectfully, Swift & Company, Per ——— ———.

Manager's Dept.

FHA:EN
c/c to Mr. G. F. Swift, jr.

[fol. 1817] Iowa Rendering Co.—The Swifts, who control the Sioux City Stock Yards, also control the Iowa Rendering Co., which has a monopoly of all the dead animals at

these yards. The profit results of this monopoly are indicated in the following letters:

Chicago, July 20, 1917.

Mr. Edward F. Swift,

Second Floor.

Referring to the attached.

You and Mr. Louis F. Swift each own 31 shares, par value $100.

Dividends have been paid by the company recent years as follows:

January, 1916, special dividend, 50 per cent.
November, 1916, special dividend, 50 per cent.
Year 1916, regular quarterly dividend, 20 per cent per annum.
April, 1917, special dividend, 50 per cent.
January, 1917, regular quarterly dividend, basis 20 per cent per annum.
April, 1917, regular quarterly dividend, basis 20 per cent per annum.

Will it be satisfactory to you to pay special dividend of 50 per cent?

Wm. B. Traynor.

Chicago, Ill., July 21, 1917.

Mr. R. F. Murray,
Secretary The Sioux City Stock Yards Co.,
Sioux City, Iowa.

Iowa Rendering Co. capital stock tax

Dear Sir: Replying to yours of the 18th instant in regard to the Iowa Rendering Co.

If the rendering company made an average of 63 per cent per year for five years from their rendering operations, it would be correct to consider the fair value of the capital stock as $630 per share and make your return on this basis.

Yours truly, L. F. Swift.

JGS:FP
cc-L. F. Swift.

[fol. 1818] St. Paul Union Stockyards Company
South St. Paul, Minn., May 7, 1917.

Mr. Louis F. Swift,
Union Stock Yards, Chicago, Ill.

Dear Sir: Answering your favor of the 1st inst. relative to my stock in the Iowa Rendering Company at Sioux City. Inasmuch as this stock earned $116 a share last year and is going stronger than that so far this year, I have not been looking very hard for a buyer. I gave several years of work to that institution when I was in Sioux City with the idea that I would help build up something that would be profitable to me in later years. I would therefore not care to dispose of my stock unless I could get enough for it so that the money invested in some other direction would bring me returns somewhere near commensurate to the returns I am getting now. I have 175 shares of St. Paul Union Stockyards Company stock which earned last year about $2,537.50. My 37 shares of Iowa Rendering Company stock earned last year $4,292.00. I will put these two together in an offer at $45,000.00. This offer is subject to prior sale of any part, and in any event will be good only until May 15th.

Yours respectfully, Wm. Magwny.

St. Paul Union Stock Yards Co.—Commission contract.—The big packers' monopoly of dead animals is made possible through control of the stockyards. This is illustrated in the following form of contract signed by all commission men who are permitted to operate in the St. Paul stockyards. This agreement, among other things, enforces the rendering monopoly.

Form 97. 300 3-17 Rep.

These articles of agreement, made and entered into this ..... day of ....., 19.., by and between St. Paul Union Stock Yards Co., a corporation duly created and organized under the laws of the State of Minnesota, hereinafter called the first party, as party of the one part, and ....., hereinafter called the second party, as part of the other part:

Witnesseth, That for and in consideration of the agreements of the second party herein contained, the first party hereby grants permission to the second party to establish and conduct the business of buying and selling live stock at the yards and upon the premises of the said first party, at South St. Paul, Minn., and also agrees to lease to said second party office space in the Exchange Building of the said first party, located in its yards at South St. Paul, upon the terms and conditions fixed and determined by the lease therefor executed between the parties hereto, when space shall be available.

The second party hereby agrees to establish and conduct the business of buying and selling live stock in the yards and upon the premises of the said first party at South St. Paul, Minn.

It is agreed that all live stock consigned to, delivered to, or in possession of said second party may be yarded [fol. 1819] and fed by said first party, and said first party shall have and receive therefor the rate and price established by said first party. And said first party shall at all times and under all circumstances have the right to direct the location and pens in which any live stock may be kept at said stockyards.

The said second party agrees to collect for said first party, free of expense, all the charges of said first party for yardage and feeding, together with freight and all other charges due said first party, or for which said first party shall be liable or holden upon all live stock received at the yards of said first party and consigned to or forwarded by said second party, or that may be turned over to said second party at said stockyards, whether the same is or is not consigned to said second party and to promptly pay the same over to said first party whenever demanded, hereby agreeing to personally so promptly pay to said first party on demand all such sums or charges, whether collected or otherwise made from other parties or not.

And the said second party hereby agrees to hold said first party harmless and to protect it against any and all claims that may be brought against it by reason of loss or mixing of live stock during the hours when the pens are unlocked and the live stock therein contained is delivered to said second party.

It is further agreed that all animals that may arrive dead at or that may die in the stockyards of said first party and consigned to or in charge of said second party shall be sold and disposed of as directed by the said first party, as to manner, price, and purchaser.

The said second party agrees to promptly indemnify the said first party for any damages that may occur by reason of the said first party having accepted and executed the orders of the said second party or the agents thereof for the handling or delivery of live or dead animals in the stockyards of the said first party, or for any damages that may occur by reason of the said first party having delivered to the said second party or the agents thereof any live stock in said yards, authority for which delivery is based upon the representations or requests made by the said second party or the agents thereof to the said first party.

The said second party hereby agrees, in conducting the said business of buying and selling live stock, to conform to, observe, and obey all the by-laws, rules, regulations, and contracts of the said first party now or hereafter made or promulgated, relating to or governing the transaction of business at or through the stockyards of said first party. [fol. 1820] The said second party agrees to furnish a bond in the sum of five thousand ($5,000) dollars for the faithful performance of this contract, with sureties, all to the satisfaction of said first party, and to furnish additional bond from time to time whenever said provided bond shall become inadequate or unsatisfactory to said first party.

It is further agreed that said second party shall begin business as herein stipulated on the _____ day of _____, 19__, and shall continue under this contract until the _____ day of _____, 19__, unless this contract be sooner rescinded by the mutual consent of the parties hereto. And it is further expressly agreed by the parties hereto that the said first party may cancel this contract upon thirty (30) days' written notice should said second party violate any of the terms hereof.

And it is further agreed that the said second party shall not sell nor assign any interest in this contract or in the business carried on thereunder without the written consent of the said first party indorsed hereon.

In witness whereof the said first party has caused these

presents to be signed by its president and attested by its secretary, and its corporate seal to be hereto affixed, and the said second party has _____ at South St. Paul, Minn., the day and date first above written.

St. Paul Union Stock Yards Co., By ——— ———, President.

Attest: ——— ———, Secretary.

Stockyards Banks and Cattle Loan Companies.—The business of loaning money on cattle is one of the activities of every stockyards market. At these market centers millions of dollars are loaned to producers and feeders of cattle, the cattle being assigned as security for such loans. Loans are usually made through the stockyards banks and cattle loan companies for periods of six months and the interest rate varies from 6 to 8 per cent.

Almost all the banks and cattle loan companies in or beside the stockyards controlled by the big packers are owned and operated by them, and inasmuch as they control stockyards handling over 75 per cent of the cattle bought and sold at all the stockyards they consequently are in an advantageous position with respect to handling live-stock credit.

With the exception of Kansas City the only banks, and in most cases the only cattle loan companies, operating in the big packer stockyards are those owned and controlled by the same packer or packers who control the yards. For instance, at St. Paul, Fort Worth, and Denver, [fol. 1821] where the yards are jointly owned by Swift and Armour, the banks and cattle loan companies are jointly controlled by these same interests. At St. Joseph and Sioux City Swift controls the yards and likewise controls the only banks and cattle loan companies in these yards. At East St. Louis the Morris interests control both the yards and the banking and cattle loan facilities.

The business of loaning money on cattle is of such a nature that it can not be entirely monopolized by any one interest at any one yard. Loans may be negotiated by agents representing companies outside the yards. However, the extent of this independent business is compara-

tively small, so that the banks and cattle loan companies established in the yards have a preponderating influence.

While the packers practically have all the business of loaning money on cattle at all the stock yards they control, it is noticeable that they do not operate cattle loan companies in the stockyards independently owned nor to any extent at other points. It would seem to follow that it is their control of the stock yards that enables them to dominate the live-stock credit at their yards.

The big packers' power over these banking facilities through control of the stockyards is illustrated at the St. Louis National Stock Yards. These yards are controlled by the Morris interests and the only bank permitted within the yards is the National Stock Yards National Bank, which is likewise controlled by the Morrises. This bank advertises as "the largest bank in Illinois outside of Chicago." Its deposits on March 4, 1918, were over $18,000,000 and its loans and those of the National Cattle Loan Co. affiliated with it were over $17,000,000. The volume of the banking business is made secure through a lease dated April 1, 1914, between the stockyards and the bank. This lease expiring May 1, 1928, stipulates that it is upon the express condition that during the term of the lease or any extension thereof "the lessor will not lease any of its property at the National Stock Yards, or any interest therein, to any person, firm, or corporation doing a banking business or allow such business to be conducted therein by any person, firm, or corporation other than the lessee, it successors or assigns."

Consequently when the Drovers National Bank was recently organized at East St. Louis to compete with the Morris bank it could not secure a location within the stock yards. It was compelled to locate at a point one-half mile from the Exchange Building. Practically all of the business of the new bank is with commission men and other [fol. 1822] stockyards patrons, whose offices are in the Exchange Building.

It is evident from the correspondence that the packers have been aggressive in organizing these financial institutions or acquiring an interest in them. The following letters from their files show the effort made by Armour to

acquire a substantial ownership in the bank and loan company at the St. Paul yards:

April 18, 1916.

Mr. Louis F. Swift,
Swift & Co., Chicago, Ill.

Dear Sir: In compliance with your message to-day, I could not meet Mr. Hill until 2:30 this afternoon. He had a great deal to say in reference to the proposed Belt Line and how much good it was going to do South St. Paul and how much good Professors Smith and Crane had done to build up the northwest and the live-stock interests, and finally said that he did not think he should be asked to give up 50 per cent of his holdings in the Cattle Loan Company and Bank, but he finally agreed that he would give up one-third.

His holdings are now 990 shares, he having given ten shares of his stock to Mr. J. J. Toomey, his private secretary. This would make 330 shares that he is willing to give up. I told him that I did not know how arrangement could be made under such circumstances, as the other party would probably want $100,000 worth of stock. This would leave 170 shares beside the $500 increased capital to be raised. I told him I thought it would be practically impossible to get the stockholders to contribute any portion of this. He claimed that he thought they ought to, etc.

He evidently wished to convey the idea that he had been quite a factor toward building up the live-stock business since he came into the bank, and I think he wants to have as large an interest as anyone.

This is the best proposition I could get out of him, and await your further instructions.

Yours respectfully, Swift & Company, Per J. S. Bangs.

Manager's Office.

Chicago, April 21, 1916.

J. O. A.:

Our cable and other efforts indicate that 95 per cent of the stockyards stockholders have signed their waivers for increase of capital.

The other 5 per cent we are working on, but in several cases the stock is trusteed and the trustees are hard to get at, and their powers are limited, and various other reasons.

About the suggestion of Mr. Hill to sell one-half of his stock of the Bank and Cattle Loan Company, which would be $50,000.

[fol. 1823] He suggests that he thinks this is too much, and that he should only sell 33-1/3 per cent, or $33,000.

I inclose you memorandum showing how this would make it on both the Bank and Cattle Loan Company, and you will note the percentage.

L. F. S.

St. Paul Stock Yards Bank:	Per Cent	St. Paul Cattle Loan Co.:	Per Cent
Armour	23.8	Armour	23.8
Swift	22.85	Swift	26.74
Hill	19.06	Hill	19.06
Miscellaneous	34.29	Miscellaneous	30.40
	100.00		100.00

May 2, 1916.

Louis F. Swift, Esq.,
Swift & Company, Chicago.

My Dear Mr. Swift: Of course I would like to have 50 per cent of Mr. Hill's holdings in the bank, but under the circumstances I am willing to accept 33-1/3 per cent if you can not do better for us.

Yours very sincerely, J. Ogden Armour.

Law Offices of Albert H. & Henry Veeder,
76 West Monroe Street, Chicago, July 21, 1916.

J. O. Armour, Esq.,

c/o Armour & Company,
Union Stock Yards, Chicago.

Dear Sir: Referring to correspondence between yourself and Mr. Louis F. Swift, which confirms an arrangement Mr. J. S. Bangs made with Mr. J. J. Hill before the latter's death, whereby you were to have one-third of Mr. Hill's holdings in the Bank and Cattle Loan Company at South St. Paul at book value: Will say that Mr. Hill's death is very unfortunate in this matter.

Mr. Louis Hill takes the position that it will be impossible for him to carry out the arrangement made with his father, because, in the first place, the estate is in the court's hands for one year, and after that time the consent of the other nine heirs must be obtained; and that he was unwilling to present the matter to them and undertake to get their consent, owing to his being so very busy with other matters; but that he is perfectly willing to contribute his proportion, when he obtains his distributive share in his [fol. 1824] father's estate, and has no objections to the matter being put before the other heirs.

If there is anything that I can do in this matter, or if you desire me to assist your legal department in any way in this matter, I shall be happy to be of service.

Sincerely yours, Henry Veeder.

July 24, 1916.

My Dear Meeker: I am surprised at the attitude Mr. Louis Hill is taking. I should think any arrangement their father made before his death would be absolutely binding on the estate and I can not understand it and this don't suit me and we will not stand for it.

You can so advise Mr. Hill, either through Mr. Urion or Mr. Faulkner, and if necessary I will take matter up when I come back to Chicago.

I certainly would think that Mr. Hill would not take the position he has just because his father died. If this is

going to be his attitude I feel sorry for his career; and I don't believe it will be his attitude, either.

Yours truly, J. Ogden Armour, H.

Mr. Arthur Meeker,
Armour & Company, Chicago, Ill.

Packing-House Sites and Appurtenances Thereto.—In addition to owning or controlling most of the important stockyards in the country, the big packers, through their land-development companies, also own or control practically all the land which is suitable for packing-house sites near those yards. The independent packer who desires to locate a packing plant at one of these big packer stockyards can not get a suitable site for his plant unless the big packer consents to lease or sell land to him. The big packer stockyards, as a matter of fact, with few notable exceptions, have neither leased nor sold to the independents who desired packing-house sites for businesses of any considerable extent.

The big packers' monopoly of desirable packing-house sites at the principal stockyards, and their refusal to sell, has forced the independents who desired to locate at those markets to build their plants outside of the stockyards—in some cases 2 and 3 miles away. It is found that the independents who thus locate their plants are given little consideration from the stockyards companies in the way of spur-tracks, driveways to get the live stock from the yards to their plants and other yard conveniences which are afforded by the yards companies to the plants of the big [fol. 1825] packers. Principally because of these facts, most of the larger independent packing plants are located in rural districts or at smaller markets where the big packers have little or no control over the stockyards and packing-house sites.

At Chicago there are several more or less independent packers such as the John Agar Co. Jacob Dold & Co. has a packing plant at Wichita which was established before the Cudahy Packing Co. gained control of the Wichita Union Stock Yards Co. At Sioux City the Midland Packing Co. is now building a large plant. (How the site for the Midland company was secured from the Sioux City Stock Yards Co. will be shown later. See pages 77-79.)

Practically all the other large independent packing plants are located at the smaller markets or in the country: Jacob Dold & Co., at Buffalo; Cincinnati Abattoir Co., Cincinnati; John Morrell & Co., Ottumwa, Iowa; Geo. A. Hormel & Co., Austin, Minn.; Kingan & Co., Indianapolis; Hammond-Standish & Co., Detroit; Parker-Webb & Co., Detroit; Jacob F. Decker & Sons, Mason City, Iowa; Rath Packing Co., Waterloo, Iowa; Cleveland Provision Co., Cleveland, Ohio; Ogden Packing & Provision Co., Salt Lake City, Utah; Frye & Co., Seattle, Wash.; Carstens Packing Co., Tacoma, Wash.; and Hauser Packing Co., Los Angeles, Cal.

That generally the most important independent packing plants are not located at the stockyards controlled by the big packers is shown by the map facing page 27. The map gives the location, size, and ownership of each of the stockyards markets and of each of the interstate packing plants.

Several years ago there were several large independent packing plants at the big packer yards, but they have been absorbed by the big packers, as is shown in Chapter III, page 145, and in Table 62, pages 237-256 of Part I of this report.

Just how the big packers use their control over packing-house sites and appurtenances thereto to keep large independent plants from developing at the large yards can best be shown by examining the exact situation which exist at some of these yards.

At Sioux City, where Swift & Co. control the stockyards, Armour & Co. and the Cudahy Packing Co. own desirable packing-house sites on which are located their plants. In 1917 two independent interstate packing companies, the R. Hurni Packing Co. and Statter & Co. also owned small packing-house sites on which were located plants. The stockyards company leased sites to two very small local slaughterers, who killed only a few animals each week.

[fol. 1826] The Sioux City Stock Yards Co. furnished to both Armour & Co. and the Cudahy Packing Co., without cost to them, lanes or chutes for driving their stock directly from the stockyards pens to their plants and spur railroad tracks so they could load their dressed meats directly from their plants to the cars. At the same time the stockyards company refused to furnish either Hurni,

Statter or the local slaughterers, lanes or chutes for driving their animals from the stockyards pens to their plants, and refused to permit Hurni to construct at his own expense a spur track to his plant, and also refused to sell Statter additional land necessary for the enlargement of his plant.

In regard to the desired land or chute for his animals Statter said to a representative of the Commission:

For a number of years I have been compelled to drive my cattle and hogs through the main street of this district against all the traffic. We need a runway along the river bank. This could be built easily with no disadvantage to anyone. Smith Bros. and Sacks (the local slaughterers) could use the chute. From time to time I tried to get a driveway, but Mr. Eaton (president of the stockyards company) always refused. Why aren't we small packers entitled to some consideration? We are in the stockyards competing daily. It isn't so much a matter of the amount of stuff we buy as it is that we are in the game making a competing market. We help make this competitive market, but the small packer has to fight for his life.

R. Hurni & Co. had been operating at the Sioux City yards for many years and was located on a site adjoining the yards. Hurni, because of his proximity to the stockyards pens did not desire a lane or chute but asked only permission to cut a gate in the yards fence through which to drive the animals directly to his plant, but the stockyards company refused permission to allow the gate to be cut so Hurni was compelled to send stock around through the main street referred to by Statter. On this subject Hurni's attorney testified before the Commission as follows:

Question. Was it possible, or would it have been possible to have permitted Hurni to have had those hogs driven from the hog house (in the stockyards) to his plant without going into the street?

Answer. Personally, I never had the matter of getting hogs into his plant from the stockyards up with the officers; but I did have the matter of getting cattle into his plant from the stockyards up, and tried to get them to make provision for a gate. One of the stockyards alleys

runs immediately back of the Hurni plant and he wanted to get a gate from that alley into his plant so that the stock would not have to be taken through Chambers Street, but they refused to do that.

[fol. 1827] Question. The yards in which the cattle are fed for sale surround the Hurni plant on three sides, do they not?

Answer. That is true; yes, sir.

Question. And a gate into the Hurni plant would have been an easy matter to have placed on any one of the three sides?

Answer. Well, any one of two sides.

Question. That would have been a matter of a few dollars putting a gate in there?

Answer. Just a very slight expense; yes, sir.

Question. For how long a period of time did Mr. Hurni endeavor to secure the privilege of having that gate put in?

Answer. I don't know that personally. He made an effort to get it 10 years ago, and he never got it.

Question. Has the Cudahy plant one?

Answer. It has.

Question. Has the Armour plant one?

Answer. It has.

Hurni was never able to induce the terminal railways company, which is controlled by the stockyards company, to permit the construction of a spur track over to his plant so he would not have to haul his finished products from the plant through the streets to load them on the cars. This haul made an extra cost of $30 a car in addition to unduly exposing his products to the weather. Hurni appeared several times before the city council with a petition asking for a franchise to construct the track, and each time officials of the stockyards company appeared before the council in opposition and succeeded in preventing the issuing of the franchise.

Hurni's attorney testified before the Commission in regard to this matter as follows:

Question. Did Hurni make any effort at any time to secure the privilege of a spur track from his plant to the terminal railroad?

Answer. He had tried from time to time during the last 10 years to get a spur track in order to serve his plant.

Question. What is the distance from his plant to the terminal railroad?

Answer. About three blocks, on Chambers Street.

Question. And how did he get his product to the terminal railroad in the absence of a spur track?

Answer. He had to haul it with wagons to a car that was switched in on Prospect Street.

Question. And what was the expense per wagon load that, do you know?

Answer. I could not tell you that, Mr. Heney.

Question. You don't remember or recall what Mr. Hurni claimed it to be?

Answer. I don't remember except in a general way that he considered it a matter of very essential importance that he have a spur track, and said he could not meet [fol. 1828] competition and could not handle the meat advantageously by having to haul it the distance he had to haul it from his packing plant to the car, which made additional handling and additional expense.

Question. And in warm weather that was quite a serious——

Answer (interrupting). It was a serious disadvantage; yes, sir.

Question. Who had the granting of the spur track?

Answer. The Sioux City Terminal Co.

Question. And the Sioux City Terminal Co. was controlled by whom?

Answer. By the stockyards company.

Question. And who controlled the stockyards company at that time? Do you know?

Answer. Well, during the time I speak of it was controlled by the Armours and Cudahys and——

Question (interrupting). And Swift?

Answer. And Swift.

On June 16, 1917, partly because of the failure of his health, Hurni sold his packing plant to the Sioux City Stock Yards Co., which is controlled by Swift & Co. The yards company leased the Hurni packing plant to Swift & Co., and within less than a week the gate leading to the

plant for which Hurni had pleaded was cut, and within less than a month the stockyards company secured from the city council a franchise to build the spur track to it. The following letter of July 13, 1917, from F. L. Eaton, president of the Sioux City Stock Yards Co., to L. F. Swift, explains the action of the city council in this matter:

Office of President,
Sioux City, Iowa, July 13, 1917.

Mr. L. F. Swift,
Union Stock Yards, Chicago, Ill.

Dear Sir: Regarding the tracks at the Hurni packing house, we asked the council to pass an ordinance giving us the right for that track and also give us the necessary rights of way for the total track changes which we anticipate. We had a meeting with the council and discussed the matter, and they seemed ready to grant everything we wanted and just as we asked, except the track to the packing house. The mayor had opposed granting the track to Hurni, and feels that to grant it to us now would make him liable to censure; therefore he asks us to change the location of the track north of the packing house and swing it 14 feet west of the proposed line, which carries it into the stockyards property and off the street for about 400 feet. It makes a slight reverse curve and is not as good for us as to run it straight down the side of the street. One member of the council, who was rather disposed to side with the mayor, said he would like to know the feeling of the live stock exchange; so at the meeting yesterday the matter was laid over until to-morow (Saturday) when it [fol. 1829] will be taken up again, and in the meantime I have a resolution from the live stock exchange and a petition signed by about 90 men doing business at the yards asking the council to grant this right of way just as we asked for. We can get the right of way as the mayor outlines without any question, and may have to take that, although we will try to get exactly what we want as long as there seems the possibility of doing so.

I wired you yesterday, asking you to hold up the crossing, because if we have to take the mayor's line, it will

require a slightly different angle on the crossing, but we should know to-morrow what we will require.[1] * * *

Yours truly, ——— ———, President.

FLE-C

To a representative of the Commission an official of the stockyards company explained its objection to the building of the spur track for Hurni by claiming that the volume of R. Hurni & Company's business would not justify the investment by the railway company; but that as Swift & Co. promised to increase the business threefold, the spur was constructed for the latter company. No enlargements of the old Hurni plant have been made as yet.

In the early part of 1917, H. Statter, the slaughterer mentioned above, because of his local influence, succeeded in forcing the Sioux City Stock Yards Co. to sell him additional land to permit him to grow. There was introduced in the Iowa Legislature the "Thompson bill," which provided that the Iowa Railroad Commission be given power to regulate stockyards charges within the State. Statter was influential in support of the bill. The Sioux City Stock Yards Co. promised to sell him land for expansion of his plant and he withdrew his support of the Thompson bill, which then died in the committee. The following letter of April 18, 1917, from F. L. Eaton to L. F. Swift states the case clearly:

The Sioux City Stock Yards Co.,
Sioux City, Iowa, April 18, 1917.

Mr. L. F. Swift,
Union Stock Yards, Chicago, Ill.

Dear Sir: Referring to your letter of April 13th, regarding proposition of Mr. Statter, Mr. Statter has several [fol. 1830] times intimated that any proposition he made to me would not be acted upon favorably, and that he could do better by going straight to the Chicago people, and I, therefore, asked him to put his proposition in writing, and I would submit it just as he proposed it; and, in fact, I dictated my letter of April 7th to you in Mr. Statter's

[1] The omitted part of this letter refers to the prospective location of a hay barn by the stockyards company.

presence, and have refrained from saying anything further on the subject until after receiving your letter of the 13th. This much in explanation of the way in which the proposition was submitted.

When the Thompson bill was before the legislature, Mr. Statter was its most ardent supporter, and his attorney, Mr. Salinger, had more influence than any other person from Sioux City. It looked very doubtful as to our ability to kill this bill because the sentiment had been worked up among the commission men that Statter and Hurni were not being allowed to grow, and that same argument was used in Des Moines. We were able to curtail the activities of the Hurni people, but in the case of Statter we found it necessary to make the plain statement in Des Moines before the committee that, if Mr. Statter needed more ground to grow upon, we would be glad to let him have it, because we wanted more business, and finally, with that assurance upon our part, Statter and his attorney, Salinger, withdrew their support of the bill, and it died in committee.

I am, therefore, anxious that Mr. Statter shall have an opportunity to secure such ground as he may need to enlarge his packing business but, of course, I have been careful to say to him that we would have to be assured that he was so organized that he could conduct a business that would warrant the use of the amount of ground which he might desire. I have seen Mr. Salinger to-day, and prefer to talk with him, as he is rather more reasonable in his views than Mr. Statter, but Mr. Salinger says that while he is preparing to reorganize Mr. Statter's company and can sell a lot more stock, that it will be impossible to do that without assurances that they could have the ground needed. I suggested to him that, while the Stock Yards Company were unwilling to give an option of three years, they might possibly be willing to give an option for a short time, within which time Mr. Statter could make his reorganization, and I suggested six months. Mr. Salinger thought that would be short as times were now, but that possibly they might get through in one year.

I do not see how we would have any use for this ground within a year, nor can I see how it could be put to any better advantage so far as the stockyard business is con-

cerned, than to have a larger packing house built upon it, and I further believe it would be good policy for the stockyards company at this time to show to the livestock people and to the townspeople an inclination to encourage Statter to increase his plant.

[fol. 1831] Mr. Salinger asked that we submit some proposition to him as to what we would be willing to do, and I suggest for your consideration something like the following:

Agreed to sell Mr. Statter the land north of him for $1,250 and to sell him the land west of him that he desires, provided he shows us that he will have capital enough to carry on his business; that he will erect within a certain definite time a packing plant on the ground now owned by him or the ground agreed to be sold to him, which shall have a capacity of not less than 100 cattle and 500 hogs daily, purchasing his stock at the stockyards or paying yardage on all bought outside except such hogs as he uses in his serum plant, and which he is not permitted to buy at the stockyards; that we hold the ground subject to his purchase for one year; that at any time within the year, at his request we will agree with him as to a price, or failing to agree, will accept a price fixed by three real estate men, each party selecting one and the two selecting a third.

I fully agree with you that the preferred stock of this company is nothing that the stockyards company should take, and I told him when his proposition was submitted that I did not believe it would be considered, but I also intimated that, if we sold him the property, we would not demand the entire purchase price in cash, but would carry a part of it for a short time as a lien upon the property.

Under the conditions that are now existing here, I believe it would be well for us to make some such sort of a proposition as I have outlined, and would be glad to have you advise me what kind of a proposition would meet with your approval. If we can agree with him upon some sort of a proposition soon, it would be a good move for us to make.

Yours truly, F. L. Eaton, President and General Manager.

FILE C

As a result of securing this packing-house site Statter in March, 1918, reorganized the Statter & Co. into the Midland Packing Co. with an authorized capital stock of $1,000,000 common and $2,500,000 preferred. Fred C. Sawyer, manager of pork packing department of Swift & Co., resigned his position with Swift & Co. and became president of the Midland Packing Co., and on January 29, 1919, held more than 20 per cent of the issued voting stock of the company. The other large holders of the voting stock are: H. Statter and his attorney, B. I. Salinger; C. H. Burlingame; John L. Weldon; and D. H. Brennan. The Midland Packing Co. is constructing a large modern packing plant.

Eaton stated in the letter quoted above:

I fully agree with you that preferred stock of this company is nothing that the Stock Yards Co. should take, and I told him when his proposition was submitted that I did [fol. 1832] not believe it would be considered.

At Fort Worth where Armour and Swift control the Fort Worth stockyards and the surrounding land, they have not only repeatedly refused to permit independent packers to establish packing plants there but also declined to allow either Morris or Sulzberger to build plants at those yards. The citizens of Fort Worth and vicinity have several times asked Armour and Swift to allow other packers to come to Fort Worth, but Armour and Swift have on each occasion declined to do so on the ground that there were not sufficient hogs at the market to support another packing plant. They could not make the same claim in reference to cattle, because such a large percentage of the receipts have to be shipped to other centers to be slaughtered.

At St. Paul, after Swift & Co., and Armour & Co. had received bonuses to locate plants at the yards, a smaller packing concern, J. T. McMillan & Co., was invited to locate there also, but no bonus was offered, and the conditions proposed were such that the move would have been unprofitable for the independent and would have forced it into an agreement for apportioning the purchases of hogs, as, according to a representative of the independent plant, Swift & Co. demanded that they agree to buy not over a certain stipulated proportion of the hogs offered each day,

that being the agreement between Swift & Co. and Armour & Co. The small packer did not accept the proposition.

At Witchita, Kans., the Jacob Dold Packing Co., which works in an agreement for purchasing hogs with the Cudahy Packing Co., has a site adjacent to the stockyards which was acquired before Cudahy came to Wichita, but Cudahy controls all the other sites there. An informant stated to an agent of the commission as follows:

There is not any possibility for any competitive packing company to get in and acquire ground suitable for a plant or to get a runway for cattle in a convenient location in the vicinity of the stockyards without obtaining the consent of the Cudahy Packing Co., or Mr. Cudahy.

At Oklahoma City, Morris and Wilson control all available packing-house sites in and near the stockyards. No other packer could establish a plant there without their permission.

The letter following by Paul D. Cravath, counsel for Sulzberger & Sons Co., to Henry Veeder, shows the measures taken by a big packer to get control of the most available packing-house site remaining in New York:

[fol. 1833]

Cravath, Henderson & De Gersdorff,
52 William Street, New York,
New York, May 26, 1911.

Confidential.

Dear Veeder: The Sulzbergers have just been in to see me about several matters preparatory to my departure for Europe. They mentioned, among other things, a piece of property fronting on East River and extending from 46th to 47th Streets, which is behind the property on First Avenue which the S. & S. Company owns. The river-front property in question has been occupied by Kane & Wright, dealers in manure, whose lease expires in 1913. The Goelet estate, which owns the property, is now seeking a new lessee. The property can be leased for about $15,000 a year plus taxes, and could be sublet to the manure concern for a fraction of that amount. The Sulzbergers have reason to fear that this property may be leased as the site of a new packing plant. Indeed, they have reason for suspecting that the Josephs are considering a venture in that

direction, apparently realizing that their tenure of office with the Butchers Company, New York Butchers Dressed Beef Co., may not last indefinitely. Mr. Sulzberger thinks it would be wise to lease this property and get it out of the market as it is the most available, indeed, they think the only very available site for a packing plant in the packing house district. They do not feel like undertaking the burden alone as they have no possible use for the property.

Max Sulzberger when he goes to Chicago will talk to Mr. Swift about the advisability of arranging a lease of this property in the interest of all concerned.

I am writing you simply to give you the situation and to give you my impression that it is probably worth while to lease the property.

Very sincerely yours, Paul D. Cravath.

Henry Veeder, Esq.,
125 Monroe Street, Chicago, Illinois.

1 P.

The property in question, on expiration of the lease in 1913, was leased for 10 years by the Goelet estates in part to F. F. and W. A. Kane, and in part to the Turtle Bay Investors Co., which company on April 14, 1916, was merged with Sulzberger & Sons Co.—now Wilson & Co., Inc.

Thus, with the control of the packing-house sites the big packers enjoy an economic advantage over the small independents, and upon occasion these advantages are employed [fol. 1834] to the detriment of the development of competition and even to the point of forestalling development by taking over a packing-house site for which they acknowledge they have no use.

Section 13.—Power to Restrain Development of Additional Markets.

It is regarded as an economic loss to transport animals for slaughter from the wide producing area to a few large markets as is now done, rather than to slaughter the animals nearer the areas of production. This fact is indicated in the following letter from the files of Swift & Co.:

Edward F. Swift,
Chicago, October 31, 1916.

Messrs. Louis F. Swift, Edward F. Swift:

We are, whenever necessary in order to get them killed, shipping live cattle from St. Paul to Chicago. Mr. Chaplin advises as against killing the same cattle at St. Paul this increases their dressed Chicago cost about 29c. per cwt.

Armour and Wilson have both shipped considerable cattle from Chicago to Kansas City. Mr. Chaplin advises as against killing the same cattle at Chicago; this increases their dressed Chicago cost 92½c. per cwt.

Armour has also shipped from St. Paul to St. Joseph. Mr. Chaplin advises as against killing the same cattle at St. Paul this increases their dressed Chicago cost 79½c. cwt.

Wilson has also shipped live cattle from St. Louis to Kansas City. Mr. Chaplin advises as against killing the same cattle at St. Louis; this increases their dressed Chicago cost 59½c. cwt.

(signed) Charles H. Swift.

It is here developed that to ship an animal weighing 1,000 pounds from St. Paul to Chicago to be slaughtered there is a loss of $1.59½. To ship the same sized animal from Chicago to Kansas City to be slaughtered there is a loss of $5.08. To ship one from St. Paul to St. Joseph to be slaughtered gives a loss of $3.27¼.

With the present farm production of live stock as contrasted with the former range production, and with the present densities of population, a comparatively small market has about as constant supply of live stock the year [fol. 1835] around as the large markets and in addition the advantage of a local demand for a greater percentage of its meat products.

But the big packers, with their present control over the large stockyards, are opposed to the development of a great number of smaller markets. By keeping the markets limited to a few large ones they are enabled to keep them "in line" through their centralized buying organizations, but it would be much harder for them to keep a great num-

ber of markets in line. Their control of the few markets also gives them the power to control the policy of a large percentage of their competitors and to prevent others from coming into the field.

The big packers because of this attitude also use their power to prevent the development of additional stockyards markets. In some cases they buy them out and either use them for their own advantages or close them down. In at least one case two of the big packers brought pressure to bear on a railroad company to induce it to close down a competing stockyards. The following letter from the files of Swift & Co. shows the attitude of the big packers toward competing stockyards.

Swift & Company,

Stockyards Station,

Ft. Worth, Texas

April 30, 1912.

Mr. L. F. Swift,

Swift & Company, Chicago, Ill.

Dear Sir: Referring to report on Hodge yards of April 29th.

We find at Hodge this morning at 8:30, 50 cars of cattle, principally stockers for northern pastures; 6 decks of sheep billed for Oklahoma City from Big Canyon Range Company, Sanderson, Texas; and they are expecting from 20 to 30 decks through here from same company next Sunday. There are also several trains of cattle expected through those yards this afternoon.

We have succeeded fairly well on the sheep through Hodge. In the past ten days we have bought 61 single-deck cars there and shipped here, and have bought them all worth the money, and are showing good results on them.

Attached copy of letter is self-explanatory. We have a machine here that we are using for solicitors that we will take for this purpose, arranging with solicitors to handle [fol. 1836] his business otherwise for the time being.

We have had a young man making a trip over Hodge yards two or three times a day, and we will have him do

this, and also whenever there is anything there of interest, get a sheep buyer if sheep, a cattle buyer if cattle, a calf buyer if calves, and he can get them up there to see the stuff and back in half an hour.

It seems to be quite the scheme to bill stuff for Oklahoma City or Kansas City and scoot it around through these yards. For instance, I referred to 16 cars billed for Oklahoma City yesterday from south Texas, directly in our territory, and here are Morris and S. & S. both buying cattle here on this market, and still working to get these cattle from our territory for Oklahoma City market, sending them within a mile and a half of our yards.

We have got to keep our eye peeled on these little outside markets and stockyards or we will get hurt with them in time. I referred you to a new stockyard being built on the Rock Island R. R. the other day. It is claimed in every way possible that the Rock Island has nothing to do with it; that a man named Zimmerman is building the dipping vat. We remember all the claims that were made when the Katy yards at Hodge were built—probably not just of this description, but of a similar nature—and now we see the result. They run thousands of cars through there that we could do business on here on this market if they were out of the road. I suggested to you the other day that perhaps it was an opportune time to take a step to get them out of the road. We are naturally located for practically all the live stock of the Southwest. If we could concentrate it here and did not have so many of these little side issues, Oklahoma City and other little yards, it would make a wonderful market, one, I believe, that would dumfound you, yourself.

Yours truly, J. B. Googins, (Swift's Fort Worth Manager.)

In Chapter 6 of Part II of its report on private car lines the Commission explained fully how Armour and Swift brought pressure to bear on the Missouri, Kansas & Texas Railway Co. to force that company to close the Hodge stockyards referred to in the above letter. These packers wanted the Hodge yards closed because they were competing with the Fort Worth stockyards; they succeeded in getting them closed and thus eliminated the competition.

[fol. 1837] In 1914, there were three stockyards at El Paso, Tex.—one owned by Morris & Co., one on the El Paso & Southwestern Belt Line operated by an independent company, and a third on the Galveston, Harrisburg & San Antonio and Texas & Pacific Railroads. At that time Morris & Co., secured a tract of and adjoining all the railroad which enter El Paso and organized the El Paso Union Stock Yards Co., with a capitalization of $100,000, and made contracts with the various railroads entering the city which gave the Morris yards preference in receipts of live stock at that center. The following is a clause of the contract between the El Paso Union Stock Yards Co. and the Texas & Pacific Railway Co. which is similar to a clause in the contracts with the other railway companies:

The railway agrees and obligates itself to deliver all live stock transported by it to El Paso for delivery thereat or with the intent of further transportation of the same, except shipments not requiring feed or rest, to said "Yards" at its said stockyards, for care, handling, and attention while waiting further transportation or delivery, unless otherwise instructed by the owner or person in control of same.

This contract is apparently designed to take away most of the business from the other stockyards at El Paso and to give Morris the greater part of the stockyards business.

As soon as the yards at El Paso were completed the Morrises proceeded to induce commission firms at the large markets to open offices at El Paso. This is shown by the following letter:

Morris & Company,
Union Stockyards, Chicago

March 10, 1915.

Mr. Norris Broaddus
Kansas City, Kans.

Dear Sir: I find we have a very nice little yard at El Paso and we are putting up an Exchange Bldg., which will be finished shortly. Clay Robinson are going into it immediately and think Cassidy will open up an office in the near future. Besides these we have several local people opening up offices. Believe this will be a growing market and

would like very much to have any good strong commission firm coming into El Paso. If you hear of any please let [fol. 1838] me know.

Would appreciate your working on this.

Yours very truly, Edward Morris, Jr.

The following letters indicate that Armour and Swift were ready to take an interest in the El Paso yards as soon as it was apparent that those yards would interfere with the Fort Worth Stock Yards:

March 11, 1915.

Mr. Arthur Meeker,
Packing House.

Referring to the attached: In and of itself I see no particular value in our having any interest in El Paso. From an earning standpoint I think there is not much value there, and if at some future time the situation becomes harmful to any of our interests we can better take the matter up then, in the light of circumstances existing at that time, than to decide upon any policy at the moment.

R. J. Dunham.

March 16, 1915.

Mr. L. F. Swift,
U. S. Yards.

Dear Mr. Swift: With reference to the enclosed, how do you feel about our going to El Paso?

Yours very truly, (Signed) Arthur Meeker.

Chicago, March 16, 1915.

Mr. Arthur Meeker,
Armour & Company,
Union Stockyards, Chicago.

Dear Mr. Meeker: Answering your note of even date, and returning attached correspondence, I feel a good deal as Mr. Dunham does.

Don't think the El Paso connection is important for the Ft. Worth stockyards, but if it proves to be important at

some future time, think we can take action then just as well as we could now.

[fol. 1839] In other words, think it better to wait awhile and see what develops than it is to agree to any plan of action now.

Yours very truly, Louis F. Swift.

MSB

After getting control of the Crescent City Stock Yards Co., at New Orleans, the Morrises then acquired the other competing stockyards at that city as is shown by the following letter:

New Orleans, La., April 21, 1917.

Mr. G. C. Shepard,
The Cudahy Packing Co.,
Chicago, Ill.

Dear Sir: We are mailing you to-day's Time-Picayune, on page seven of which you will note that Morris & Co. have also purchased the Union Stockyards; this is in addition to the Crescent City stockyards of which the articles in the papers covered. This gives Morris & Co. all of the stockyard facilities in the city.

The Crescent City stockyards were at the old Crescent City plant, just across the parish line; The Union Stock Yards were a new enterprise that was recently permitted by the city at or near the butchers' abattoir, which is within the city limits. This eliminates any possible competition in the stockyard matter, as Morris seems to have taken them all in.

Yours truly, The Cudahy Packing Co. of La. (Ltd.),
W. H. Arnold.

WHA/E

Armour secured control of the Birmingham stockyards in 1915, and used them to his own advantage, as is shown by the following letters from the files of Swift & Co.:

Chicago, Oct. 16, 1915.

Mr. C. P. White,
Mgr. Swift & Company, Birmingham, Ala.

Dear Sir: Have your letter Oct. 13th, with reference to the live-cattle market in Birmingham; also in regard to

Armour & Company having an option running for five years on the Birmingham stockyards.

Please continue to keep me posted what you hear in regard to this proposition. Would like to know whatever develops.

[fol. 1840] Also would like to know at your convenience about what their facilities are at the Birmingham stockyards—general condition of their buildings, pens, etc., whether new or old or up to date.

Awaiting your reply,

Yours truly, Charles H. Swift.

HCC-AG

Copy L. F. S., E. F. S., C. H. S., G. F. S., jr., H. H. S., W. L.

Birmingham, Nov. 4, 1951.

Mr. Charles H. Swift,
Chicago, Ill.

Dear Sir: Replying to your letter of Oct. 16th in regard to Birmingham stockyards.

Wish to advise that the buildings and pens at these yards are new, having been built within the last year, and they have facilities for taking care of thirty to forty cars.

They are at present getting the majority of cattle coming into Birmingham and a large per cent of the cattle is being bought by Armour's local manager and shipped to East St. Louis, although we are mable to get any information as to what prices these cattle are costing.

Yours respectfully, Swift & Company, Per C. P. W.

CPW/FS

Copy L. F. S., E. F. S., C. H. S., G. F. S., jr., H. H. S., W. L.

So long as the big packers retain their present control over stockyards, and enjoy the present advantages from the ownership and operation of private car lines and branch houses, there is little promise that additional live-stock

marketing centers will develop unless the big packers themselves own and develop them. In order to make a stockyards successful as a market, it must attract live stock; to attract live stock there must be buyers at the yards who will buy the live stock which is offered for sale. The big packers, as a rule, buy little at yards in which one or more of them are not financially interested, and in the case of new independent yards they would use their power in other ways to prevent the development of the yards.

(Here follows 1 Paster, side folios 1841, 1842)

[fol. 1841]

Name & Address of Co.	Armour Voting Stock	Armour Amount	Armour Per Cent	Swi Amount
Bourbon Stock Yds. Co., Louisville, Ky.	$1,300,000	$167,500	12.9	$165,00
Brighton Stock Yds. Co., Brighton, Mass.	10,000			6,10
Chicago Stock Yards (Maine)	8,000,000	1,552,000	19.4	
Central Union Stock Yards Co., Jersey City, N. J.	601,000			
Cleveland Union Stock Yards Co., Cleveland, Ohio	1,192,400			100,00
Crescent City Stock Yds. & Slaughter Hse. Co., Ltd., Arabi, La.	500,000			
Denver Union Stock Yds., Denver, Colo.	1,500,000	750,000	50.0	750,00
Dallas Union Stk. Yds. Co., Dallas, Texas.	16,000	16,000	100.0	
El Paso Union Stock Yds. Co., El Paso, Texas	100,000			
Ft. Worth Stock Yds. Co., Fort Worth, Texas	2,750,000	928,000	33.8	907,50
Ind. Stock Yds. Co., St. Louis, Mo.	10,000			
Interstate Stock Yds. Co., Jacksonville, Fla.	25,000	25,000	100.00	
Jersey City Stock Yds. Co., Jersey City, N. J.	500,000	347,500	69.5	90,00
K. C. Stock Yds. Co., Kansas City, Mo.	2,500,000	50,100	2.0	5,30
Milwaukee Stock Yds. Co., Milwaukee, Wis.	200,000			200,00
New York Stock Yds. Co., New York, N. Y.	500,000			
[fol. 1842]				
Okla. Nat'l. Stock Yds. Co., Oklahoma City, Okla.	1,000,000			
Pittsburgh Union Stock Yds. Co., Pittsburgh, Pa.	1,200,000	1,153,800	96.2	
Portland Union Stock Yds. Co., No. Portland, Ore.	150,000			114,70
St. Joseph Stock Yds. Co., So. St. Joseph, Mo.	2,500,000			1,324,50
St. Louis Nat'l. Stock Yds. Co., Nat'l. City, Ill.	4,300,000	826,600	19.2	1,195,50
St. Paul Union Stock Yds. Co., St. Paul, Minn.	2,500,000	609,000	24.3	974,50
Sioux City Stock Yds. Co., Sioux City, Ia.	d2,848,300	400,000	14.0	1,693,90
Salt Lake Union Stock Yds. Co., Salt Lake City, Utah	194,600			
Union Stock Yards Co. of Baltimore County, Baltimore, Md.	800,000			
Union Stock Yds. of Omaha (Ltd.), Omaha, Nebr.	7,496,300	2,580,400	34.4	175,60
West Philadelphia Stock Yds. Co., Philadelphia, Pa.	300,000			
Wichita Union Stock Yds. Co., Wichita, Kans.	1,400,000			

1610A

EXHIBIT 74

	Morris		Cudahy		Wilson		Total Big Five	
Per Cent	Amount	Per Cent	Amount	Per Cent	Amount	Per Cent	Amount	Per Cent
12.7	$.....	....	$.....	....	$.....	....	$332,500	25.6
61.0	3,500	35.0	.....	....	.....	....	9,600	96.0
....	.....	....	.....	....	.....	....	1,552,000	19.4
....	.....	....	.....	....	590,200	98.2	590,200	98.2
8.4	.....	....	.....	....	.....	....	100,000	8.4
....	332,650	66.5	.....	....	.....	....	332,650	66.5
50.0	.....	....	.....	....	.....	....	1,500,000	100.0
....	.....	....	.....	....	.....	....	16,000	100.0
....	62,000	62.0	.....	....	.....	....	62,000	62.0
33.0	.....	....	.....	....	.....	....	1,835,500	66.8
....	.....	....	.....	....	.....	....	.....	....
....	.....	....	.....	....	.....	....	25,000	100.0
18.0	.....	....	.....	....	.....	....	437,500	87.5
.2	1,144,700	45.8	50,000	2.0	35,400	1.4	1,285,500	51.4
100.0	.....	....	.....	....	.....	....	200,000	100.0
....	462,100	92.4	.....	....	25,000	5.0	487,100	97.4
....	519,200	51.9	.....	....	299,000	29.9	818,200	31.8
....	.....	....	.....	....	.....	....	1,153,800	96.2
76.4	13,500	9.0	.....	....	.....	....	128,200	85.4
53.0	739,000	29.6	.....	....	.....	....	2,063,500	82.6
27.8	1,503,600	35.0	.....	....	16,500	.4	3,542,200	82.4
39.0	.....	....	.....	....	.....	....	1,583,500	63.3
59.5	.....	....	134,100	4.7	.....	....	2,228,000	78.2
....	.....	....	56,250	28.9	.....	....	56,250	28.9
....	83,700	10.4	.....	....	.....	....	83,700	10.4
2.3	.....	....	4,500	0.1	.....	....	2,760,500	36.8
....	68,750	22.9	.....	....	.....	....	68,750	22.9
....	.....	....	584,100	41.7	.....	....	584,100	41.7

[fol. 1843] Copy

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

To All to Whom These Presents Come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the time hereinafter mentioned, among others was the following proceeding, to wit:

[fol. 1844] Filed Apr. 12, 1921. Morgan H. Beach, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Equity No. 37623

UNITED STATES OF AMERICA

vs.

SWIFT AND COMPANY AND OTHERS, Defendants

TO THE HONORABLE JUSTICES OF THE ABOVE-ENTITLED COURT:

Now comes Swift and Company (Ill.), Swift and Company (W. Va.), Swift and Company, Inc. (Ky.), Swift and Company Ltd. (La.), Swift and Company (Me.), Swift Beef Company (Me.), United Dressed Beef Company of New York, J. J. Harrington and Company, Inc., Bimbler Company, The G. H. Hammond Company, Omaha Packing Company, Plankinton Packing Company, Sturtevant & Haley Beef & Supply Company, E. K. Pond Packing Company, Van Wagenen and Schickhaus Company, Western Packing Company, Hammond Beef Company, Omaha Meat Company, A. Canfield Commission Company, H. C. Derby Company, Metropolitan Hotel Supply Company, Vermont Supply Company, The Hotchkiss Beef Company, New England Dressed Meat & Wool Company, North Packing & Provision Company, The Sperry & Barnes Company, John

P. Squire & Company, (Me.), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R. I.), Springfield Provision Company, White, Pevy and Dexter Company, Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, Jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Keavitt, John M. Chaplin, William B. Traynor, Western Meat Company, Oakland Meat & Packing Com-
[fol. 1845] pany, Nevada Packing Company and Fred L. Washburn, defendants in the above entitled cause, by their solicitors, and respectfully represent to the Court:

Sioux City Stockyard Company

Located at Sioux City, Iowa;
Authorized Capital Stock: Preferred, 15,000 shares of the par value of $100 per share; Common, 15,000 shares, of the par value of $100 per share;
Issued and Outstanding Capital Stock: Preferred, 14,607 shares; Common 13,876 shares;
Owned by these defendants, or some of them: Preferred, 9,407 shares; Common 7,455 shares;

St. Paul Union Stock Yards Company

Located at South St. Paul, Minnesota;
Authorized Capital Stock: Common 50,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 25,000 shares;
Owned by these defendants, or some of them: Common 9,205 shares.

St. Joseph Stock Yards Company

Located at St. Joseph, Missouri;
Authorized Capital Stock: Common, 25,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 25,000 shares;
Owned by these defendants, or some of them: Common, 13,329 shares.

Fort Worth Stock Yards Company

Located at Fort Worth, Texas;
Authorized Capital Stock: Common, 30,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 27,500 shares;
Owned by these defendants, or some of them: Common, 9,075 shares.

[fol. 1846] The Denver Union Stock Yards Company

Located at Denver, Colorado;
Authorized Capital Stock: Preferred, 10,000 shares of the par value of $100 per share; Common, 15,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Preferred, 4,000 shares; Common, 15,000 shares;
Owned by these defendants, or some of them: Preferred, none; Common, 7,500 shares.

Kansas City Stock Yards Company

Located at Kansas City, Missouri;
Authorized Capital Stock: Preferred, 90,000 shares of the par value of $100 per share; Common, 25,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Preferred 79,915 shares; Common 25,000 shares;
Owned by these defendants, or some of them: Preferred, 371 shares; Common 53 shares.

St. Louis National Stock Yards

Located at East St. Louis, Illinois;
Authorized Capital Stock: Common 50,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 43,000 shares;
Owned by these defendants, or some of them: Common, 10,820 shares.

Union Stock Yards Company of Omaha, Ltd.

Located at Omaha, Nebraska;
Authorized Capital Stock: Common, 75,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 74,963 shares;
Owned by these defendants, or some of them: Common, 1,596 shares.

Bourbon Stock Yard Company

Located at Louisville, Kentucky;
Authorized Capital Stock: Common, 13,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 13,000 shares;
Owned by these defendants, or some of them: Common, 1,615 shares.

[fol. 1847] Newark Stock Yards

Located at Newark, New Jersey;
Authorized Capital Stock: Common, 500 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 500 shares;
Owned by these defendants, or some of them: Common, 475 shares.

Milwaukee Stock Yards Company

Located at Milwaukee, Wisconsin;
Authorized Capital Stock: Common, 2,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 2,000 shares;
Owned by these defendants, or some of them: Common, 2,000 shares.

Brighton Stock Yards Company

Located at Brighton, Massachusetts;
Authorized Capital Stock: Common, 100 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 100 shares;
Owned by these defendants, or some of them: Common, 61 shares.

Portland Union Stock Yards Company

Located at North Portland, Oregon;
Authorized Capital Stock: Common, 1,500 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 1,500 shares;
Owned by these defendants, or some of them: Common, 731 shares;

The Cleveland Union Stock Yards Company

Located at Cleveland, Ohio;
Authorized Capital Stock: Common, 12,500 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common 12,500 shares;
Owned by these defendants, or some of them: Common, 1,000 shares.

[fol. 1848] That the capital stock of each and every stock yard terminal railroad, in which these defendants, or any of them, have any interest, is owned in each case by some one of said stock yard companies, as hereinafter set forth, and none of these defendants has any direct or other interest in said stock yard terminal railroad companies, except through the ownership of stock in said stock yard companies so owning said stock yard terminal railroads. Said stock yard terminal railroads are as follows:

Sioux City Terminal Railway Company

Located at Sioux City, Iowa;
Authorized Capital Stock: Common, 3,000 shares of the par value of $100 per share;

Issued and Outstanding Capital Stock: Common, 2,000 shares.

All of said outstanding shares of stock are owned by the said The Sioux City Stock Yards Company.

St. Paul Bridge and Terminal Railway

Located at South St. Paul, Minnesota;

Authorized Capital Stock: Common, 5,000 shares of the par value of $100 per share;

Issued and Outstanding Capital Stock: Common, 20 shares;

All of said Outstanding Shares of stock are owned by said St. Paul Union Stock Yards Company.

St. Joseph Belt Railway Company

Located at South St. Joseph, Missouri;

Authorized Capital Stock: Common, 5,000 shares of the par value of $100 per share;

Issued and Outstanding Capital Stock: Common, 4,000 shares.

All of said outstanding shares of stock are owned by said St. Joseph Stock Yards Company.

Fort Worth Belt Railway Company

Located at Fort Worth, Texas;

Authorized Capital Stock: Common, 4,000 shares of the par value of $100 per share.

[fol. 1849] Issued and Outstanding Capital Stock: Common, 4,000 shares;

All of said shares of stock are owned by said Fort Worth Stock Yards Company, through the means of Trustee.

Kansas City Connection Railroad

Located at Kansas City, Missouri;

Authorized Capital Stock: Common, 10,000 shares of the par value of $100 per share;

Issued and Outstanding Capital Stock: Common, 10,000 shares.

All of said shares of stock are owned by said Kansas City Stock Yards Company.

East St. Louis Junction Railroad Company

Located at East St. Louis, Illinois;
Authorized Capital Stock: Common, 5,000 shares of the par value of $100 per share;
Issued and Outstanding Capital Stock: Common, 5,000 shares;
All of said shares of stock are owned by said St. Louis National Stock Yards.

That these defendants, saving and reserving unto themselves, and each of them, the benefit of exceptions to those portions of the Court's memorandum of decision filed herein on the 4th day of January, 1921, and holding that the ownership of stock by these defendants in the said public stockyard market companies falls within the purview of the anti-trust laws, and has the effect to restrain interstate commerce and tends to create a monopoly of a line of commerce, and that the Court has the power to enforce the injunction entered in this cause by receivership and sale of the stock-holdings of the defendants in public stockyard market companies and stockyard terminal railway companies, and to that portion of said memorandum which disapproves of the plan presented by these defendants on the 26th day of October, 1920, and to that portion of the said memorandum which holds that unless the defendants were able to propose a plan which would meet the require-
[fol. 1850] ments of the said memorandum, the Court would appoint officers to take title to the stock of the defendants, and to hold the same subject to the order of the Court until suitable arrangements could be made to have it disposed of in accordance with the terms and purposes of the decree, and farther saving and reserving unto themselves, and each of them, benefit of exceptions to the memorandum decision of the Court filed herein under date of March 2, 1921, disapproving that certain plan of defendants filed under date of February 7, 1921, which plan provided for the disposition and divestment of their respective interests in the several public stockyard market companies and stockyard terminal railway companies named in the Bill of Complaint herein exhibited, in which they, or any of them, have an interest, the said defendants

now respectfully submit for the approval of this Honorable Court the following plan for the disposition of the stock held and owned by them and representing their interest in said public stockyard market companies, and in said stockyard terminal railway companies.

Deposit of Stock

These defendants, within thirty days from and after the date of the approval of this plan by the Court, shall deliver to the Illinois Trust & Savings Bank, of Chicago, Illinois, hereinafter referred to as the Trust Company, all evidence of stock ownership in said stockyard companies above mentioned (which includes the interest of these defendants in stockyard terminal railroad companies owned by said stockyard companies) upon negotiable receipts of said Trust Company therefor, except such of said stocks as may be now pledged. As to any of such stock as may be now pledged, the defendants will execute and deliver to said Trust Company an order signed by the defendant owning such pledged stocks, directing the pledgees thereof [fol. 1851] to deliver the certificates of stock held by the pledgee to said Trust Company in exchange for its negotiable receipt. In the event that any pledgee shall fail to exchange such pledged stock for the negotiable receipt of said Trust Company and such pledged stock shall thereafter be released from said pledge, the pledgor thereof shall, upon such release, deliver the certificate of stock to said Trust Company, in exchange for its negotiable receipt.

Said depositary shall enter its appearance in this cause so as to be subject to the jurisdiction of the Court in the discharge of its duties as such depositary.

In connection with deposit of said shares of stock, defendants shall enter into an escrow agreement with said Trust Company, the terms of which shall be in accordance with the provisions of this plan and the decree entered herein on the 27th day of February, 1920, and all such stock delivered to the said Trust Company shall be held by it in escrow thereunder until disposed of by said Trust Company as hereinafter provided.

Within sixty days after the Court's approval of this plan the Trust Company shall make a report to the Court,

furnishing to the Attorney General of the United States and to these defendants each a copy thereof, showing the amount of stock deposited with it pursuant to the provisions hereof, and also the orders delivered to it by these defendants on the pledgees, showning the amount of the stock covered by such orders and the names of the pledgees; and it shall be the duty of the Trust Company to make additional reports as the Court may direct, or as may be requested of it either by the Attorney General or these defendants.

As and when any of the said stock shall have been sold, pursuant to this plan and the sale approved by the Court, the depositary shall, in exchange for its receipt, deliver the proper certificates of stock to the purchaser thereof. [fol. 1852] If any pledgee of stock accepting the negotiable receipt of the said Trust Company shall find it necessary to foreclose the loan for which such receipt is held as collateral said Trust Company shall, upon proof thereof, and surrender of said receipt, deliver to such pledgee the certificate or certificates of stock represented thereby and said defendants will request the pledgee to give to the Court and the Attorney General full information as to its final disposition of such stock.

The Swift and Armour groups of defendants assume the duty and obligation of making provision for the compensation of and expenses incurred by said Trust Company in the performance of its duties hereunder, and in such manner as that said compensation and expenses will not be or in any way constitute a lien upon either the certificates of stock deposited with it or the negotiable receipts issued against the same os the stock represented thereby.

Upon the sale of all of said stock or on termination of this plan by order of the Court or otherwise, the said Trust Company shall be discharged of all its powers and duties under this plan and all certificates of stock or other evidences of ownership then held by said Trust Company hereunder shall be forthwith returned to the defendant depositing the same therewith, upon surrender of the receipts issued by said depositary therefor.

Individual Trustees

Upon the approval of this plan by the Court, these defendants will execute and deliver to Henry W. Anderson, of Richmond, Virginia, and George Sutherland, of Salt Lake City, Utah, as trustees, powers of attorney, irrevocable during the time this plan remains in effect, authorizing said trustees jointly to vote all of the stock of said [fol. 1853] defendants in said last mentioned stockyard companies and stockyard terminal railroad companies, or such portion thereof as from time to time shall remain unsold pursuant to this plan.

Said individual trustees shall be charged with the duty of acquainting themselves with the conduct and operation of said stockyard companies and stockyard terminal railroads, but shall not vote said stock so as to interfere with the management and conduct of said public stockyard market companies or the stockyards operated by them, or said stockyard terminal railroads, unless both of said trustees shall be of the opinion that said stockyards or stockyard terminal railroads, or some of them, are being used in violation of the anti-trust laws of the United States, or the decree herein.

In case said trustees shall disagree as to the voting of said stock, they, or either of them, or the petitioner, or the defendants, may apply to the Court for an order directing how said stock shall be voted, with the right of either party hereto to be heard and to except to the order of the Court and to appeal therefrom.

It shall be the duty of said trustees to keep themselves informed as to the progress made in the sale of the stock in accordance with this plan and report the same to the Court as and when directed by it, or upon their own initiative, and with such recommendations and suggestions as they may deem proper.

The said trustees, in the performance of their duties hereunder shall not be liable, except for willful misconduct on their part.

Said trustees shall be subject to removal by the Court, in its discretion. If any vacancy in said trusteeship occur, [fol. 1854] because of the removal or otherwise of said Henry W. Anderson, the Court shall appoint as his suc-

cessor a suitable person nominated by the petitioner; and if such vacancy shall occur because of the removal or otherwise of said George Sutherland, the Court shall appoint as his successor a suitable person nominated by the Armour and Swift groups of defendants.

Each individual trustee shall receive compensation at the rate of Ten Thousand Dollars ($10,000) per annum, and his reasonable and proper expenses, to be approved by the Court and paid by the Armour and Swift groups of defendants.

Upon the sale of all of said stock, or upon the termination of this plan, by order of Court, or otherwise, the said trustees shall be discharged of all their powers and duties under this plan.

Report of Sales

These defendants will proceed with due diligence to sell the aforesaid stock owned by them, as hereinbefore detailed, and they will make reports of sales to the Court from time to time, furnishing copies thereof to the depositary and to the individual trustees, stating in said reports the name or names of said proposed purchaser or purchasers, the number of shares proposed to be purchased by them, the price to be paid and the terms and conditions of such proposed sales. They shall attach to said reports affidavits of the proposed purchasers, setting forth that such proposed purchaser is making the purchase for himself and not for any of the defendants in this action, and that none of said defendants has any interest whatever in said purchase; in what manner, if any, said proposed purchaser is connected with or related to, by blood or marriage, any of the individual defendants in this action, and what connection, if any, he has with, or what interest, if any, he has in any of the corporation defendants in this action, [fol. 1855] and also that he is not acting for or on behalf of any of the defendants or in concert, agreement or understanding with any of such defendants. The form of such affidavit is hereto annexed as a part hereof.

No sales of said stock will be consummated until the same have been approved by the Court.

General

If, before sale of the said stock of any of the public stockyard companies hereinbefore mentioned, a reorganization of such company shall be effected by a majority of the stockholders thereof, whereby it shall become necessary and desirable to exchange any shares of the stock of said company so reorganized for shares or securities of any such reorganized corporation, the defendants shall have the right to make such exchanges and the shares or securities received in exchange shall thereafter be subject to all the provisions of this plan for sale by these defendants, as were the shares of stock surrendered in lieu thereof.

Each purchaser of stock in stockyard companies, wherein defendants in this cause hold controlling interest, shall agree, as a condition of the purchase and holding of said stock by himself, his personal representatives or assigns, that said stock shall be voted to effectuate the provisions of Paragraph Thirteenth of the Consent Decree herein entered.

In the event sales of any stock shall be sold by these defendants on the installment plan, the purchaser thereof shall have the right to vote said share or shares of stock either in person or by proxy, provided such proxy shall not be given to or voted by any of these defendants.

These defendants will, upon the request of the Attorney General of the United States, furnish him any information which he may request as to their progress in the sale and disposition of said stock and generally in the execution [fol. 1856] of this plan.

Time for Completion of Sales

These defendants, and each of them, will proceed with due diligence, in the manner herein provided, and in accordance with the provisions of this plan, to sell their respective interests in the hereinabove described stockyard market companies, and stockyard terminal railroad companies, at fair and reasonable value, and in case the same cannot be so disposed of within one year from the date of the approval of this plan, said defendants may make a showing to this court of the diligence used and the best offers received for said stocks, and may obtain from the

Court such extensions of time as the Court may prescribe for the disposition of the same.

The approval of this plan shall not be construed so as to deprive these defendants of the right to petition or move the Court at any time for a modification hereof.

Termination

The Court shall have the power to terminate this plan, or any part hereof, on being convinced, after hearing, that these defendants are not proceeding with promptness and vigor in disposing of said stocks hereunder.

Wherefore, these defendants pray that an order be entered in this cause approving the plan herein set forth for divesting these defendants of their ownership or interests, as aforesaid, in said public stockyard market companies and said stockyard terminal railroads.

Dated at Washington, D. C. this 12th day of April, A. D. 1921.

(Sgd) Chas. A. Douglas, (Sgd) Conrad H. Syme, (Sgd) Henry Veeder, Attorneys for the Swift Group of Defendants.

[fol. 1857] (Form of Affidavit)

In the Supreme Court of the District of Columbia

Equity No. 37623

United States of America, Petitioner

vs.

Swift and Company, Armour and Company, Morris and Company, Wilson and Company and Cudahy Packing Company, et al.

Affidavit

_____ being duly sworn, says: I reside at _____ St., City of _____ State of _____; I am the actual purchaser in good faith of _____ shares evidenced by Certificate _____ of the _____ Company heretofore standing in the name of _____.

This purchase is made in my own name and for my own use and benefit and not for any of the defendants in this action.

I am not acting for or on behalf of any of the defendants, or in concert, agreement or understanding with any of them.

My only interest, either by stockholdings or otherwise, in any of the corporation defendants, is as follows:

.....

My relation by blood or marriage to any of the individual defendants is as follows: .....

——— ———, Affiant.

Subscribed and sworn to before me this ..... day of ....., 192 .

——— ———, Notary Public.

[fol. 1858] Authentication

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

I, CHARLES E. STEWART, Clerk of the said Court, do hereby certify that the writing annexed to this certificate is a true copy of original on file and of record in said Court in this cause.

Witness my hand and the seal of said Court, this 28th day July, 1938.

(Sgd) C. E. Stewart, Clerk, by ——— ———, Asst. Clerk. (Seal.)

I, O. R. LUHRING, Presiding Justice of said Court, do hereby certify the foregoing attestation by CHARLES E. STEWART, Clerk of the said Court, to be in due form.

Witness my hand this 28th day of July, 1938.

(Sgd) O. R. Luhring, Presiding Justice.

I, CHARLES E. STEWART, Clerk of said Court, hereby certify that the Honorable O. R. LUHRING, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Presiding Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 28th day of July, 1938.

(Sgd.) Sharles E. Stewart, Clerk, by Chas. B. Coffin, Asst. Clerk. (Seal.)

[fol. 1859] Copy

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

To All to Whom Theso Presents Come, Greeting:

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, That in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the time hereinafter mentioned, among others was the following proceeding, to wit:

[fol. 1860] Filed Apr. 12, 1921. Morgan H. Beach, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Equity No. 37623

UNITED STATES OF AMERICA

vs.

SWIFT AND COMPANY AND OTHERS, Defendants

It is, by the Court, this the 12th day of April, 1921, ORDERED that the order dated and entered the 2nd day of March, 1921, requiring the taking of testimony on the subject of values, and the orders amendatory thereof and heretofore entered, be, and they are hereby revoked.

It is further ordered that the plans this day submitted by the Armour and Swift defendants be, and they are hereby approved.

(Sgd) Wendell P. Stafford, Justice.

O. K.

Herman J. Galloway,
Special Asst. to the Atty. Gen.

O. K.

Conrad H. Syme,
Chas. A. Douglas,
Attys. for Armour & Swift groups.

[fol. 1861] Authentication

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

I, CHARLES E. STEWART, Clerk of the said Court, do hereby certify that the writing annexed to this certificate is a true copy of original on file and of record in said court in this cause.

Witness my hand and the seal of said Court, this 28th day of July, 1938.

(Sgd) C. E. Stewart, Clerk. By —— ——, Ass't. Clerk. (Seal.).

I, O. R. LUHRING, Presiding Justice of said Court, do hereby certify the foregoing attestation by CHARLES E. STEWART, Clerk of the said Court, to be in due form.

Witness my hand this 28th day of July, 1938.

(Sgd) O. R. Luhring, Presiding Justice.

I, CHARLES E. STEWART, Clerk of said Court, hereby certify that the Honorable O. R. LUHRING, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Presiding Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 28th day of July, 1938.

(Sgd) Charles E. Stewart, Clerk, By Chas. B. Coflin, Ass't. Clerk. (Seal.)

[fol. 1862] DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

In Equity

No. 37623

UNITED STATES OF AMERICA

vs.

SWIFT & COMPANY ET AL.

Order

[fol. 1863] Copy

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

To All to Whom These Presents Come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the time hereinafter mentioned, among others was the following proceeding, to wit: [fol. 1864] Filed June 16, 1932. Frank E. Cunningham, Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Equity No. 37623

UNITED STATES OF AMERICA, Plaintiff

vs.

SWIFT & COMPANY, ET AL., Defendants

Order Appointing Trustee

This cause came on for further hearing on the application of the Swift defendants for a further extension of time in which to dispose of their interests in public stockyard market companies and stockyard terminal railroads in compliance with paragraph 2 of the Consent Decree entered herein

on February 27, 1920, and with the order entered January 31, 1931; and upon the cross-complaint on the United States asking for the appointment of a trustee to take the custody of the stock holdings of the Swift defendants in public stockyard market companies and stock yard terminal railroads, for the purpose of disposing of the same under the direction of the Court in compliance with the Consent Decree; and counsel for the Swift defendants having consented to the appointment of a trustee as aforesaid, it is hereby

Ordered, Adjudged, and Decreed:

1. That the application of the Swift defendants for a further extension of time be, and it is hereby, denied;

2. That the Swift defendants be, and they are hereby, directed forthwith, to assign and transfer, absolutely and [fol. 1865] unconditionally, all shares of stock held by them, or any of them, of which they are required to divest themselves by paragraph 2 of the Consent Decree, to the trustee hereinafter named, in trust, for the purposes hereinafter described; provided that as to such of said shares of stock as may now be pledged, the defendants shall execute and deliver to the Trustee an order signed by the defendant owning such pledged stocks directing the pledgee thereof to deliver the certificates representing such shares of stock held by the pledgee to the Depositary, hereinafter named, in exchange for negotiable receipts. Upon receipt of said certificates the Depositary shall forthwith cause the certificates to be transferred into the name of the Trustee and retain the same in its possession until the further order of the Court. In the event that any pledgee shall fail to exchange such pledged stock for the negotiable receipts of the Depositary and such pledged stock shall thereafter be released from said pledge, the pledger thereof shall, upon such release, deliver the certificate representing said shares of stock to the Depositary in exchange for its negotiable receipts, as provided in paragraph 3 hereof with respect to shares of stock that are not now pledged. If any pledgee of shares of stock, accepting the negotiable receipt of the Depositary, shall find it necessary to foreclose the loan for which such receipt is held as collateral, the Depositary shall, upon proof thereof and surrender of said receipt,

deliver to such pledgee the certificate or certificates representing such shares of stock;

2. That the certificates representing the above described shares of stock which are not now pledged, shall be depos- [fol. 1866] ited forthwith for safekeeping with the First Union Trust Company, Chicago, Illinois, which is hereby designated as Depositary hereunder. In exchange for said certificates of stock the Depositary shall issue its negotiable receipts to the beneficial owners thereof as the Trustee shall designate them to it in writing, but shall not deliver the said certificates of stock out of its possession, except upon the further order of this Court. Said negotiable receipts shall be issued by said Depositary subject to all the provisions of the Decree entered in this cause on February 27, 1920; and subject to the power of the Trustee to sell the stock represented by said receipts in the manner and under the conditions provided in this Order and subject also to all other powers and limitations created or imposed by this Order. Said receipts shall contain appropriate provisions reciting the conditions under which they are issued, and the form of said receipts shall be submitted to and approved by this Court prior to issue. By consenting to act as such, the Depositary shall become a party to this cause and be subject in all respects to the further order of this Court.

4. That Harry S. New be, and he is hereby appointed as Trustee with the power and duty of disposing of the shares of stock referred to in paragraph 2 hereof, or any part thereof, subject to the approval of this Court, as quickly as may be; the beneficial owners to be entitled to suggest prospective purchasers. No sale shall be consummated until approved by the court, and until it shall be established to the satisfaction of this Court that the purchaser is making the purchase for himself and not for any of the defendants herein, and that none of the defendants has any interest whatever in the purchase; that the purchaser is in no manner connected with or related to any of the indi- [fol. 1867] vidual defendants herein; and that he is not acting for or on behalf of any of the defendants herein or in concert, agreement, or understanding with any of them;

5. That, except as provided in paragraph 3 hereof, until finally disposed of, the Trustee shall vote the said stock and otherwise exercise all rights incidental to absolute ownership thereof, independent of any control by any of the Swift defendants, except the right to retain dividends, if as and when declared, for his own use and benefit; and shall perform such other acts in the premises as may from time to time be directed by this Court. The Trustee shall direct the Stockyards Companies to pay all cash dividends to the defendants as he shall designate them. Upon the sale of any of said stock by the Trustee pursuant to the approval of this Court, the net proceeds thereof, as determined by the Order of this Court, shall be deposited with the Depositary and distributed by it to the owner or holder of the negotiable receipts for the stock so sold. Dividends in the form of stock shall be deposited with the Depositary subject to the same terms and conditions as the other shares of stock held hereunder;

6. That the Trustee shall be paid as compensation in full for all services rendered as Trustee at the rate of Ten Thousand Dollars per annum payable in equal quarterly instalments. The Trustee shall file with the Court quarterly hereafter a verified statement of the amount of compensation due him and the expenses necessarily incurred by him in the administration of this trust, which, upon approval of the Court, shall be paid by the defendant Swift & Company. The trustee shall be subject to removal by the Court in its discretion and in the event of his removal or in the event of his death, resignation, or inability to act, the Court shall appoint his successor. That the De- [fol. 1868] positary shall receive such compensation for its services and expenses in the performance of its duties hereunder as may be agreed upon by the Depositary and defendants;

7. That the Trustee shall be accountable for action hereunder only in proceedings in this cause, and shall not be liable for any loss or default unless resulting from gross negligence or wilful misconduct; and any further order of this Court entered upon notice to the Trustee and to the United States and to the Swift defendants shall be full protection in any action taken pursuant thereto;

8. That within thirty days hereafter the Trustee shall report to the Court whether all the above described shares of stock have been transferred to him as Trustee and have been deposited with the Depositary as hereinbefore provided, and as to any such shares of stock as shall not have been transferred to him or deposited with the Depositary as provided herein, the Trustee shall describe fully the situation with reference to such stock and shall seek the further instructions of this Court with respect thereto;

9. That the Trustee shall report to the Court semi-annually and upon further order of the Court, the facts in respect to the administration of the trust herein described, and shall make such recommendations as he may deem advisable in respect thereof and in respect to the carrying out of the provisions of paragraph 2 of the Consent Decree;

10. That the Trustee may make application to the Court at any time for such further orders or directions as may be necessary or proper in connection with the administration of his trust; and jurisdiction of this cause is hereby retained for the purpose of making such other and further orders or taking such other action, if any, as may be necessary or appropriate to the carrying out and enforce-[fol. 1869] ment of this order and of paragraph 2 of the Consent Decree;

11. That the defendants are not to be deprived by any of the provisions of this order from the right to divest themselves of all ownership or interest in public stockyard market companies, in accordance with the provisions of the Decree of 1920, under any plan or plans which may hereinafter be approved by this Court.

Dated June 16, 1932.

(Sgd) Jennings Bailey, Justice.

Consented to:

(Sgd) Frank J. Hogan,
Counsel for Swift defendants.

(Sgd) John Lord O'Brian,
The Assistant to the Attorney General.

M 145 P 376

[fol. 1870] AUTHENTICATION

District Court of the United States for the District of Columbia:

I, CHARLES E. STEWART, Clerk of the said Court, do hereby certify that the writing annexed to this certificate is a true copy of original on file and of record in said Court in this cause.

Witness my hand and the seal of said Court, this 28th day of July, 1938.

(Sgd.) C. E. Stewart, Clerk, By —— ——, Ass't. Clerk. (Seal.)

I, O. R. LUHRING, Presiding Justice of said Court, do hereby certify the foregoing attestation by Charles E. Stewart, Clerk of the said Court, to be in due form.

Witness my hand this 28th day of July, 1938.

(Sgd) O. R. Luhring, Presiding Justice.

I, CHARLES E. STEWART, Clerk of said Court, hereby certify that the Honorable O. R. Luhring, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same, Presiding Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 28th day of July, 1938.

(Sgd) Charles E. Stewart, Clerk, By Chas. B. Coffin, Ass't. Clerk. (Seal.)

[fol. 1871] DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

In Equity No. 37623

UNITED STATES OF AMERICA

vs.

SWIFT & COMPANY ET AL.

Order Appointing Trustee

[fol. 1872] Copy

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

To All to Whom These Presents Come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the time hereinafter mentioned, among others was the following proceeding, to wit:

[fol. 1873] (Filed Aug. 13, 1936. Charles E. Stewart, Clerk)

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

In Equity No. 37623

UNITED STATES OF AMERICA, Plaintiff,

vs.

SWIFT AND COMPANY, ET AL., Defendants

ORDER APPROVING SALE OF STOCK

Upon consideration of the petition filed herein by Harry S. New, as Trustee, for approval of the plan for the sale to United Stockyards Corporation of the shares of capital stock specifically described in said petition, being the shares of capital stock hereinafter described, insofar as said plan relates thereto, be approved, and on consideration of the consent of the United States of America, by its attorney, hereto appended, and being fully advised in the premises, it is this 13th day of August, 1936, by the Court

Ordered, That said plan, insofar as it relates to the sale of the shares of capital stock hereinafter described, and the sale by Harry S. New, as Trustee, to United Stockyards Corporation of said shares of capital stock, to-wit:

(a) 26,764 shares of preferred capital stock and 57,287 shares of common capital stock of The Sioux City Stock Yards Company, as follows:

	Shares
In the name of Harry S. New, Trustee,	
Preferred	26,763
Common	57,287
In the name of W. K. Wright—preferred	1
In the name of J. H. Bliss—common	1
(b) Milwaukee Stock Yards Company	
M164 P253	
In the name of Harry S. New, Trustee	3,995
In the name of Wm. B. Traynor	1
In the name of W. K. Wright	1
In the name of C. P. Hobson	1
In the name of J. E. McGillivray	1
In the name of E. G. Six	1

[fol. 1874]

	Shares	Shares
Portland Union Stock Yards Company		3,065
In the name of Harry S. New, Trustee	3,063	
In the name of C. C. Colt	1	
In the name of B. C. Darnall	1	
South San Francisco Union Stock Yards Company		4,000
In the name of Harry S. New, Trustee	3,995	
In the name of H. A. Hartl	1	
In the name of Wm. H. Byrnes	1	
In the name of F. L. Tooker	1	
In the name of J. A. White	1	
In the name of J. J. Hearne	1	
Brighton Stock Yards Company		62
In the name of Harry S. New, Trustee	57	
In the name of George H. Swift	1	
In the name of W. W. Sherman	2	
In the name of J. A. Rose	1	
In the name of F. W. Crocker	1	
Saint Paul Union Stockyards Company		62,216
In the name of Harry S. New, Trustee	62,213	
In the name of J. H. Bliss	1	
In the name of W. K. Wright	1	
In the name of L. A. Carton	1	
Fort Worth Stock Yards Company		34,640
In the name of Harry S. New, Trustee	34,637	
In the name of L. F. Swift, Jr.	1	
In the name of J. H. Bliss	1	
In the name of W. K. Wright	1	

be, and the same is hereby confirmed and approved.

[fol. 1875] Further ordered and decreed, That the First National Bank of Chicago, formerly the First Union Trust and Savings Bank, the designated depositary of said shares of stock, shall deliver unto the purchaser, the United Stockyards Corporation, certificates for the aforesaid shares of capital stock now standing in the name of Harry S. New, Trustee, and in the names of the other individuals hereinabove named as holders of certain of said shares in exchange for the net proceeds of said sale, namely, $6,279,787, which sum represents the purchase price of all of said shares of capital stock as is shown in the petition aforesaid.

Further ordered and decreed, That no director, officer or employee of Swift and Company, while such director, officer or employee, shall be a director, officer or employee of United Stockyards Corporation after the sale of the shares of capital stock hereinabove specifically described shall have been completed.

(sgd) Jennings Bailey, Justice.

Consented to:

H. E. C. John Dickinson (sgd), Assistant United States Attorney General.

Consented to:

Frank J. Hogan, Nelson T. Hartson (sgd), Attorneys for Defendant Swift and Company.

[fol. 1876] AUTHENTICATION

District Court of the United States for the District of Columbia:

I, CHARLES E. STEWART, Clerk of the said Court, do hereby certify that the writing annexed to this certificate is a true copy of original on file and of record in said Court in this cause.

Witness my hand and the seal of said Court, this 28th day of July, 1938.

(sgd.) C. E. Stewart, Clerk, By ——, Ass't. Clerk. (Seal.)

I, O. R. LUHRING, Presiding Justice of said Court, do hereby certify the foregoing attestation by Charles E. Stewart, Clerk of the said Court, to be in due form.

Witness my hand this 28th day of July, 1938.

(Sgd) O. R. Luhring, Presiding Justice.

I, CHARLES E. STEWART, Clerk of said Court, hereby certify that the Honorable O. R. Luhring, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same, Presiding Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 28th day of July, 1938.

(Sgd) Charles E. Stewart, Clerk, By Chas. B. Coffin, Ass't. Clerk. (Seal.)

[fol. 1877] Copy

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

To All to Whom These Presents Come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the time hereinafter mentioned, among others was the following proceeding, to wit:

[fol. 1878] (Filed Jun. 15, 1937. Charles E. Stewart, Clerk)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Equity No. 37623

UNITED STATES OF AMERICA, Plaintiff,

vs.

SWIFT & COMPANY, ET AL., Defendants

ORDER APPOINTING TRUSTEE

This cause came on for further hearing on application of the United States of America for the appointment of a trustee to succeed Harry S. New, deceased, who was appointed and acted as trustee herein pursuant to the order of this Court dated June 16, 1932; and the Court being advised in the premises it is hereby

Ordered:

1. That John Walsh be and he hereby is appointed trustee upon the same trusts and with all the powers and duties of the trustee as provided in the order of this Court dated June 16, 1932; and under the terms thereof;

2. That the certificates representing all the shares of stock referred to in paragraph 2 of the order of June 16, 1932 which have remained unsold shall continue to be held in the custody of the depositary designated in the order dated July 22, 1932, supplementing the order appointing trustee entered June 16, 1932; subject to the instructions of the trustee with the approval of the Court;

3. That the compensation of the trustee in full for all services rendered as trustee shall be at the rate of Four Thousand Dollars ($4,000.00) per annum, to be paid quarterly, together with expenses incurred by said trustee, in the manner provided in the order of June 16, 1932.

(sgd) Jennings Bailey, Justice.

M169P346

Dated: June 15th, 1937.

Consented to:

Frank J. Hogan by Hartson, For the Swift Defendants.

[fol. 1879] AUTHENTICATION

District Court of the United States for the District of Columbia:

I, CHARLES E. STEWART, Clerk of the said Court, do hereby certify that the writing annexed to this certificate is a true copy of original on file and of record in said Court in this cause.

Witness my hand and the seal of said Court, this 28th day of July, 1938.

(sgd.) C. E. Stewart, Clerk, By ——— ———, Ass't. Clerk. (Seal.)

I, O. R. LUMBING, Presiding Justice of said Court, do hereby certify the foregoing attestation by Charles E. Stewart, Clerk of the said Court, to be in due form.

Witness my hand this 28th day of July, 1938.
(sgd) O. R. Luhring, Presiding Justice.

I, CHARLES E. STEWART, Clerk of said Court, hereby certify that the Honorable O. R. Luhring, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same, Presiding Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 28th day of July, 1938.

(sgd) Charles E. Stewart, Clerk, By Chas. B. Coffin, Ass't. Clerk. (Seal.)

EXHIBIT NO. 43

Witness: H. R. Park

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Docket 29809

SWIFT & COMPANY

vs

THE ATCHISON, TOPEKA & SANTA FE RY. CO. et al

Submitted on behalf of the
Breeders, Growers, Feeders
and Farmers of live stock
patrons of the members of
The Chicago Live Stock Exchange

Chicago,
February 24, 1948

THE CHICAGO LIVE STOCK EXCHANGE

Firm	Names of members of The Chicago Live Stock Exchange associated with firm shown.	Number of employees (other than Chicago Live Stock Exchange members) employed by firm shown.
Adams, Corrick & Keleher	L. J. Keleher	None
Alexander, Conover & Co.	W. E. Stewart H. Summers M. M. Miller W. C. Overman A. B. Coover R. Sarsfield	6
Baker-Heyne & Co.	F. L. Heyne W. B. Heyne F. H. Baker	1
Barton, Looney & Co.	T. P. Looney	None
G. A. Benton & Co.	G. A. Benton	None
Lou Bick Company	Lou Bick	None
James J. Brown	J. J. Brown	None
G. M. Brownson & Co.	G. M. Brownson	None
Abe Burnett & Co.	E. D. Burnett I. D. Burnett	None
J. B. Cahill & Co.	J. B. Cahill	None
Central Live Stock Comm. Co.	M. A. McDermott E. R. McDermott	2
Chicago Commission Co.	C. E. Mathews	2
Clark, Bowles & Co.	J. R. Grace	None
John Clay & Company	F. H. Connor A. F. Wilson E. McAdams H. C. White K. Erickson J. Wolf A. Rhodes W. J. White C. A. Swanson J. Barr L. A. Williams	14
N. W. Cochran & Co.	N. W. Cochran	None

1881

Conklin Bros. Comm. Co.	W. F. Tormoehlen W. J. Sirch	3
Consolidated Comm. Co.	W. Hager J. A. Goble B. B. Cook	2
H. D. Copeland & Co.	L. W. Hatch A. Van Fowler E. J. Wegener C. E. Hanley W. Anderson	5
Corkery & Boegner	John Boegner P. Corkery W. H. Palmer	4
Thos. H. Cross	T. H. Cross	None
Ed. P. Daly & Son	E. P. Daly	None
John F. Deutsch & Co.	J. F. Deutsch	None
Miles Dodd Comm. Co.	M. Dodd	None
Dolan, Ludeman & Co.	P. T. Dolan C. Dolan R. Dwyer E. Pence	7
Drovers Comm. Co.	P. E. Moore J. E. Wise F. Sullivan	6
Dunbar-St. John & Co.	H. Dunbar	None
Henry DuPlan, Jr.	H. DuPlan, Jr.	None
Homer Dye Live Stock Comm. Co.	H. Dye	None
Ettlinger Comm. Co.	J. L. Ettlinger	None
Evans, Snider, Buel Comm. Co.	H. E. Buel W. H. Richards C. R. Barquist	3
Max Farley Live Stock Comm. Co.	Max Farley	None
Filler, Wilson & Co.	C. Filler	4
Wm. Gentleman & Sons	C. F. Gentleman G. J. Gentleman W. Cale	4

1882

Gillogly & Co.	R. E. Gillogly F. D. Gillogly M. W. Gillogly F. B. Light L. S. Larrison J. R. Corcoran	9
Gragg & Drahos	L. Drahos G. S. Gragg	None
Hefner-Nixon Comm. Co.	C. A. Hefner	None
Haime & Reneker	G. J. Reneker	None
Halpin Live Stock Comm. Co.	F. J. Halpin	None
Chas. E. Harding Co.	C. E. Harding	1
Hatch Live Stock Comm. Co.	Fred H. Hatch Fred Hatch, Sr. A. P. Schmal J. R. Carney H. A. Hatch, Jr.	5
J. B. Hatch & Co.	J. B. Hatch	None
Matt T. Hayes & Son	M. T. Hayes	None
Hefner Comm. Co.	C. R. Davis W. L. Stevens F. A. Hefner J. I. Mahoney J. E. Finn D. G. Moore	2
Henneberry & Wallace	A. M. Henneberry R. W. Wallace F. A. Fitzgibbon	4
Holloway & Ogren	E. J. Andrews Ed. Holloway A. E. Holbert P. A. Ogren H. Yepsen	3
Ingwersen, Humbert & Compton	A. Humbert D. R. Ingwersen H. R. Ingwersen W. Youngstrom	4
Iowa Live Stock Comm. Co.	F. K. Surbeck J. B. Gregory J. C. Igoe A. R. Gregory	5
W. C. Jennings & Co.	W. C. Jennings M. Ross	3

Johnson Comm. Co.	R. E. Johnson	None
Kuenster Live Stock Comm. Co.	V. L. Kuenster F. P. Owens	4
Kuenster Bros?	R. Kuenster W. Kuenster J. Amagnost	None
Lawler Bros.	A. Crippen J. Kane R. Deets W. O'Meara T. A. Grimes	7
McCausland, Hoag & Vaughan	E. S. Quinn G. R. Work J. A. Bell L. P. Armbrecht T. P. McHugh	6
Mackle Comm. Co.	E. J. Mackle	None
Wm. Mahoney	Wm. Mahoney	None
Marion Bros.	R. Marion	None
Martin Bros.	F. R. Bonthron W. M. Exner F. J. Kilburg A. W. McGeoghegan G. L. Bonthron	4
May & Simerman	R. May	None
Merrion & Co.	J. Lee Merrion	None
Midwest Comm. Co.	W. Gentleman	None
Miller, White & Woods	O. T. Korty G. A. Martin J. L. Jones G. Kidwell	5
Minteer, Hubbird & Co.	G. Hixon A. Slane	None
Robt. A. Morrey	R. A. Morrey	None
Mullen Comm. Co.	N. E. Barnes	None
Murray & McDowell	A. R. Jenkins	None
Will J. Malley Co.	W. J. Malley	None

National Live Stock Comm. Co.	D. C. Mosier T. L. Healy F. L. Smith C. J. Connolly L. H. Eckstrom H. C. Nelson A. L. Enright	9
Norris & Holgate	H. R. Holgate H. E. Thompson	3
Northwestern Live Stock Comm. Co.	F. M. Hatch	None
Peters, Turnbull & Co.	G. C. Peters A. O'Toole	3
Thos. K. Polley & Co.	T. K. Polley	None
Quinn Comm. Co.	J. E. Quinn	2
Rice Bros.	C. R. Rice O. H. Huber O. Witt B. R. Hugill W. J. O'Flynn. W. Donohue W. Cogan	5.
Alex Rinderle	V. S. Hurley	1
Roberts & Mills	W. D. Mills	None
Rosenbaum Bros. & Co.	H. K. Wertheimer D. C. Hayes	2
Sarsfield Bros.	Jos. Sarsfield John Sarsfield	1
R. G. Scherdin	R. G. Scherdin	None
Schroeder Live Stock Comm. Co.	A. C. Schroeder T. H. Shuell F. Hartman	2
Schultz Live Stock Comm. Co.	C. H. Schultz R. H. Schultz E. M. Schultz J. O'Connor E. J. Johnson	6
Sherwood & Son	R. H. Sherwood	None
Sinnard Comm. Co.	T. J. Sinnard M. T. Sinnard A. McGahah	None

Wm. R. Smith & Son	J. E. Eastes W. Desmond	None
L. Spencer & Co.	L. Spencer	None
Stafford Bros.	W. E. Otto M. Ward	7
Standard Live Stock Comm. Co.	R. R. Keys C. J. Ryan	1
Starrett Live Stock Comm. Co.	A. F. Starrett	None
Stockmens Live Stock Comm. Co.	E. C. Erickson	None
Swanson, Gilmore & Castenholz	C. J. Castenholz E. V. Parrish J. F. Gilmore C. Collendor J. Littleton	10
C. M. Swiney	C. M. Swiney	None
Swiney Bros.	T. E. Swiney B. J. Knoerla	3
Art W. Thomas & Co.	A. W. Thomas	None
H. O. Thompson & Co.	H. O. Thompson	None
Walter Bros.	R. A. Walter H. C. Walter	None
Walters & Dunbar	J. H. Dunbar J. T. Dunbar W. J. O'Neill C. A. Dunbar W. J. Rubins T. M. Quinn	8
Shirley L. Wilson & Co.	S. L. Wilson	None
E. F. Woelfer & Co.	E. F. Woelfer	None
Wood Bros.	F. E. Burt J. Teefel P. Coffman	3

8

Sheep Salesman

E. Hebel
J. Sheehy
N. Sutton

Total Members 225
Total Employees 191
196

1886

6 p

CATTLE

Year	1. Total Number Salable Received U. S. Yards	2. Total Number Shipped from U. S. Yards	3. Percentage Column 2 is of Column 1
*1922	3,858,542	1,137,135	29.5
*1923	3,874,224	1,104,757	28.5
*1924	3,962,416	1,107,463	27.9
*1925	3,829,979	1,001,977	26.2
*1926	3,905,644	1,061,103	27.2
*1927	3,499,877	938,023	26.8
6 Yr. Avg.	3,821,780	1,058,409	27.7
1928	2,465,126	735,965	29.9
1929	2,332,184	729,421	31.3
2 Yr. Avg.	2,399,055	732,693	30.5
1930	2,169,013	693,705	32.0
1931	2,237,405	778,896	34.8
1932	1,967,067	633,289	32.2
1933	1,961,787	612,567	31.2
1934	2,586,761	699,751	27.1
5 Yr. Avg.	2,184,406	683,641	31.3
1935	1,889,952	532,423	28.2
1936	2,166,348	660,178	30.5
1937	1,923,397	595,650	31.0
1938	1,835,051	577,763	31.5
1939	1,775,677	560,251	31.5
5 Yr. Avg.	1,918,085	585,253	30.5
1940	1,888,236	588,891	31.2
1941	1,982,954	569,488	28.7
1942	2,097,989	679,654	32.4
1943	2,064,134	904,540	43.8
1944	2,176,390	881,702	40.6
5 Yr. Avg.	2,041,940	724,855	35.5
1945	2,235,743	1,054,398	47.2
1946	1,861,737	1,117,442	60.0
1947	1,993,894	785,992	39.3

*Includes Calves

Authority - B.A.E. - U.S.D.A.

1647

CALVES

Year	1. Total Number Salable Received U. S. Yards	2. Total Number Shipped from U. S. Yards	3. Percentage Column 2 is of Column 1
1922	See Cattle	49,722	
1923	" "	51,216	
1924	" "	49,398	
1925	" "	58,428	
1926	" "	48,193	
1927	" "	36,999	
6 Yr. Avg.			
1928	697,210	26,716	3.8
1929	594,278	28,496	4.8
2 Yr. Avg.	645,744	27,606	4.3
1930	505,124	15,954	3.2
1931	492,971	31,605	6.4
1932	410,138	31,516	7.7
1933	355,553	18,386	5.2
1934	626,026	38,813	6.2
5 Yr. Avg.	477,962	27,255	5.7
1935	378,058	64,325	17.0
1936	373,142	60,986	16.3
1937	356,996	54,096	15.2
1938	301,113	42,755	14.2
1939	249,998	24,893	10.0
5 Yr. Avg.	331,861	49,411	14.9
1940	218,766	23,113	10.6
1941	191,624	22,258	11.6
1942	210,709	32,792	15.6
1943	199,024	37,511	18.8
1944	231,133	30,423	13.2
5 Yr. Avg.	210,251	29,218	13.9
1945	211,866	54,623	25.8
1946	164,726	54,383	33.0
1947	196,431	24,450	12.4

Authority - B.A.E. - U.S.D.A.

HOGS

Year	1. Total Number Salable Received U. S. Yards	2. Total Number Shipped from U. S. Yards	3. Percentage Column 2 is of Column 1
1922	7,769,155	1,852,006	23.8
1923	10,040,901	2,369,501	23.6
1924	10,304,216	2,989,326	29.0
1925	7,645,848	2,395,193	31.3
1926	6,764,899	2,108,120	31.2
1927	7,109,567	2,112,732	29.7
6 Yr. Avg.	8,272,431	2,304,479	27.8
1928	7,561,941	2,144,996	28.4
1929	5,846,317	1,831,244	31.3
2 Yr. Avg.	6,704,129	1,988,120	29.7
1930	5,145,156	1,786,295	34.7
1931	5,275,363	1,700,212	32.2
1932	4,323,038	1,036,684	24.0
1933	4,689,942	603,881	12.9
1934	3,765,987	639,816	17.0
5 Yr. Avg.	4,639,897	1,153,177	24.9
1935	2,055,490	517,726	25.2
1936	2,821,926	609,747	21.6
1937	2,638,325	525,919	19.9
1938	2,689,473	524,732	16.9
1939	2,774,020	468,365	16.9
5 Yr. Avg.	2,596,846	529,297	20.4
1940	3,536,555	447,076	12.6
1941	3,023,278	372,708	12.3
1942	3,201,173	467,064	14.6
1943	3,321,595	583,276	17.6
1944	3,618,308	451,407	12.5
5 Yr. Avg.	3,340,141	464,304	13.9
1945	1,714,595	428,612	25.0
1946	1,823,852	525,495	28.9
1947	1,949,003	282,328	14.5

Authority - B.A.E. - U.S.D.A.

SHEEP

Year	1. Total Number Salable Received U. S. Yards	2. Total Number Shipped from U. S. Yards	3. Percentage Column 2 is of Column 1
1922	3,225,597	1,273,107	39.4
1923	3,554,035	1,413,938	39.8
1924	3,640,497	1,380,735	37.9
1925	3,176,025	1,108,955	34.9
1926	3,662,742	1,443,348	39.4
1927	3,053,491	1,038,271	34.0
6 Yr. Avg.	3,385,398	1,276,392	37.7
1928	2,911,619	1,127,725	38.7
1929	2,722,910	1,117,680	41.0
2 Yr. Avg.	2,817,264	1,122,702	39.9
1930	3,130,796	1,311,435	41.9
1931	3,373,361	1,425,951	42.3
1932	2,779,882	915,051	32.9
1933	2,676,536	752,914	28.1
1934	2,099,442	537,430	25.6
5 Yr Avg.	2,812,003	988,556	35.2
1935	2,066,692	561,738	27.2
1936	1,830,380	504,294	27.6
1937	1,681,941	400,355	23.8
1938	1,855,484	499,622	26.9
1939	1,793,475	488,213	27.2
5 Yr. Avg.	1,845,594	490,844	26.6
1940	1,354,583	339,542	25.1
1941	1,224,644	321,707	26.3
1942	1,431,152	298,454	20.9
1943	1,282,212	294,090	22.9
1944	1,095,868	282,307	25.8
5 Yr. Avg.	1,277,692	307,220	24.0
1945	1,031,089	373,855	36.3
1946	1,017,798	401,141	39.4
1947	672,590	280,451	41.7

Authority - B.A.E. - U.S.D.A.

CATTLE

Year	1. Total Number Slaughtered under Federal Inspection Chicago	2. Total Number Salable Received U. S. Yds.	3. Percentage Column 2 is of Column 1
*1922	2,693,952	3,858,542	143.2
*1923	2,708,364	3,874,224	143.0
*1924	2,783,510	3,962,416	142.4
3 Yr. Avg.	2,728,608	3,898,394	142.9
*1925	2,799,787	3,829,979	136.8
*1926	2,873,491	3,905,644	135.9
*1927	2,571,473	3,499,877	136.1
1928	1,721,310	2,465,126	143.2
1929	1,639,875	2,332,184	142.2
5 Yr. Avg.	2,321,187	3,206,562	138.1
1930	1,528,464	2,169,013	141.9
1931	1,489,552	2,237,405	150.2
1932	1,366,194	1,967,067	144.0
1933	1,488,222	1,961,787	131.8
1934	1,735,935	2,586,761	149.0
5 Yr. Avg.	1,521,673	2,184,406	143.6
1935	1,439,487	1,889,952	131.3
1936	1,637,019	2,168,348	132.3
1937	1,405,507	1,923,397	136.8
1938	1,346,905	1,835,051	136.2
1939	1,280,598	1,775,677	138.7
5 Yr. Avg.	1,421,903	1,918,085	134.9
1940	1,358,248	1,888,235	139.0
1941	1,508,170	1,982,954	131.5
1942	1,574,836	2,097,989	133.2
1943	1,288,876	2,064,134	160.1
1944	1,540,051	2,176,390	141.3
5 Yr. Avg.	1,454,036	2,041,940	140.4
1945	1,440,690	2,235,743	155.2
1946	974,611	1,861,737	191.0
1947	1,428,297	1,993,894	139.6

* Includes calves

Authority - B.A.E. - U.S.D.A.

CALVES

Year	1. Total Number Slaughtered under Federal Inspection Chicago	2. Total Number Salable Received U. S. Yds.	3. Percentage Column 2 is of Column 1
1922	643,263	See Cattle	
1923	632,744	" "	
1924	669,713	" "	
1925	736,085	" "	
1926	643,436	" "	
1927	630,745	" "	
1928	687,566	697,210	101.4
1929	605,216	594,278	98.2
2 Yr. Avg.	646,391	645,744	99.9
1930	530,043	505,124	95.3
1931	506,927	492,971	97.2
1932	390,763	410,138	105.0
1933	428,411	355,553	83.0
1934	569,170	626,026	110.0
5 Yr. Avg.	485,062	477,962	98.5
1935	413,751	378,056	91.4
1936	382,851	373,142	97.5
1937	372,266	356,996	95.9
1938	321,252	301,113	93.7
1939	340,087	249,998	73.5
5 Yr. Avg.	366,037	331,861	90.7
1940	345,122	218,766	63.4
1941	299,506	191,624	64.0
1942	262,100	210,709	80.4
1943	269,593	199,024	73.8
1944	455,250	231,133	50.8
5 Yr. Avg.	326,314	210,251	64.4
1945	372,447	211,566	56.8
1946	326,151	164,726	50.5
1947	614,508	196,431	32.0

Authority - B.A.E. - U.S.D.A.

HOGS

Year	1. Total Number Slaughtered under Federal Inspection Chicago	2. Total Number Salable Received U. S. Yds.	3. Percentage Column 2 is of Column 1
1922	6,676,860	7,769,155	116.4
1923	8,505,457	10,040,901	118.1
1924	7,889,377	10,304,216	130.4
3 Yr. Avg.	7,693,564	9,371,424	121.8
1925	5,948,334	7,645,848	128.5
1926	5,293,589	6,764,899	127.8
1927	5,973,190	7,109,567	119.0
1928	6,935,261	7,561,941	109.0
1929	7,111,242	5,846,317	82.2
5 Yr. Avg.	6,252,323	6,985,714	111.7
1930	6,647,613	5,145,156	77.5
1931	6,654,993	5,275,383	79.3
1932	6,108,254	4,323,038	70.8
1933	5,892,499	4,689,942	79.6
1934	6,701,766	3,765,987	56.2
5 Yr. Avg.	6,401,025	4,639,897	72.5
1935	3,512,718	2,055,490	58.5
1936	4,368,950	2,821,926	64.6
1937	4,091,304	2,638,325	64.5
1938	4,342,056	2,689,473	61.9
1939	4,551,078	2,774,020	61.0
5 Yr. Avg.	4,173,221	2,595,846	62.2
1940	5,692,010	3,536,555	62.1
1941	4,895,926	3,023,278	61.8
1942	5,579,968	3,201,173	57.4
1943	6,917,245	3,321,595	55.2
1944	6,486,186	3,618,308	55.8
5 Yr. Avg.	5,734,667	3,340,181	58.2
1945	3,760,138	1,714,595	45.6
1946	3,897,212	1,823,852	46.8
1947	4,050,260	1,949,003	48.1

Authority - B.A.E. - U.S.D.A.

SHEEP

Year	1. Total Number Slaughtered under Federal Inspection Chicago	2. Total Number Salable Received U. S. Yds.	3. Percentage Column 2 is of Column 1
1922	2,522,569	3,226,597	127.9
1923	2,610,446	3,554,035	136.1
1924	2,716,866	3,640,497	134.0
3 Yr. Avg.	2,616,627	3,473,376	132.7
1925	2,793,983	3,178,025	113.7
1926	2,876,161	3,662,742	127.3
1927	2,720,522	3,053,491	112.2
1928	2,666,106	2,911,619	109.2
1929	2,694,005	2,722,910	105.0
5 Yr. Avg.	2,730,155	3,105,357	113.7
1930	2,946,518	3,130,796	106.3
1931	2,979,494	3,373,361	113.2
1932	2,963,402	2,779,882	93.8
1933	3,253,388	2,678,536	82.3
1934	3,113,097	2,099,442	67.4
5 Yr. Avg.	3,051,179	2,812,010	92.2
1935	2,939,463	2,066,692	70.3
1936	2,641,334	1,830,380	69.3
1937	2,601,044	1,681,941	64.7
1938	2,569,611	1,855,484	72.2
1939	2,444,146	1,793,475	73.4
5 Yr. Avg.	2,639,119	1,845,594	69.9
1940	2,287,181	1,354,583	59.2
1941	2,511,029	1,224,644	48.8
1942	3,154,683	1,431,152	45.4
1943	2,926,767	1,282,212	43.8
1944	2,511,602	1,095,868	43.6
5 Yr. Avg.	2,678,252	1,277,692	47.7
1945	1,967,407	1,031,089	52.4
1946	1,490,945	1,017,798	68.2
1947	1,179,486	672,590	57.0

Authority - B.A.E. - U.S.D.A.

CATTLE

Year	1. Total Number Slaughtered in the City of Chicago - Federal Inspected & Non-Federal Inspected	2. Total Number Salable Received U.S. Yds.	3. Percentage Column 2 is of Column 1
*1922	2,782,961	3,858,542	138.6
*1923	2,784,809	3,874,224	139.1
*1924	2,857,293	3,962,416	138.7
3 Yr. Avg.	2,808,354	3,898,394	138.8
*1925	2,861,365	3,829,979	133.9
*1926	2,960,499	3,905,644	131.9
*1927	2,854,629	3,499,877	131.8
1928	1,736,062	2,465,126	142.0
1929	1,656,102	2,332,184	140.8
5 Yr. Avg.	2,373,731	3,206,562	135.1
1930	1,543,222	2,169,013	140.6
1931	1,512,968	2,237,405	147.9
1932	1,390,161	1,967,067	141.5
1933	1,507,757	1,961,787	130.1
1934	1,766,487	2,586,761	146.4
5 Yr. Avg.	1,544,119	2,184,407	141.5
1935	1,480,753	1,889,952	127.6
1936	1,690,783	2,166,348	128.1
1937	1,471,802	1,923,397	130.7
1938	1,399,398	1,835,051	131.1
1939	1,319,135	1,775,677	134.6
5 Yr. Avg.	1,472,374	1,918,085	130.8
1940	1,398,179	1,888,235	135.0
1941	1,547,775	1,982,954	128.1
1942	1,623,144	2,097,989	129.3
1943	1,331,569	2,064,134	155.0
1944	1,566,974	2,176,890	138.9
5 Yr. Avg.	1,493,328	2,041,940	136.7
1945	1,440,690	2,235,743	155.2
1946	974,611	1,861,737	191.0
1947	1,423,480	1,998,894	139.6

* Includes calves

Authority - B.A.E. - U.S.D.A.

CALVES

Year	1. Total Number Slaughtered in the City of Chicago Federal Inspected & Non-Federal Inspected	2. Total Number Salable Received	3. Percentage Column 2 is of
1922	711,637	See Cattle	
1923	697,428	" "	
1924	732,800	" "	
1925	768,306	" "	
1926	719,794	" "	
1927	701,059	" "	
1928	751,311	697,210	92.8
1929	671,396	594,278	88.5
2 Yr. Avg.	711,353	645,744	90.8
1930	561,824	506,134	89.9
1931	536,616	492,971	92.0
1932	430,808	410,138	95.2
1933	457,863	355,553	77.7
1934	598,626	626,026	104.6
5 Yr.Avg.	516,947	477,962	92.5
1935	449,997	378,058	84.0
1936	421,680	373,142	88.5
1937	431,499	356,988	82.7
1938	357,317	301,113	84.3
1939	362,762	249,998	68.9
5 Yr.Avg.	404,651	331,861	82.0
1940	376,395	218,786	57.8
1941	328,685	191,824	58.3
1942	283,726	210,709	74.3
1943	288,193	199,024	69.8
1944	459,185	231,133	50.3
5 Yr. Avg.	347,037	210,251	60.6
1945	374,208	211,666	56.5
1946	328,076	164,726	50.2
1947	617,301	196,431	31.8

Authority - B.A.E. - U.S.D.A.

H O G S

Year	1. Total Number Slaughtered in the City of Chicago Federal Inspected & Non-Federal Inspected	2. Total Number Salable Received U.S. Yds	3. Percentage Column 2 is of Column 1
1922	6,734,247	7,789,155	116.4
1923	8,610,623	10,040,901	116.6
1924	8,054,684	10,304,216	127.9
3 Yr. Avg.	7,799,851	9,371,424	120.1
1925	6,082,582	7,645,848	125.7
1926	5,444,150	6,764,899	124.3
1927	6,142,669	7,109,567	115.7
1928	7,182,432	7,561,941	105.3
1929	7,306,825	5,846,317	80.1
5 Yr. Avg.	6,431,732	6,985,714	108.6
1930	6,837,369	5,145,156	75.2
1931	6,898,239	5,276,363	76.5
1932	6,357,807	4,323,038	68.0
1933	6,174,613	4,689,942	76.0
1934	7,041,728	3,765,987	53.5
5 Yr. Avg.	6,661,951	4,639,897	69.6
1935	3,740,415	2,055,490	55.0
1936	4,562,295	2,821,926	60.5
1937	4,359,995	2,638,325	60.5
1938	4,564,520	2,689,473	58.9
1939	4,785,039	2,774,020	58.0
5 Yr. Avg.	4,422,453	2,596,847	58.7
1940	6,023,595	3,536,555	58.7
1941	5,233,376	3,023,278	57.8
1942	5,962,810	3,201,173	53.7
1943	6,331,432	3,321,595	52.5
1944	6,838,870	3,618,308	52.9
5 Yr. Avg.	6,078,017	3,340,182	55.0
1945	3,973,213	1,714,595	43.1
1946	4,162,979	1,823,852	43.8
1947	4,252,971	1,949,003	45.8

Authority - B.A.E. - U.S.D.A.

SHEEP

Year	1. Total Number Slaughtered in the City of Chicago Federal Inspected & Non-Federal Inspected	2. Total Number Salable Received U.S. Yds.	3. Percentage Column 2 is of Column 1
1922	2,561,233	3,225,597	125.9
1923	2,632,999	3,554,036	135.0
1924	2,746,021	3,640,497	132.6
3 Yr. Avg.	2,646,751	3,473,376	131.2
1925	2,826,798	3,176,025	112.4
1926	2,912,525	3,662,742	125.8
1927	2,758,365	3,053,491	110.7
1928	2,703,420	2,911,619	107.7
1929	2,629,116	2,722,910	103.6
5 Yr. Avg.	2,766,045	3,105,357	112.3
1930	2,988,569	3,130,796	104.8
1931	3,012,354	3,373,361	112.0
1932	3,008,944	2,779,882	92.4
1933	3,290,230	2,676,536	81.3
1934	3,133,779	2,099,442	67.0
5 Yr. Avg.	3,086,775	2,812,003	91.1
1935	2,957,050	2,066,692	69.9
1936	2,068,343	1,830,380	68.6
1937	2,639,476	1,681,941	63.7
1938	2,601,082	1,855,484	71.3
1939	2,465,154	1,793,475	72.8
5 Yr. Avg.	2,666,221	1,845,594	69.2
1940	2,311,578	1,354,583	58.6
1941	2,525,184	1,224,644	48.5
1942	3,169,975	1,431,152	45.1
1943	2,943,559	1,282,212	43.6
1944	2,517,927	1,095,868	43.5
5 Yr. Avg.	2,693,645	1,277,691	47.4
1945	2,015,599	1,031,089	51.2
1946	1,583,755	1,017,798	64.3
1947	1,223,645	672,590	55.0

Authority - B.A.E. - U.S.D.A.

CATTLE - CHICAGO

	Yearly Slaughter Under Federal Inspection	Yearly Slaughter Under City Insp. (Passed)	Total
1922	2,060,689	20,635	2,071,324
1923	2,075,620	11,761	2,087,381
1924	2,113,797	10,696	2,124,493
3 Yr. Avg.	2,080,035	14,364	2,094,396
1925	2,063,702	9,357	2,073,059
1926	2,230,055	10,650	2,240,705
1927	1,940,728	12,842	1,953,570
1928	1,721,310	14,752	1,736,062
1929	1,639,875	16,227	1,656,102
5 Yr. Avg.	1,919,130	12,766	1,931,900
1930	1,528,464	14,758	1,543,222
1931	1,489,552	23,416	1,512,968
1932	1,366,194	23,967	1,390,161
1933	1,488,222	19,535	1,507,757
1934	1,735,935	30,552	1,766,487
5 Yr. Avg.	1,521,673	22,446	1,544,119
1935	1,439,487	41,266	1,480,753
1936	1,637,019	53,764	1,690,783
1937	1,405,507	66,295	1,471,802
1938	1,346,905	52,493	1,399,398
1939	1,280,598	38,537	1,319,135
5 Yr. Avg.	1,421,903	50,471	1,472,374
1940	1,358,248	39,931	1,398,179
1941	1,508,170	39,605	1,547,775
1942	1,574,836	48,308	1,623,144
1943	1,288,876	42,693	1,331,569
1944	1,540,051	26,923	1,566,974
5 Yr. Avg.	1,454,036	39,492	1,493,528
1945	1,440,690		1,440,690
1946	974,611		974,611
1947	1,428,297	183	1,428,480

Authority - B.A.E. - U.S.D.A.

CALVES - CHICAGO

	Yearly Slaughter Under Federal Inspection	Yearly Slaughter Under City Insp. (Passed)	Total
1922	643,263	68,374	711,637
1923	632,744	64,684	697,428
1924	669,713	63,087	732,800
3 Yr. Avg.	648,573	65,382	713,955
1925	736,085	52,221	788,306
1926	643,436	76,358	719,794
1927	630,745	70,314	701,059
1928	687,566	63,745	751,311
1929	605,216	66,180	671,396
5 Yr. Avg.	660,610	65,764	726,373
1930	530,043	31,781	561,824
1931	506,927	28,689	535,616
1932	390,763	40,045	430,808
1933	428,411	29,452	457,863
1934	569,170	29,456	598,626
5 Yr. Avg.	485,063	31,885	516,947
1935	413,751	36,246	449,997
1936	382,851	38,829	421,680
1937	372,266	59,233	431,499
1938	321,252	36,065	357,317
1939	340,067	22,695	362,762
5 Yr. Avg.	366,037	38,614	404,651
1940	345,122	33,273	378,395
1941	299,506	29,179	328,685
1942	262,100	21,626	283,726
1943	269,593	15,600	285,193
1944	455,250	3,935	459,185
5 Yr. Avg.	326,314	20,723	347,037
1945	372,447	1,759	374,206
1946	326,151	1,925	328,076
1947	614,508	2,793	617,301

Authority - B.A.E. - U.S.D.A.

1900

HOGS - CHICAGO

	Yearly Slaughter Under Federal Inspection	Yearly Slaughter Under City Inspection (Passed)	Total
1922	6,675,860	58,387	6,734,247
1923	8,505,457	105,166	8,610,623
1924	7,899,377	155,307	8,054,684
3 Yr. Avg.	7,693,565	106,287	7,799,851
1925	5,948,334	134,248	6,082,582
1926	5,293,589	150,561	5,444,150
1927	5,973,190	169,479	6,142,669
1928	6,935,261	247,171	7,182,432
1929	7,111,242	195,583	7,306,825
5 Yr. Avg.	6,252,323	179,408	6,431,732
1930	6,647,613	189,756	6,837,369
1931	6,654,993	243,246	6,898,239
1932	6,108,254	249,553	6,357,807
1933	5,892,499	282,114	6,174,613
1934	6,701,766	339,962	7,041,728
5 Yr. Avg.	6,401,025	260,926	6,661,951
1935	3,512,718	227,697	3,740,415
1936	4,368,950	293,345	4,662,295
1937	4,091,304	268,691	4,359,995
1938	4,342,066	222,464	4,564,520
1939	4,551,078	233,961	4,785,039
5 Yr. Avg.	4,173,221	249,232	4,422,453
1940	5,692,010	331,585	6,023,595
1941	4,895,926	337,450	5,233,376
1942	5,579,968	382,842	5,962,810
1943	6,017,245	314,187	6,331,432
1944	6,488,186	350,684	6,838,870
5 Yr. Avg.	5,734,667	343,350	6,078,017
1945	3,760,138	213,075	3,973,213
1946	3,897,212	265,767	4,162,979
1947	4,050,260	202,711	4,252,971

Authority B.A.E. - U.S.D.A.

SHEEP - CHICAGO

	Yearly Slaughter Under Federal Inspection	Yearly Slaughter Under City Insp. (Passed)	Total
1922	2,522,569	38,664	2,561,233
1923	2,610,446	22,553	2,632,999
1924	2,716,866	29,155	2,746,021
3 Yr. Avg.	2,616,627	30,124	2,646,751
1925	2,793,983	32,815	2,826,798
1926	2,876,161	36,364	2,912,525
1927	2,720,522	37,843	2,758,365
1928	2,666,106	37,314	2,703,420
1929	2,594,005	35,111	2,629,116
5 Yr. Avg.	2,730,155	35,889	2,766,045
1930	2,946,518	42,051	2,988,569
1931	2,979,494	32,860	3,012,354
1932	2,963,402	45,542	3,008,944
1933	3,253,388	36,842	3,290,230
1934	3,113,097	20,682	3,133,779
5 Yr. Avg.	3,051,180	35,595	3,086,775
1935	2,939,463	17,587	2,957,050
1936	2,641,334	27,009	2,668,343
1937	2,601,044	38,432	2,639,476
1938	2,569,611	31,471.	2,601,082
1939	2,444,146	21,008	2,465,154
5 Yr. Avg.	2,639,120	27,101	2,666,221
1940	2,287,181	24,397	2,311,578
1941	2,511,029	14,155	2,525,184
1942	3,154,683	15,292	3,169,975
1943	2,926,767	16,792	2,943,559
1944	2,511,602	6,325	2,517,927
5 Yr. Avg.	2,678,252	15,392	2,693,645
1945	1,967,407	48,192	2,015,599
1946	1,490,945	92,810	1,583,755
1947	1,179,486	44,159	1,223,645

Authority B.A.E. - U.S.D.A.

CATTLE

Year	1. Total Number (Salable and Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Salable Received U.S.Yds.	3. Percentage Column 2 is of Column 1
•1922	3,934,498	3,858,542	98.1
•1923	3,917,851	3,874,224	98.9
•1924	3,997,069	3,962,416	99.1
•1925	3,871,149	3,829,979	98.9
•1926	4,012,309	3,905,644	97.3
•1927	3,582,823	3,499,877	97.7
6 Yr. Avg.	3,885,941	3,821,780	98.3
1928	2,506,882	2,465,126	98.3
1929	2,392,903	2,332,184	97.5
2 Yr. Avg.	2,449,892	2,398,655	97.9
1930	2,242,897	2,169,013	96.7
1931	2,296,464	2,237,405	97.4
1932	2,016,681	1,967,067	97.5
1933	2,124,531	1,961,787	92.3
1934	2,818,807	2,586,761	91.8
5 Yr. Avg.	2,299,876	2,184,407	95.0
1935	2,026,051	1,889,952	93.3
1936	2,320,116	2,166,348	93.4
1937	2,026,643	1,923,397	94.9
1938	1,928,755	1,835,051	95.1
1939	1,839,395	1,775,677	96.5
5 Yr. Avg.	2,028,192	1,918,085	94.6
1940	1,953,578	1,888,235	96.7
1941	2,078,191	1,982,954	95.4
1942	2,234,989	2,097,989	93.9
1943	2,176,535	2,064,134	94.8
1944	2,388,041	2,176,390	91.1
5 Yr. Avg.	2,166,267	2,041,940	94.3
1945	2,423,180	2,235,743	92.3
1946	1,975,972	1,861,737	94.2
1947	2,133,496	1,993,894	93.4

• Includes calves

Authority - B.A.E. - U.S.D.A.

CATTLE

Year	1. Total Number (Salable & Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received U.S.Yds. Direct	3. Percentage Column 2 is of Column 1
•1922	3,934,498	75,956	1.9
•1923	3,917,851	43,627	1.1
•1924	3,997,069	34,653	0.9
•1925	3,871,149	41,170	1.1
•1926	4,012,309	106,665	2.7
•1927	3,582,823	82,946	2.3
6 Yr. Avg.	3,885,941	64,170	1.7
1928	2,503,882	40,130	1.6
1929	2,392,903	56,238	2.4
2 Yr. Avg.	2,449,892	48,184	2.0
1930	2,242,897	70,029	3.3
1931	2,296,464	49,153	2.1
1932	2,016,681	38,578	1.9
1933	2,124,531	104,872	4.9
1934	2,818,807	140,499	5.0
5 Yr. Avg	2,299,876	80,646	3.5
1935	2,026,051	82,228	4.1
1936	2,329,116	67,717	2.9
1937	2,026,643	57,595	2.8
1938	1,928,755	49,502	2.6
1939	1,839,395	42,817	2.3
5 Yr. Avg.	2,026,192	59,972	3.0
1940	1,953,578	37,557	1.9
1941	2,078,191	52,455	2.5
1942	2,234,989	83,774	3.7
1943	2,176,535	78,995	3.6
1944	2,388,041	163,439	6.8
5 Yr. Avg.	2,166,267	83,244	3.8
1945	2,423,180	154,933	6.4
1946	1,975,972	97,812	4.9
1947	2,133,496	95,539	4.5

• Includes calves

Authority - B.A.E. - U.S.D.A.

CATTLE

Year	1. Total Number (Salable & Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received other than U.S.Yds. Direct	3. Percentage Column 2 is of Column 1
•1922	3,934,498	-	-
•1923	3,917,851	-	-
•1924	3,997,069	-	-
•1925	3,871,149	-	-
•1926	4,012,309	-	-
•1927	3,582,823	-	-
6 Yr. Avg.	3,885,941	-	-
1928	2,506,882	1,626	0.06
1929	2,392,903	4,481	0.19
2 Yr. Avg.	2,449,892	3,053	0.12
1930	2,242,897	3,855	0.17
1931	2,295,464	9,906	0.43
1932	2,016,581	10,936	0.54
1933	2,124,531	57,872	2.72
1934	2,819,807	91,547	3.24
5 Yr. Avg.	2,299,876	34,823	1.51
1935	2,026,051	53,871	2.65
1936	2,320,116	86,051	3.71
1937	2,025,643	45,651	2.25
1938	1,928,755	44,202	2.29
1939	1,839,395	20,901	1.14
5 Yr. Avg.	2,028,192	50,135	2.47
1940	1,953,578	27,786	1.42
1941	2,078,191	42,782	2.05
1942	2,234,989	53,226	2.38
1943	2,176,535	33,406	1.53
1944	2,388,041	48,212	2.02
5 Yr. Avg.	2,166,267	41,082	1.90
1945	2,423,180	32,504	1.34
1946	1,975,972	16,423	0.83
1947	2,133,496	44,063	2.06

• Includes calves

Authority - B.A.E. - U.S.D.A.

CATTLE

Year	1. Total Number (Salable & Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received in the City of Chicago U.S.Yds. as well as elsewhere directs	3. Percentage Column 2 is of Column 1
•1922	3,934,498	75,956	1.9
•1923	3,917,851	43,627	1.1
•1924	3,997,069	34,653	0.9
•1925	3,873,149	41,170	1.1
•1926	4,012,309	106,665	2.7
•1927	3,582,823	82,946	2.3
6 Yr. Avg.	3,885,941	64,170	1.7
1928	2,506,882	41,756	1.7
1929	2,392,903	60,719	2.5
2 Yr. Avg.	2,449,892	51,237	2.1
1930	2,242,897	73,884	3.3
1931	2,296,464	59,059	2.6
1932	2,016,681	49,614	2.5
1933	2,124,531	162,744	7.6
1934	2,818,807	232,046	8.2
5 Yr. Avg.	2,299,876	115,469	5.0
1935	2,026,051	136,099	6.7
1936	2,320,116	153,768	6.6
1937	2,026,643	103,246	5.1
1938	1,928,755	93,704	4.9
1939	1,839,395	63,718	3.5
5 Yr. Avg.	2,028,192	110,107	5.4
1940	1,953,578	65,343	3.3
1941	2,078,191	95,237	4.6
1942	2,234,989	137,000	6.1
1943	2,176,535	112,401	5.2
1944	2,368,041	211,051	8.9
5 Yr. Avg.	2,162,267	124,326	5.7
1945	2,423,180	187,437	7.7
1946	1,975,972	114,235	5.8
1947	2,133,496	139,602	6.5

• Includes calves

Authority - B.A.E. - U.S.D.A.

CALVES

Year	1. Total Number (Salable and Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Salable Received U.S.Yds.	3. Percentage Column 2 is of Column 1
1922	771,489	See Cattle (Included)	
1923	760,751	" " "	
1924	794,350	" " "	
1925	847,762	" " "	
1926	755,393	" " "	
1927	710,393	" " "	
6 yr. Avg.	773,356		
1928	771,599	697,210	90.4
1929	685,721	594,278	86.7
2 yr. Avg.	728,660	645,744	88.6
1930	567,518	505,124	89.0
1931	561,931	492,971	87.7
1932	464,324	410,138	88.6
1933	470,732	355,553	75.5
1934	830,252	626,026	75.4
5 yr. Avg.	578,951	477,962	82.6
1935	503,190	378,056	75.1
1936	456,682	373,142	81.7
1937	438,985	356,996	81.4
1938	361,938	301,113	83.2
1939	353,434	249,998	70.7
5 yr. Avg.	422,766	331,861	78.5
1940	332,418	218,766	65.8
1941	286,559	191,624	66.9
1942	273,830	210,709	76.9
1943	251,562	199,024	79.1
1944	349,143	231,133	66.2
5 yr. Avg.	298,702	210,251	70.4
1945	266,172	211,566	79.5
1946	236,491	164,726	69.7
1947	418,771	196,431	46.9

Authority - B.A.E. - U.S.D.A.

CALVES

Year	1. Total Number (Salable and Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received U.S.Yds. Direct	3. Percentage Column 2 is of Column 1
1922	771,489	-	-
1923	760,751	-	-
1924	794,350	-	-
1925	847,762	-	-
1926	755,393	-	-
1927	710,393	-	-
6 yr. Avg.	773,356	-	-
1928	772,599	64,401	8.4
1929	685,721	77,795	11.3
2 yr. Avg.	728,660	71,048	9.8
1930	567,518	51,537	9.1
1931	561,931	53,775	9.6
1932	464,324	36,704	7.9
1933	470,732	84,771	18.0
1934	830,252	111,262	13.4
5 yr. Avg.	578,951	67,610	11.7
1935	503,190	78,730	15.6
1936	456,682	37,694	8.3
1937	438,585	29,072	6.6
1938	361,938	24,030	6.6
1939	353,434	62,054	17.6
5 yr. Avg.	422,766	46,316	10.9
1940	332,418	52,351	15.7
1941	286,559	52,100	18.2
1942	273,830	37,643	13.7
1943	251,562	17,875	7.1
1944	349,143	56,202	16.1
5 yr. Avg.	298,702	43,234	14.5
1945	266,172	18,018	6.8
1946	236,491	29,517	12.5
1947	418,771	74,798	17.9

Authority - B.A.E. - U.S.D.A.

CALVES

Year	1. Total Number (Salable and Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received other than U.S.Yds. direct	3. Percentage Column 2 is of Column 1
1922	771,489	-	-
1923	760,751	-	-
1924	794,350	-	-
1925	847,762	-	-
1926	755,393	-	-
1927	710,393	-	-
6 yr. Avg.	773,356	-	-
1928	771,599	9,988	1.3
1929	684,721	13,648	2.0
2 yr. Avg.	728,660	11,818	1.6
1930	567,518	10,857	1.9
1931	561,931	15,185	2.7
1932	464,324	17,482	3.8
1933	470,732	30,408	6.5
1934	830,252	92,964	11.2
5 yr. Avg.	578,951	33,380	5.8
1935	503,190	46,404	9.2
1936	456,682	45,846	10.0
1937	438,585	52,517	12.0
1938	361,938	36,795	10.2
1939	353,434	41,382	11.7
5 yr. Avg.	422,766	44,589	10.5
1940	332,418	61,301	18.4
1941	286,559	42,835	14.9
1942	273,830	25,478	9.3
1943	251,562	34,663	13.8
1944	349,143	61,808	17.7
5 yr. Avg.	298,702	45,217	15.1
1945	266,172	36,588	13.7
1946	236,491	42,248	17.9
1947	418,771	147,542	35.2

Authority - B.A.E. - U.S.D.A.

CALVES

Year	1. Total Number (Salable and Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received in the City of Chicago U.S.Yds. as well as elsewhere directs	3. Percentage Column 2 is of Column I
1922	771,489	-	-
1923	760,751	-	-
1924	794,350	-	-
1925	847,762	-	-
1926	755,393	-	-
1927	710,393	-	-
6 yr. Avg.	773,356	-	-
1928	771,599	74,389	9.6
1929	685,721	91,443	13.3
2 yr. Avg.	728,660	82,916	11.4
1930	567,518	62,394	11.0
1931	561,931	68,960	12.3
1932	464,324	54,186	11.7
1933	470,732	115,179	24.5
1934	830,252	204,226	24.6
5 yr. Avg.	578,951	100,989	17.4
1935	503,190	125,134	24.9
1936	456,682	83,540	18.3
1937	438,585	81,589	18.6
1938	361,938	60,825	16.8
1939	353,434	103,436	29.3
5 yr. Avg.	422,766	90,905	21.5
1940	332,418	113,652	34.2
1941	286,559	94,935	33.1
1942	273,830	63,121	23.0
1943	251,562	52,538	20.9
1944	349,143	118,010	33.5
5 yr. Avg.	298,702	88,451	29.6
1945	266,172	54,606	20.5
1946	236,491	71,765	30.3
1947	418,771	222,340	53.1

Authority - B.A.E. - U.S.D.A.

HOGS

Year	1. Total Number (Salable and Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Salable Received U.S.Yards.	3. Percentage Column 2 is of Column 1
1922	8,562,301	7,769,155	90.7
1923	11,031,357	10,040,901	91.0
1924	11,068,687	10,304,216	93.1
1925	8,478,128	7,645,848	90.2
1926	7,543,891	6,764,899	89.7
1927	8,184,584	7,109,567	86.9
6 yr. Avg.	9,144,825	8,272,431	90.5
1928	9,361,599	7,561,941	80.8
1929	9,152,409	5,846,317	63.9
2 yr. Avg.	9,257,004	6,704,129	72.4
1930	8,640,655	5,145,156	59.5
1931	8,650,527	5,275,363	61.0
1932	7,412,261	4,323,038	58.3
1933	8,681,367	4,689,942	54.0
1934	7,674,984	3,765,987	49.1
5 yr. Avg.	8,213,159	4,639,897	56.5
1935	4,260,795	2,055,490	48.2
1936	5,315,149	2,821,926	53.1
1937	4,901,066	2,638,325	53.8
1938	5,094,127	2,689,473	52.8
1939	5,185,471	2,774,020	53.5
5 yr. Avg.	4,951,322	2,595,847	52.4
1940	6,511,718	3,536,555	54.3
1941	5,560,841	3,023,278	54.4
1942	6,405,398	3,201,173	50.0
1943	7,045,162	3,321,595	47.1
1944	7,296,741	3,618,308	49.6
5 yr. Avg.	6,564,032	3,340,182	50.9
1945	4,450,484	1,714,595	38.5
1946	4,644,148	1,823,852	39.3
1947	4,544,997	1,969,003	43.7

Authority -B.A.E. - U.S.D.A.

1C71

HOGS

Year	1. Total Number (Salable and Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received U.S.Yds. Direct	3. Percentage Column 2 is of Column 1
1922	8,562,301	387,317	4.5
1923	11,031,357	419,233	3.8
1924	11,068,687	138,959	1.3
1925	8,478,128	350,116	4.1
1926	7,543,891	327,630	4.3
1927	8,184,584	614,649	7.6
6 yr. Avg.	9,144,825	372,984	4.1
1928	9,361,599	977,464	10.4
1929	9,152,409	2,346,634	25.6
2 yr. Avg.	9,257,004	1,662,049	17.9
1930	8,646,655	2,724,758	31.5
1931	8,650,527	2,666,477	30.8
1932	7,412,261	2,279,199	30.7
1933	8,861,367	3,101,684	35.7
1934	7,674,984	2,744,015	35.8
5 yr. Avg.	8,213,159	2,703,227	32.9
1935	4,260,795	1,544,853	36.3
1936	5,315,149	1,542,212	29.0
1937	4,901,066	1,330,073	27.1
1938	5,094,127	1,498,582	29.4
1939	5,185,471	1,489,790	28.7
5 yr. Avg.	4,951,322	1,481,102	29.9
1940	6,511,718	1,848,937	28.4
1941	5,560,841	1,610,434	29.0
1942	6,405,398	2,137,014	33.4
1943	7,045,462	2,469,946	35.1
1944	7,296,741	2,399,790	32.9
5 yr. Avg.	6,564,032	2,093,224	31.9
1945	4,450,484	1,801,587	40.5
1946	4,644,148	1,717,488	37.0
1947	4,564,997	1,368,946	30.0

Authority - B.A.E. - U.S.D.A.

HOGS

Year	1. Total Number (Salable & Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received other than U.S.Yds Direct	3. Percentage Column 2 is of Column 1
1922	8,562,301	405,829	4.7
1923	11,031,357	571,233	5.2
1924	11,068,687	625,512	5.7
1925	8,478,128	482,164	5.7
1926	7,543,891	451,362	6.0
1927	8,184,584	460,368	5.6
6 yr. Avg.	9,144,825	499,411	5.5
1928	9,361,599	822,194	8.8
1929	9,152,409	959,458	10.5
2 yr. Avg.	9,257,004	890,826	9.6
1930	8,646,655	776,741	9.0
1931	8,650,527	708,687	8.2
1932	7,412,261	810,024	10.9
1933	8,681,367	889,741	10.2
1934	7,674,984	1,164,982	15.2
5 Yr. Avg.	8,213,159	870,035	10.6
1935	4,260,795	660,452	15.5
1936	5,315,149	931,011	17.5
1937	4,901,066	932,668	19.3
1938	5,094,127	906,072	17.8
1939	5,185,471	921,931	17.8
5 Yr. Avg.	4,951,322	870,427	17.6
1940	6,511,718	1,126,226	17.3
1941	5,560,841	927,129	16.7
1942	6,405,398	1,067,211	16.7
1943	7,045,462	1,253,921	17.8
1944	7,296,741	1,278,643	17.5
5 Yr. Avg.	6,564,032	1,130,626	17.2
1945	4,450,484	934,302	21.0
1946	4,644,148	1,102,808	23.7
1947	4,564,997	1,247,048	27.3

Authority - B.A.E. - U.S.D.A.

1C73

HOGS

	1. Total Number (Salable & Directs) Received in the City of Chicago (U.S.Yards& elsewhere)	2. Total Number Received in the City of Chicago U.S.Yds as well as elsewhere directs	3. Percentage Column 2 is of Column 1
1922	8,562,301	793,146	9.3
1923	11,031,357	990,666	9.0
1924	11,068,687	764,471	6.9
1925	8,478,128	832,280	9.8
1926	7,543,891	778,932	10.3
1927	8,184,584	1,095,017	13.4
6 Yr. Avg.	9,144,825	875,729	9.6
1928	9,361,599	1,799,658	19.2
1929	9,152,409	3,306,092	36.1
2 Yr. Avg.	9,257,004	2,552,875	27.6
1930	8,646,655	3,501,699	40.5
1931	8,650,527	3,375,164	39.0
1932	7,412,261	3,069,223	41.7
1933	8,681,367	3,991,425	46.0
1934	7,674,984	3,908,997	50.9
5 Yr. Avg.	8,213,159	3,573,262	43.5
1935	4,260,795	2,205,305	51.8
1936	5,315,149	2,473,221	46.5
1937	4,901,066	2,262,741	46.2
1938	5,094,127	2,404,654	47.2
1939	5,185,471	2,411,721	46.5
5 Yr. Avg.	4,951,322	2,351,528	47.5
1940	6,511,718	2,975,163	45.7
1941	5,560,811	2,537,563	45.6
1942	6,405,398	3,204,225	50.0
1943	7,045,462	3,723,667	52.8
1944	7,296,741	3,678,433	50.4
5 Yr. Avg.	6,564,032	3,223,850	49.1
1945	4,450,484	2,735,889	61.5
1946	4,646,148	2,820,296	60.7
1947	4,664,997	2,615,994	57.3

Authority B.A.E. - U.S.D.A.

1913

SHEEP

	1. Total Number (Salable Directs) Received in the City of Chicago (U.S.Yds.& elsewhere)	2. Total Number Salable Received U.S. Yds.	3. Percentage Column 2 is of Column 1
1922	3,873,917	3,225,597	83.3
1923	4,097,833	3,554,035	86.7
1924	4,192,265	3,640,497	86.8
1925	3,968,670	3,176,025	80.0
1926	4,404,851	3,662,742	83.0
1927	3,829,320	3,053,491	79.7
6 Yr. Avg.	4,061,143	3,385,398	83.4
1928	3,872,710	2,911,619	75.2
1929	3,793,631	2,722,910	71.8
2 Yr. Avg.	3,833,170	2,817,264	73.5
1930	4,341,338	3,130,796	72.1
1931	4,506,630	3,373,361	74.9
1932	3,953,325	2,779,882	70.3
1933	4,074,598	2,676,536	65.7
1934	3,752,309	2,099,442	55.9
5 Yr. Avg.	4,125,640	2,812,003	68.2
1935	3,514,857	2,066,692	58.8
1936	3,161,687	1,830,380	57.9
1937	3,033,272	1,681,941	55.4
1938	3,077,778	1,855,484	60.3
1939	2,959,966	1,793,475	60.6
5 Yr. Avg.	3,149,508	1,845,594	58.6
1940	2,652,973	1,354,583	51.1
1941	2,813,328	1,224,644	43.5
1942	3,494,015	1,432,252	41.0
1943	3,197,647	1,282,212	40.1
1944	2,817,205	1,095,808	38.9
5 Yr. Avg.	2,996,434	1,277,552	42.7
1945	2,397,204	1,031,089	43.0
1946	1,900,151	1,017,798	53.6
1947	1,489,195	672,590	45.2

Authority B.A.E. - U.S.D.A.

1C75

SHEEP

	1. Total Number (Salable Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received U.S.Yds. direct	3. Percentage Column 2 is of Column 1
1922	3,873,917	648,320	16.7
1923	4,097,833	543,798	13.3
1924	4,192,265	551,768	13.2
1925	3,968,670	792,645	20.0
1926	4,404,851	742,109	16.8
1927	3,829,320	775,829	20.3
6 Yr. Avg.	4,061,143	675,745	16.6
1928	3,872,710	956,263	24.7
1929	3,793,631	1,061,953	28.0
2 Yr. Avg.	3,833,170	1,009,108	26.3
1930	4,341,338	1,204,310	27.7
1931	4,506,630	1,116,070	24.8
1932	3,953,325	1,142,303	28.9
1933	4,074,598	859,641	21.1
1934	3,752,309	903,268	24.1
5 Yr. Avg.	4,125,640	1,045,118	25.3
1935	3,514,857	874,029	24.9
1936	3,161,667	765,013	24.2
1937	3,033,272	819,025	27.0
1938	3,077,778	708,323	23.0
1939	2,959,966	705,394	23.8
5 Yr. Avg.	3,149,508	774,357	24.6
1940	2,652,973	747,938	28.2
1941	2,813,828	953,874	33.9
1942	3,494,015	1,164,988	33.3
1943	3,197,647	1,107,659	34.6
1944	2,817,205	959,929	34.1
5 Yr. Avg.	2,995,134	986,880	33.0
1945	2,397,204	843,477	35.2
1946	1,900,161	468,935	24.7
1947	1,489,195	295,504	19.8

Authority B.A.E. - U.S.D.A.

1915

SHEEP

	1. Total Number (Salable Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received other than U.S.Yards direct	3. Percentage Column 2 is of Column 1
1922	3,873,917	No record	
1923	4,097,833	" "	
1924	4,192,265	" "	
1925	3,968,670	" "	
1926	4,404,851	" "	
1927	3,829,320	" "	
6 Yr. Avg.	4,061,143		
1928	3,872,710	4,828	0.12
1929	3,793,631	8,768	0.23
2 Yr. Avg.	3,833,170	6,798	0.18
1930	4,341,338	6,232	0.14
1931	4,506,630	17,199	0.38
1932	3,953,325	31,149	0.79
1933	4,084,598	538,421	13.2
1934	3,752,309	749,599	20.0
5 Yr. Avg.	4,125,640	268,518	6.5
1935	3,514,857	574,136	16.3
1936	3,161,667	566,274	17.9
1937	3,033,272	532,306	17.5
1938	3,077,778	514,971	16.7
1939	2,959,966	481,097	15.6
5 Yr. Avg.	3,149,508	529,557	16.8
1940	2,652,973	550,452	20.7
1941	2,813,828	665,310	23.6
1942	3,494,015	897,875	25.7
1943	3,197,647	807,776	25.3
1944	2,817,205	761,408	27.0
5 Yr. Avg.	2,995,134	736,564	24.6
1945	2,397,204	522,638	21.8
1946	1,900,161	413,428	21.8
1947	1,489,195	521,101	35.0

Authority B.A.E. - U.S.D.A.

1916

1677

1677

SHEEP

	1. Total Number (Salable Directs) Received in the City of Chicago (U.S.Yds. & elsewhere)	2. Total Number Received in the City of Chicago U.S. Yards as well as elsewhere directs	3. Percentage Column 2 is of Column 1
1922	3,873,917	648,320	16.7
1923	4,097,833	543,798	13.3
1924	4,192,265	551,768	13.2
1925	3,968,670	792,645	20.0
1926	4,404,851	742,109	16.8
1927	3,829,320	775,829	20.3
6 Yr. Avg.	4,061,143	675,745	16.6
1928	3,872,710	961,091	24.8
1929	3,793,631	1,070,721	28.2
2 Yr. Avg.	3,833,170	1,015,906	26.5
1930	4,341,338	1,210,542	27.9
1931	4,506,630	1,133,269	25.1
1932	3,953,325	1,173,443	29.7
1933	4,074,598	1,398,062	34.3
1934	3,752,309	1,652,867	44.0
5 Yr. Avg.	4,125,640	1,313,636	31.8
1935	3,514,857	1,448,165	41.2
1936	3,161,667	1,331,287	42.1
1937	3,033,272	1,351,331	44.6
1938	3,077,778	1,222,294	39.7
1939	2,959,966	1,166,491	39.4
5 Yr. Avg.	3,149,508	1,303,914	41.4
1940	2,652,973	1,298,390	48.9
1941	2,813,828	1,619,184	57.5
1942	3,494,015	2,062,863	59.0
1943	3,197,647	1,915,435	59.9
1944	2,817,205	1,721,337	61.1
5 Yr. Avg.	2,995,134	1,723,442	57.5
1945	2,397,204	1,366,115	57.0
1946	1,900,161	882,363	46.4
1947	1,489,195	816,605	54.8

Authority B.A.E. - U.S.D.A.

1678

ORIGIN OF RECEIPTS (SALABLE AND DIRECTS)
CHICAGO UNION STOCK YARD
YEAR 1947

BY RAIL

STATE	CATTLE	CALVES	H O G S	SHEEP	HORSES
Iowa	229,794	27,506	543,065	91,650	8
Illinois	128,547	25,022	625,150	90,551	7
Wisconsin	40,321	3,655	209,021	38,391	-
Nebraska	29,623	1,364	654	17,740	1
Kentucky	28,913	22,127	429	9,149	1
Colorado	27,951	853	184	61,077	3
Missouri	27,189	2,400	595	23,879	16
Oklahoma	22,475	3,021	32	5,010	41
Tennessee	19,529	16,525	1,715	10,297	-
Montana	18,533	1,608	73	12,941	25
South Dakota	17,653	212	40,475	17,604	3
Texas	17,331	3,051	-	27,959	70
Kansas	14,588	1,194	18	35,915	-
Minnesota	10,295	1,684	10,851	9,802	14
Indiana	9,882	10,483	126,293	21,969	7
North Dakota	9,551	930	50	21,527	-
Wyoming	6,442	155	-	7,648	-
Ohio	4,916	678	19,571	22,939	-
Michigan	3,773	726	24,442	17,632	13
Mississippi	2,915	724	-	-	-
New Mexico	2,402	165	-	547	-
Virginia	1,349	412	369	48	-
Arkansas	1,223	923	73	26	8
Louisiana	751	395	-	-	-
New York	429	-	137	1,039	1
Utah	360	4	37	12,693	-
Idaho	359	-	-	32,624	4
Alabama	314	157	-	-	-
Maryland	219	-	-	7	1
Pennsylvania	203	-	1,144	426	14
Oregon	196	-	-	3,135	-
North Carolina	180	58	-	-	-
Canada	176	6	6	292	23
West Virginia	111	108	70	962	8
South Carolina	84	-	135	-	-
Washington	64	-	-	7,722	-
Florida	50	142	-	-	-
Massachusetts	17	12	-	-	-
Georgia	12	-	-	-	-
California	-	-	-	48,876	-
Arizona	-	-	-	9,664	-
Nevada	-	-	-	248	-
No Points of Origin	16	-	-	-	-
TOTAL BY RAIL	678,738	126,502	1,604,589	661,779	268

1918

1918

Authority U.S.Y. & T. CO.
39-A

1C79

ORIGIN OF RECEIPTS (SALABLE AND DIRECTS)
CHICAGO UNION STOCK YARD
YEAR 1947

BY TRUCKS

STATE	CATTLE	CALVES	H O G S	SHEEP	HORSES
Illinois	840,316	95,535	1,304,232	218,109	936
Iowa	435,386	25,496	253,484	36,858	66
Indiana	88,876	18,357	112,816	28,989	88
Wisconsin	27,974	1,906	23,668	15,560	109
Michigan	9,776	1,043	2,995	2,763	33
Ohio	4,629	1,477	15,343	3,282	12
Missouri	2,288	254	773	694	6
Kentucky	495	126	16	180	-
Nebraska	478	411	-	-	-
Minnesota	329	10	13	-	-
South Dakota	70	-	-	-	-
Tennessee	39	-	-	-	-
Mississippi	25	1	-	-	-
West Virginia	-	110	-	-	-
Kansas	10	1	-	-	-
New Jersey	4	-	-	-	-
Oklahoma	2	-	-	-	-
TOTAL BY TRUCKS	1,410,697	144,727	1,713,360	306,315	1,252
TOTAL RECEIPTS	2,089,433	271,229	3,317,949	968,094	1,520

Authority U.S.Y. & T. CO.

1919

STATE DESTINATION OF ALL SHIPMENTS BY RAIL AND TRUCK - YEAR 1941

STATE	RAIL CARS	ACTUAL TRUCKS
New York	8,333	9
New Jersey	4,720	1
Illinois	546	6,799
Ohio	2,706	183
Pennsylvania	2,812	11
Michigan	2,034	730
Wisconsin	1,536	274
Indiana	97	1,740
Massachusetts	841	-
Maryland	366	-
Iowa	45	175
Rhode Island	64	1
Connecticut	43	-
Kentucky	17	5
Missouri	11	15
Virginia	17	-
Maine	13	1
Canada	11	-
Nebraska	7	6
Tennessee	8	2
Minnesota	5	6
Oklahoma	8	-
Kansas	6	2
Texas	4	5
West Virginia	6	-
Montana	3	3
Wyoming	4	-
Colorado	3	-
Florida	3	-
Alabama	2	-
California	1	1
Georgia	1	1
Idaho	1	1
North Dakota	2	-
South Dakota	2	-
Washington	2	-
Delaware	1	-
Louisiana	-	1
Nevada		-
New Mexico		-
Oregon		2
ALL STATES	24,083	9,974

Authority - U.S.Y. & T. Co.

1920

41-A

1

EXHIBIT NO. 45

1651

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C B & Q Railroad - 1/26/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
						To Feed At	Reloaded		Time						
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Longmont, Colo.	20	C*	Salable	1/22	8 pm	Lincoln, Neb.	1/25	1 am	1/26	5:10am	5:16am	28	16		X

* C = Cattle
H = Hogs
S = Sheep
Mxd = Mixed

1921

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 1/26/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
						To Feed At	Reloaded		Time						
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
LaSalle, Colo.	2	C	Salable	1/23	5 pm	Valley, Neb.	1/24	10:45pm	1/26	6:20am	7 am	32	15		X
Lucerne, Colo.	4	C	"	"	3 pm	" "	"	"	"	"	7 am	32	15		X
Wisner, Neb.	1	C	"	1/24	9 pm	- - - - - - - - -	- - -		1/26	"	"	34			X
Greeley, Colo.	3	C	"	1/23	4 pm	" "	1/24	10:45pm	"	"	"	32	15		X

1922

1652

I.C.C. Dkt. No. 29809
Exhibit _____

3

1653

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

6 M St P & P Railroad - 1/27/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
						To Feed At	Reloaded		Time						
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Rock City, Ill.	3	H	Salable	1/26	3:30pm				1/27	3:30pm	3:42pm	24	12	X	
Dixon, Ia.	3	H	"	"	1 pm				"	"	"	26	42		X

1923

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & E I Railroad - 1/27/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
						To Feed At	Reloaded		Time						
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Danville, Ill.	1	H	[redacted]	1/26	7 pm				1/27	6:27pm	6:35pm	23	20		X

1924

1654

I.C.C. Dkt. No. 29809
Exhibit _____

1655

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

A T & S F Railroad - 1/27/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
						To Feed At	Reloaded		Time						
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Artesia, N. M.	2	S	Salable	1/19	5:30pm	Morris, Kans.	1/26	6 pm	1/27	3:40pm	3:50pm	21	50		X

1925

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 1/27/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
						To Feed At	Reloaded		Time						
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Denver, Colo.	1	C	Salable	1/24	6:30pm	Valley, Nebr.	1/25	10:30pm	1/27	10:10am	10:43am	36	13		X
Lucerne, Colo.	1	C	"	1/24	3 pm	" "	"	"	"	"	"	36	13		X
Greeley, Colo.	3	C	"	1/24	4 pm	" "	"	"	"	"	"	36	13		X
Harrold, S. Dak.	1	C	"	1/24	9 am	Belle Plaine	1/25	9 pm	1/27	5:07am	5:10am	32	10		X
Sioux City, S. Dak.	2	C	"	1/26	4:15pm				"	3 pm	3:08pm	22	53		X
So. Omaha, Nebr.	3	C	"	1/26	4:25pm				"	"	"	22	43		X
Green Bay, Wis.	4	H	[redacted]	"	5:45pm				"	7:45	8:20pm	26	25	X	

1926

1656

I.C.C. Dkt. No. 29809
Exhibit _____

1652

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

PENNSYLVANIA Railroad - 1/27/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Re-leases
						To Feed At	Reloaded		Time						
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Sabina, Ohio	1	H	[redacted]	1/24	4:40pm	Cincinnati	1/25	6:30pm	1/27	5:15am	5:17am	34	43		X

1927

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C B & Q Railroad - 1/27/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Re-leases
						To Feed At	Reloaded		Time						
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Basen, Wyo.	1	S	Salable	1/23	2:50pm	Lincoln, Nebr.	1/25	10:55pm	1/27	2:35am	2:50am	26	55		X
Circle, Mont.	1	S	"	1/22	3:30pm	Min. Trfr	1/26	2 pm	1/27	9:42pm	9:48pm	30	18		X
So. Omaha, Nebr.	1	C	"	1/26	3:45pm				"	"	"	30	03		X

1928

1658

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - - 1/27/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Time Date	Unloaded at U.S. Yards: Time Set	Unloaded at U.S. Yards: Time Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-Hr Releases
Monroe, Wis.	2	H	[redacted]	1/26	3 pm				1/27	1:40pm	2:25pm	23	35	X	
Peosta, Iowa	2	S	Salable	"	3:30pm				"	"	"	23	05	X	
Peoria, Ill.	1	C	"	"	4 pm				"	3:15pm	4:30pm	24	30		X
"	2	"	[redacted]	"	"				"	"	"	24	30		X
"	2	"	[redacted]	"	"				"	"	"	24	30		X
"	3	C	Salable	"	5 pm				"	"	"	25	30		X
"	8	H	[redacted]	"	5 pm				"	"	"	23	30		X
"	2	H	[redacted]	"	5 pm				"	"	"	23	30		X
"	1	H	Salable	"	5 pm				"	"	"	23	30		X
Yetter, Iowa	2	S	"	"	5 pm				"	10:22pm	11:05pm	30	05		X
Sioux Falls, S. Dak.	2	H	[redacted]	"	6 pm				"	"	"	29	05		X
"	4	H	[redacted]	"	6 pm				"	"	"	29	05		X

1929

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C R I & P Railroad 1/27/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Time Date	Unloaded at U.S. Yards: Time Set	Unloaded at U.S. Yards: Time Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-Hr Releases
Des Moines, Ia.	2	H	[redacted]	1/26	8 pm				1/27	11:06pm	11:12pm	27	12		X

1930

11

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U.S. YARDS, CHICAGO, ILLINOIS

MICHIGAN CENTRAL Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Release
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Detroit, Mich.	1	C	Salable	1/27	7:30pm				1/28	9:40pm	9:42pm	26	12		X

1931

1631

12

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Release
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Orion, Ill.	2	H	Salable	1/27	2 pm				1/28	11:07am	11:12am	21	12	X	
Livingston, Wis.	1	Mxd	"	1/27	11 am				"	9:35am	9:40am	22	35		X
Algona, Ia.	2	C	"	1/26	10 pm				"	6:05am	7:05am	33	05		X
Montfort, Wis.	1	S	"	1/27	12:15pm				"	7:50pm	8:50pm	32	35		X
Green Bay, Wis.	2	H	[redacted].	"	5:30pm				"	"	"	27	20	X	

1932

1632

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

A T & S F Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Release
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Peabody, Ks.	1	C	Salable	1/26	3:30pm				1/28	2:35am	2:45am	35	15		X
Lebo, Ks.	2	C	"	"	7:30pm				"	"	"	31	15		X
Oskaloosa, Ia.	5	H	[redacted]	1/27	5 pm				"	11:10pm	11:30pm	30	30		X

1933

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Release
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Peoria	6	C	Salable	1/27	4:30pm				1/28	5:35pm	6:15pm	25	45		X
Lafayette, Ind.	1	H	[redacted]	"	5 pm				"	"	"	25	15		X
Bloomington, Ill.	1	H	[redacted]	"	"				"	"	"	25	15		X
Dubuque, Ia.	2	H	[redacted]	"	6 pm				"	11:55pm	1:55am 1/29	31	55		X
Manchester, Ia.	4	H	[redacted]	"	"				"	"	"	31	55		X
Waverly, Ia.	3	Mxd	[redacted]	"	8:30pm				"	"	"	29	25		X

1934

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C R I & P Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Releases
Annawan, Ill.	2	H	[redacted]	1/27	4:45pm				1/28	12:55pm	2:05pm	21	20	X	
Genesseo, Ill.	4	H CAC	Salable	1/27	5 pm				"	"	"	21	05	X	
"	2	H	[redacted]	"	4:15pm				"	"	"	21	50	X	
W. Liberty, Ia.	2	C	Salable	"	3:30pm				"	"	"	22	35		X
Rock Island, Ill.	1	C	"	"	1 pm				"	"	"	25	05	X	
Washington, Ia.	1	Mxd	"	"	11:50am				"	"	"	26	15		X
Reynolds, Ill.	2	H	[redacted]	"	5 pm				"	"	"	21	05	X	
Aledo, Ill.	1	H	[redacted]	"	4 pm				"	"	"	22	05		X
"	6	C	[redacted]	"	4 pm				"	"	"	22	05		X
Des Moines	2	H	[redacted]	1/27	7 pm				"	9:20pm	9:25am	26	25		X

1935

1655

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C B & Q Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Releases
Brush, Colo.	2	C	Salable	1/24	9:01pm	So. Omaha	1/26	8:30pm	1/28	8:45am	9:15am	36	45		X
So. Omaha	1	"	"	1/26	8:30pm				"	"	"	36	45		X
Augusta, Ill.	1	S		1/27	1 pm				"	"	"	20	15		X
Prophetstown, Ill.	1	H	[redacted]	1/27	5:30pm				1/26	1:37pm	2:05pm	20	35	X	
Erie, Ill.	1	H	[redacted]	"	6 pm				"	"	"	20	05	X	
Princeton, Ill.	1	H	[redacted]	"	4:30pm				"	"	"	21	35	X	
Oil City, Ill.	1	H	[redacted]	"	4:30pm				"	"	"	21	35		X
Brush, Colo.	1	C	Salable	1/25	9:30pm	So. Omaha	1/27	4:05pm	"	8:55pm	8:57pm	28	52		X

1936

1696

I.C.C. Dkt. No. 29809
Exhibit _____

1697

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Madison, Wisc.	1	H	Salable	1/27	2 pm				1/28	4:30pm	5:50pm	27	50		X
Belmont, Wisc.	1	Mxd	"	"	12:55pm				"	"	"	28	55		X

1937

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Mauston, Wis.	1	H	[redacted]	1/26	6 pm				1/28	3 am	4 am	34			X
West Salem, Wis.	2	H	[redacted]	1/26	5 pm				"	"	"	35			X
Sioux City, Ia.	1	C	[redacted]	1/26	"				"	"	"	35			X
Kirkland, Ill.	2	S	Salable	1/27	"				"	"	"	23			X
Sioux Falls	1	C	[redacted]	1/25	5 pm				"	"	"	35			X
Garner, Ia.	1	[illegible]	Salable	1/26	5 pm				"	"	"	35			X
Elkader, Ia.	2	H	[redacted]	1/26	3 pm				"	"	"	37			X
Bellevue, Ia.	2	C	Salable	1/27	5:30pm				"	4:50pm	5:50pm	24	20		X
Lost Nation, Ia.	1	H	"	"	3 pm				"	"	"	26	50		X
Monticello, Ia.	1	C	"	"	10 am				"	"	"	31	50		X
"	2	C	"	"	11 am				"	"	"	30	50		X
"	2	C	"	"	11:30am				"	"	"	30	20		X
"	1	C	"	"	12:30pm				"	"	"	28	20		X
Bellevue, Ia.	2	H	[redacted]	"	5:30pm				"	"	"	24	20		X
Elkader, Ia.	1	H	[redacted]	"	1:30pm				"	"	"	28	20		X

1938

1698

I.C.C. Dkt. No. 29809
Exhibit _____

1639

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

WABASH Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Release
Nat'l.Stk.Yds.,Ill.	1	C	Salable	1/27	3:30pm				1/28	11:15am	11:18am	19	12		X

1939

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

N Y C Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Release
Archbald, Ohio	1	C	Salable	1/26	11 pm				1/28	6:22am	8:25am	31	22		X

1940

1700

I.C.C. Dkt. No. 29809
Exhibit _____

1201

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

GRAND TRUNK Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Release
Clare, Mich.	1	C	Salable	1/26	8 pm				1/28	1:12am	1:15am	29	15		X

1941

I.C.C. Dkt. No. 29809
Exhibit _____

1202

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

PENNSYLVANIA Railroad - 1/28/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Release
Effner, Ind.	2	H	[redacted]	1/27	4 pm				1/28	9:51pm	9:55pm	29	55		X

1942

I.C.C. Dkt. No. 29809
Exhibit _____

1768

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS.

WABASH Railroad - 1/29/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Releases
Kansas City	3	L	[redacted]	1/28	2 pm				1/29	7:02pm	7:10pm	29	02		X

1943

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

MONON Railroad - 1/29/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Releases
Rushville, Ind.	1	H	[redacted]	1/28	2:01pm				1/29	11:45am	11:51am	21	50		X

1944

1704

I.C.C. Dkt. No. 29809
Exhibit _____

1705

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

N Y C & St L Railroad - 1/29/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Release
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Greentown, Ind.	1	H	[redacted]	1/27	9 pm				1/29	4:10am	4:20am	31	20		X

1945

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 1/29/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Release
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Shullsburg, Wis.	1	C	Salable	1/28	10:15am				1/29	10 am	10:40am	24	25		X

1946

1706

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C R I & P Railroad - 1/29/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Leda, Ill.	2	H	[redacted]	1/28	3:30pm				1/29	1:25pm	1:27pm	21	57	X	X
Des Moines, Ia.	1	H	[redacted]	"	8 pm				"	9:02pm	9:11pm	25	11		X
Cambridge, Ill.	1	H	Salable	"	3 pm				"	"	"	30	11		X

1947

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 1/29/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Waverly, Ia.	2	H	[redacted]	1/27	8:30pm				1/29	8:50am	9:05am	36	35		X
Waverly, Ia.	2	H	[redacted]	1/28	8 pm				1/29	8:40pm	9:25am	25	25		X
Manchester, Ia.	2	H	[redacted]	"	6 pm				"	"	"	27	25		X
Dubuque, Ia.	1	H	[redacted]	1/28	6 pm				"	"	"	27	25		X
Sioux Falls	1	C	[redacted]	1/28	4 pm				"	"	"	29	25		X
Lafayette, Ind.	1	H	[redacted]	1/28	5 pm				"	9:21pm	9:55pm	28	55		X
Peoria	8	C	Salable	1/28	4 pm				"	"	"	29	55		X

1948

I.C.C. Dkt. No. 29909
Exhibit_____

1709

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 1/29/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Release
Early, Ia.	1	H	Salable	1/27	5 pm				1/29	3:40am	3:43am	34	43		X
Eagle Grove, Ia.	1	H	[redacted]	"	11:45pm				"	"	"	27	58		X
Rutland, Ia.	1	H	[redacted]	"	11:30pm				"	"	"	27	43		X
Shoshone, Idaho	3	S	[redacted]	1/23	5:10pm	Valley, Neb.	1/28	12 am	"	7:42am	8:02am	32	02		X
Ogden, Utah	1	S	[redacted]	1/25	1:10am	"	"	12:30am	"	9 am	9:10am	32	40		X
Sioux City	1	H	Salable	1/28	4:30pm				"	3:15pm	3:21pm	22	51		X
Deep River, Ia.	2	H	[redacted]	"	6 pm				"	"	"	21	21		X
Green Bay, Wis.	2	H	[redacted]	"	5:15pm				"	4:13pm	4:20pm	23	05	X	

1949

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C G W Railroad - 1/29/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Release
Stockton, Ill.	1	H	[redacted]	1/27	5:10pm				1/29	12:31am	12:40am	31	30		X

1950

1710

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C B & Q Railroad - 1/29/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Denver, Colo.	1	C	Salable	1/26	8 pm	Lincoln, Neb.	1/28	1:45am	1/29	10:18am	10:30am	32	45		X
Atwood, Colo.	1	C	"	1/25	2:55pm	Valley, Neb.	1/28	1:15pm	"	"	"	21	15		X
Adrian, Ill.	1	H	"	1/28	1:30pm				"	"	"	21			X
Ferryville, Wis.	1	H	[redacted]	1/28	12:30pm				"	8:37am	8:50am	20	20		X
So. Omaha	1	C	Salable	1/28	4:30pm				"	10:[illegible]pm	10:30pm	30			X

1951

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C G W Railroad - 1/30/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Releases
Allison, Ia.	1	H	[redacted]	1/29	4:30pm				1/30	9:05pm	10 pm	29	30		X
Marshalltown, Ia.	5	"	[redacted]	1/29	8 pm				"	"	"	26	"		X

1952

I.C.C. Dkt. No. 29909
Exhibit _____

1713

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
PENNSYLVANIA Railroad - 1/30/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Portland, Ind.	1	H	[redacted]	1/29	4:45pm				1/30	11:45pm	11:52pm	31	07		X
E. Liverpool, Ohio	1	C	Salable	1/24	6:30pm	Ft. Wayne	1/29	7:30pm	1/30	"	"	28	22		X

1953

I.C.C. Dkt. No. 29909
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C R I & P Railroad - 1/30/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
West Liberty, Ia.	2	H	[redacted]	1/29	5 pm				1/30	3:13pm	3:22pm	22	22		X
Orion, Ill.	1	H	Salable	"	1:05pm				"	"	"	26	17		
Des Moines	1	H	[redacted]	"	10 pm				"	9:10pm	9:20pm	23	40		X
Aledo, Ill.	3	H	[redacted]	"	3:30pm				"	"	"	29	30		X

1954

1714

I.C.C. Dkt. No. 29909
Exhibit_____

1715

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
I C Railroad - 1/30/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Time Date	Unloaded at U.S. Yards: Time Set	Unloaded at U.S. Yards: Time Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-hr Releases
Peoria	1	C	Salable	1/29	3:30pm				1/30	8:30pm	8:45pm	29	15		X
"	5	C	[redacted]	"	3 pm				"	"	"	29	45		X
"	2	H	"	"	3 pm				"	"	"	29	45		X
Dubuque	2	H	"	"	6 pm				"	10:40pm	11:30pm	29	30		X
Manchester	4	H	"	"	"				"	"	"	29	30		X
Waverly, Ia.	3	H	"	"	8 pm				"	"	"	27	30		X

1955

I.C.C. Dkt. No. 29909
Exhibit_____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C & N W Railroad - 1/30/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Time Date	Unloaded at U.S. Yards: Time Set	Unloaded at U.S. Yards: Time Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-hr Releases
Hillsboro, Wis.	1	H	[redacted]	1/29	4 pm				1/30	8:25pm	8:58pm	28	58		X
Hortonville	1	H	"	"	3 pm				"	"	"	29	58	X	
Green Bay	5	H	"	"	5:30pm				"	"	"	27	28	X	

1956

1716

37

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 1/30/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Dixon, Ill.	1	H & C	Salable	1/28	1 pm				1/30	12:58pm	1:30am	36	00		X
Cheseburg, Wis.	1	Mxd	[redacted]	1/28	4 pm				"	"	"	33	-		X
Morrisonville, Wis.	1	C	Salable	1/27	10 am	Milwaukee, Wis.	1/28	6:35pm	1/30	"	"	30	25		X

1957

1717

38

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

PENNSYLVANIA Railroad - 1/30/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Indianapolis, Ind.	1	L	[redacted]	1/27	4 pm	Logansport	1/29	8 am	1/30	6:10am	6:20am	22	20		X
Columbus, Ohio	1	H	K	"	5 pm	"	"	8 am	"	"	"	22	20		X

1958

1718

I.C.C. Dkt. No. 29909
Exhibit

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

A T & S F Railroad - 1/30/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Stronghurst	4	H	[redacted]	1/29	5:30pm				1/30	6:35pm	6:50pm	25	20		X
Galesburg	7	H		"	5 pm				"	"	"	25	50		X

1959

I.C.C. Dkt. No. 29909
Exhibit

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 1/31/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Peoria	2	H	[redacted]	1/30	3 pm				1/31	4 pm	4:04pm	25	04		X

1960

I.C.C. Dkt. No. 29809
Exhibit _____

1721

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 1/31/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Greeley, Ia.	1	H	[redacted]	1/30	1 pm				1/31	11:25pm	11:28pm	34	28		X

1961

I.C.C. Dkt. No. 29809
Exhibit _____

1722

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

WABASH Railroad - 1/31/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-Hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Peru, Ind.	H	1 Car	[redacted]	1/30	6 pm				1/31	5:10pm	5:12pm	23	48		X

1962

I.C.C. Dkt. No. 29909
Exhibit ____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 1/31/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Date	Time: Set	Time: Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-Hr Releases
Rutland, Ia.	2	H	[redacted]	1/29	11:30pm				1/31	7:05am	7:25am	31	55		X
Eagle Grove	2	"	"	"	11:45pm				"	"	"	31	40		X
So. Omaha	1	C	Salable	1/30	5:05pm				1/31	3:13pm	3:15pm	22	50		X
Green Bay	3	H	[redacted]	"	5:30pm				"	8:05pm	8:12pm	26	42	X	

1963

1723

I.C.C. Dkt. No. 29909
Exhibit ____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 1/31/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Date	Time: Set	Time: Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-Hr Releases
Elkader, Ia.	1	H	[redacted]	1/30	12:45am				1/31	9:53am	9:55am	21	10		X

1964

1724

I.C.C. Dkt. No. 29809
Exhibit

1725

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

B & O Railroad - 1/31/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Zanesville, Ohio	1	L	[redacted]	1/29	10:30pm				1/31	7:50am	7:55am	53	25		X

1725

1965

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

PENNSYLVANIA Railroad -- 1/31/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Columbus, Ohio	1	S	[redacted]	1/28	6:30pm	Logansport	1/30	9 am	1/31	7:30am	7:35am	22	35		X

1726

1966

I.C.C. Dkt. No. 29909
Exhibit

1727

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C & O Railroad - 1/31/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Cincinnati, Ohio	1	H	Salable	1/30	6 am				1/31	5:08am	5:25am	23	25		X

1967

I.C.C. Dkt. No. 29909
Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
A T & S F Railroad - 1/31/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Oskaloosa, Ia.	4	H	[redacted]	1/29	5 pm				1/31	12:15am	12:30am	31	30		X

1968

1728

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C & N W Railroad - 2/1/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Galesville, Wis.	1	C	Salable	1/31	9 pm				2/1	10:05am	10:10am	25	10		X
Moorhead, Ia.	1	"	"	"	4:45pm				"	2:50pm	3:50pm	22	05		X
Ankeny, Ia.	1	"	"	"	7:45pm				"	"	"	20	-		X
Audubon, Ia.	1	"	"	"	5 pm				"	"	"	22	50		X
Battle Creek, Ia.	1	"	"	"	5 pm				"	"	"	22	50		X
Schleswig, IA.	2	"	"	"	"				"	"	"	22	50		X
Auburn, Ia.	2	"	"	"	2 pm				"	"	"	25	50		X
Galva, Ia.	2	S	"	"	2:30pm				"	"	"	25	20		X
Schaller, Ia.	3	C	"	"	4 pm				"	"	"	23	50		X
Sac City, Ia.	2	"	"	"	6 pm				"	"	"	21	50		X
Centerville, S. Dak.	2	C	"	"	11 am				"	"	"	28	50		X
Hawarden, Ia.	6	C	"	"	1 pm				"	"	"	26	50		X
Sioux City	1	H	"	"	3 pm							24	50		X

1969

1729

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C B & Q Railroad - 2/1/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Hampton, Ia.	2	C	Salable	1/31	4 pm				2/1	6:51pm	6:55pm	26	55		X

1970

1730

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

PENNSYLVANIA Railroad - 2/1/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Car		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Effner, Ind.	1	H	[redacted]	1/30	4 pm				2/1	1:40am	1:43am	33	43		X
E. Liverpool, Ohio	1	H	Salable	1/29	5:30pm	Crestline, O.	1/31	10 am	2/1	8:02pm	8:05pm	34	05		X

1971

1231

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C R I & P Railroad - 2/1/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Car		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Des Moines	1	H	[redacted]	1/31	8 pm				2/1	8:15pm	8:17pm	24	17		X

1972

1232

I.C.C. Dkt. No. 29809
Exhibit _____

1733

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C G W Railroad - 2/1/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Linn, Ia.	1	C	Salable	1/31	11 pm	"			2/1	7:48pm	7:53pm	20	53		X
Sumner, Ia.	1	"	"	"	5 pm				"	"	"	26	53		X

1733

1973

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
N Y C Railroad - 2/1/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Kenton, Ohio	1	S	[redacted]	1/30	5:30pm	E. Toledo	1/31	8 pm	2/1	10:39pm	10:45pm	26	45		X

1734

1974

I.C.C. Dkt. No. 29809
Exhibit_____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 2/1/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Waverly, Ia.	1	Mxd	[redacted]	1/30	7 pm				2/1	1:15am	1:35am	30	35		X
Dubuque, Ia.	2	H	[redacted]	1/30	6 pm				"	"	"	31	35		X
Sioux Falls	2	H	[redacted]	1/30	5 pm				"	"	"	32	35		X

1975

12335

I.C.C. Dkt. No. 29809
Exhibit_____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 2/2/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Rutland, Ia.	2	C	Salable	1/31	11:30pm				2/2	2:08am	3:02am	27	32		X
Renwick, Ia.	2	"	"	"	8 pm				"	"	"	31	02		X
Algona, Ia.	5	"	"	"	10 pm				"	"	"	29	02		X
Nevada, Ia.	1	"	"	2/1	9 am				2/2	6:46am	6:50am	21	50		X
Merchiston, Neb.	1	"	"	1/31	6 pm				"	7:20am	7:50am	37	50		X
DeBeque, Colo.	1	C	"	10/24	2 pm	Valley, Neb.	1/31	9:45pm	"	"	"	34	05		X
Nevada, Ia.	2	C	"	2/1	9 am				"	"	"	22	50		X
Wisner, Neb.	3	C	"	1/31	10 pm				"	"	"	33	50		X
Greeley Jct., Neb.	2	C	"	1/30	4 pm	Valley	1/31	9:45pm	"	"	"	34	05		X
Lucerne, Colo.	4	C	"	1/30	3 pm	"	"	"	"	"	"	34	05		X
Eaton, Colo.	4	C	"	"	"	"	"	"	"	"	"	34	05		X
Fort Morgan	4	C	"	1/29	8 pm	"	"	"	"	"	"	34	05		X
Valley, Neb.	1	C	Salable	1/31	9:45pm				2/2	7:20am	7:50am	34	05		X
Denver, Colo.	3	C	"	"	6 pm				"	"	"	37	50		X
Sheldahl, Ia.	5	C	"	"	10 am				"	"	"	21	50		X

1976

12336

I.C.C. Dkt. No. 29909
Exhibit_____

1737

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
PERE MARQUETTE Railroad. - 2/2/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Portland, Mich.	2	S	[redacted]	1/31	8 pm				2/2	12:10am	12:18am	28	18		X

1977

I.C.C. Dkt. No. 29909
Exhibit_____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C R I & P Railroad - 2/2/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Colwein, Ia.	2	C	Saleble	2/1	11 am				2/2	6:05pm	6:09pm	31	09		X

1978

1738

I.C.C. Dkt. No. 29809
Exhibit _____

1739

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C B & Q Railroad - 2/2/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Mt. Sterling, Ia.	1	S	Salable	2/1	1 pm				2/2	1 pm	1:02pm	24	02		X

1979

I.C.C. Dkt. No. 29809
Exhibit _____

1740

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
I C Railroad - 2/2/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Peoria, Ill.	2	H	Salable	1/31	3 pm				2/2	2:20am	2:30am	35	30		X
Yetter, Ia.	5	S	"	"	6 pm				2/1	11:05pm	11:50pm	29	50		X
Cleghorn, Ia.	2	C	"	"	4 pm				2/1	11:05pm	11:50pm	31	50		X

1980

I.C.C. Dkt. No. 29809
Exhibit _____

1741

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
A T & S F Railroad - 2/2/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs.	Min		
Sudan, Texas	1	C	Salable	1/29	3:50pm	Morris, Ks.	1/31	11:50am	2/2	12:12am	12:22am	37	32		X
Plattsburg, Mo.	1	C	"	1/31	6 pm				"	"	"	30	22		X
Ormonde, Ill.	1														

1981

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C M St P & P Railroad - 2/2/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Severance, Colo.	1	C	Salable	1/29	2 pm	Valley, Neb.	1/31	10 pm	2/2	8:55am	9:20am	35	20		X
Lawler, Ia.	4	C	"	2/1	11:30am				2/2	2:40pm	2:48am	27	18		X
New Hampton, Ia.	3	C	"	2/1	11 am				"	"	"	27	48		X
Preston, Minn.	1	C	"	1/31	3 pm				2/2	1:45am	3:45am	36	45		X
Severance, Colo.	1	C	"	1/29	2 pm	Valley	1/31	12:45pm	2/2	1:45am	3:45am	37	0		X
Nemaha, Ia.	1	C	"	1/31	3 pm				2/2	"	"	36	45		X
Sac City, Ia.	3	C	"	1/31	5:30pm				2/2	"	"	36	45		X
Webb, Ia.	4	C	"	1/31	3:10pm				2/2	"	"	36	35		X
Emmetsburg, Ia.	1	H	[redacted]	1/31	3:15pm				2/2	"	"	36	30		X
Wesley, Ia.	1	C	Salable	1/31	5 pm				2/2	"	"	34	45		X
Britt, Ia.	5	C	"	1/31	6 pm				2/2	"	"	33	45		X
Garner, Ia.	1	C	"	1/31	6 pm				2/2	"	"	33	45		X
Spencer, Ia.	2	H	[redacted]	1/31	6 pm				2/2	"	"	33	45		
Decorah, Ia.	1	H	[redacted]	1/31	6 pm				2/2	1:45am	3:45am	33	45		X
Welcome, Minn.	1	C	Salable	1/31	2:50pm				2/2	1:45am	3:45am	36	55		X
Jackson, Minn.	2	C	"	1/31	2 pm				2/2	"	"	37	45		X
Chester, Ia.	2	C	"	1/31	6 pm				2/2	"	"	33	45		

1982

1742

I.C.C. Dkt. No. 29809
Exhibit_____

1278

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

A T & S F Railroad - 2/3/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Newton, Ks.	1	C	Salable	2/2	2 pm				2/3	1:45am	1:55am	23	55		X
Peabody, Ks.	1	C	"		5 pm				"	"	"	20	55		X
Plattsburg, Mo.	2	"	"		6 pm				"	8:32pm	8:37pm	26	37		X

1983

I.C.C. Dkt. No. 29809
Exhibit_____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C C W Railroad - 2/3/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Readlyn, Ia.	2	H	[redacted]	2/2	6:30pm				2/3	8:17pm	8:30pm	22			X

1984

1284

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C R I & P Railroad - 2/3/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Stockton, Ia.	2	S	Salable	2/2	12 am				2/3	7:15am	8 am	32		I	
Des Moines	1	H	[redacted]	"	10 pm				"	10:10	10:20pm	24	10		I

1985

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C B & Q Railroad - 2/3/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-Hr Releases
Minatare, Neb.	1	C	Salable	1/30	12:10pm	Galesburg	2/2	11:15am	2/3	6:35am	7:25am	20	10		X
Denver, Colo.	5	"	"	1/28	6:30pm	"	"	"	"	"	"	20	10		X
Sargent, Neb.	1	"	"	1/31	5:50am	Lincoln	2/1	11 pm	"	"	"	32	25		X
Mitchell, Neb.	1	S	[redacted]	"	10 am	Creston, Ia.	2/2	8 am	"	"	"	23	25		X
Galesburg	3	C	Salable	2/2	6 pm				"	"	"	25	25	X	
Ophiem, Ill.	1	C	"	"	1 pm				"	9:45am	10:15am	21	15		X
So. Omaha	2	C	"	"	4:45pm				"	6:35pm	6:45pm	26	-		X
Brush, Colo.	1	"	"	1/31	9:30pm	So. Omaha	2/2	4:45pm	"	"	"	26	-		X

1986

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 2/3/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Lena, Ill.	1	H	[redacted]	2/2	4 pm				2/3	2:25pm	3:06pm	23	08	X	
Manchester, Ia.	3	"	[redacted]	2/2	6 pm				"	"	"	21	08	X	
Dubuque, Ia.	6	"	[redacted]	"	"				"	"	"	21	08		X
Bloomington, Ill.	2	"	[redacted]	"	5 pm				"	3:05pm	3:18pm	22	18		X
Decatur, Ill.	1	C	Salable	"	3 pm				"	"	"	24	18		X
Peoria, Ill.	1	H	[redacted]	"	"				"	"	"	24	18		X
Yetter, Ia.	2	S	Salable	"	6 pm				"	10 pm	10:45pm	28	45		X
Knierim, Ia.	3	C	"	"	5:55pm				"	"	"	28	50		X
Sioux Falls	3	H	[redacted]	"	"				"	"	"	28	50		X
Hinton, Ia.	1	C	~~Salable~~	"	12:25pm				"	"	"	34	20		X
Sheldon, Ia.	2	H	[redacted]	"	6 pm				"	"	"	28	45		X
Fulton, Ky.	2	C	[redacted]	1/31	7:30pm	Champaign, Ill.	2/2	8 am	2/3	7:15am	8 am	24			X
Waterloo, Ia.	1	H	Salable	2/2	11 am				"	9:15am	10:05am	23	05		X

1987

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 2/3/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Eaton, Colo.	2	C	Salable	1/31	3 pm	Valley	2/1	10 pm	2/3	8:38am	9:05am	35	05		X
Lucerne	3	"	"	"	"	"	"	"	"	"	"	35	05		X
Greeley Jct.	3	"	"	"	4 pm	"	"	"	"	"	"	34	05		X
Anamosa, Ia.	3	"	"	2/2	11:45am				"	"	"	21	20	X	
Green Bay	6	Mxd	[redacted]	2/2	6 pm				2/3	2:30pm	2:48pm	20	48	X	
So. Morrill, Neb.	1	S	[redacted]	2/1	11 am	Valley	2/2	3 pm	2/3	3:10pm	3:35pm	24	35		X
Onslow, Ia.	1	C	Salable	2/2	12noon				"	"	"	27	35	X	
Irwin, Ia.	2	"	"	"	6:30pm				"	"	"	21	05		X
Galva, Ia.	2	"	"	"	4:45pm				"	"	"	22	50		X
Sioux City	1	C	"	"	6 pm				"	"	"	21	35		X

1988

I.C.C. Dkt. No. 29309
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 2/3/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Belmont, Wis.	2	H	[redacted]	2/2	12:50pm				2/3	9:22am	10:05am	21	45	X	
Platteville, Wis.	1	"	"	"	12 pm				"	"	"	22	05		X
Shullsburg, Wis.	1	C	Salable	"	10:30am				"	"	"	23	35		X
Rock City, Ill.	3	Mxd	"	"	4:15pm				"	3:40pm	4:25pm	23	50	X	
Dixon, Ia.	1	H & C	"	"	1 pm				"	"	"	25	25		X
Monticello, Ia.	1	C	"	"	11 am				"	"	"	29	25		X
Maquoketa, Ia.	2	H	"	"	3 pm				"	"	"	25	25		X
Woodward, Ia.	3	S	"	"	11 am				"	"	"	29	25		X
Wyoming, Ia.	2	H	[redacted]	"	4:20pm				"	"	"	24	05		X
Bellevue, Ia.	3	"	"	"	6:30pm				"	"	"	21	55		X

1989

I.C.C. Dkt. No. 29309
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 2/4/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Waterloo, Ia.	1	C	Salable	2/3	11 am				2/4	8:45am	8:50am	21	50		X
Williams, Ia.	1	H	"	"	8 am				"	"	"	24	50		X
Peoria, Ill.	1	"	[redacted]	"	3 pm				"	1:55pm	1:57pm	22	57		X

1990

1750

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C R I & P Railroad - 2/4/48.

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Shellsburg, Ia.	1	2/3	Salable	2/3	2 pm				2/4	9:30am	10:05am	20	05		X
Washington, Ia.	1	"	"	"	"				"	"	"	20	05		X

1991

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 2/4/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Monticello, Ia.	8	C	Salable	2/3	11 am				2/4	10 am	11 am	24	2	X	
Slater, Ia.	1	"	"	"	12:10pm				"	"	"	23	50		X
Tama, Ia.	1	"	"	"	11:30am				"	"	"	24	30		X
New Hampton, Ia.	2	H	[redacted]	"	10:30am				"	"	"	23	30		X
W. Chas. City, Ia.	2	"	"	"	9 am				"	"	"	24	-		X
Belmont, Wis.	3	C	Salable	"	1:10pm				"	"	"	24	10		X
Platteville, Wis.	2	C	"	"	12:15pm				"	"	"	23	45		X

1992

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 2/4/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Date	Time: Set.	Time: Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-hr Releases
Valley, Neb.	2	C	Salable	2/2	10:30pm				2/4	5:30am	5:37am	34	07		X
Livingston, Wis.	2	C	"	2/3	11 am				"	9:10am	9:15am	22	15		X
Sibley, Ia.	1	H	[redacted]	2/2	9:30pm				"	9:50am	10:25am	36	55		X
So. Omaha	1	C	Salable	2/3	4 pm				"	3:30pm	3:32pm	25	28		X
Green Bay, Wis.	3	H	[redacted]	"	5:15pm				"	9:57pm	10:05pm	28	10	X	

1993

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 2/5/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Date	Time: Set	Time: Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-hr Releases
Shullsburg, Wis.	1	C	Salable	2/4	10:30am				2/5	8:35am	9:08am	22	38		X
Milwaukee,	2	S	Salable	2/3	7 pm				"	12:25am	1 am	29	25		X
Terry, Mont.	1	"	"	1/30	5 pm	Milw. Stk. Yds.	2/3	5:15pm	"	"	"	31	10		X
Dixon, Ia.	1	H	Salable	2/4	1 pm				"	2:25pm	2:50pm	25	50		X
Monticello, Ia.	1	C	"	"	11:30am				"	"	"	27	20		X
Greeley, Ia.	1	H	[redacted]	"	12 M				"	"	"	26	50		X

1994

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C R I & P Railroad - 2/5/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Des Moines	1	H	[redacted]	2/3	8 pm				2/5	7 am	7:20am	35	20		X
W. Liberty, Ia.	2	"	[redacted]	"	3:30pm				"	12:46am	12:52am		22		X
Des Moines	1	H	[redacted]	2/4	10 pm				"	9:55pm	10:03pm	24	03		X

1995

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

A T & S F Railroad - 2/5/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Oskaloosa, Ia.	1	H	[redacted]	2/4	5 pm				2/5	11:05pm	11:10pm	30	10		X

1996

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C B & Q Railroad - 2/5/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Prophetstown, Ill.	2	H	[redacted]	2/4	4:30pm				2/5	2:35pm	2:45pm	22	15	X	
Erie, Ill.	1	"	[redacted]	"	6:30pm				"	"	"	20	15	X	
Barstow, Ill.	1	"	Salable	"	5 pm				"	"	"	21	45	X	
Ferryville, Wis.	1	H & S	[redacted]	"	5 pm				"	9:30pm	9:40pm	28	40		X
Oil City, Ill.	2	H & S	[redacted]	"	5:15pm				"	"	"	28	25		X

1997

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 2/5/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Fort Collins	1	S	Salable	2/1	2:30pm	Valley, Neb.	2/4	1:45pm	2/5	2:45pm	3:10pm	25	25	X	
Greeley, Colo.	1	"	"	"	4 pm	"	"	"	"	"	"	25	25	X	
Ault, Colo.	1	"	"	"	2:30pm	"	"	"	"	"	"	25	25	X	
Powell, Colo.	1	"	"	"	11 am	"	"	"	"	"	"	25	25	X	
So. Omaha	2	C	"	2/4	4:20pm				"	"	"	22	50		X
Huntley, Wyo.	2	S	"	2/1	1 pm	So. Omaha	"	4:20pm	"	"	"	22	50		X
Sibley, Ia.	1	H	[redacted]	2/3	8 pm	Sioux City	"	5:50pm	"	2:45pm	3:10pm	21	20		X
Green Bay	2	H & C	[redacted]	2/4	5.15pm				"	6:34pm	6:45pm	25	30	X	

1998

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 2/5/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Waverly, Ia.	2	H	[redacted]	2/3	7 pm				2/5	12:15am	1:05am	30	05		X
Sioux Falls, S. Dak.	5	C	Salable	"	5 pm				"	"	"	32	05		X
Dubuque, Ia.	2	H	[redacted]	2/4	6 pm				"	2:50pm	3 pm	21			X
Remsen, Ia.	1	H	[redacted]	2/4	3 pm				"	9:30pm	9:45pm	36	45		X
Waverly, Ia.	2	H	[redacted]	"	8 pm				"	"	"	25	45		X

1999

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C R I & P Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Reynolds, Ill.	1	H	[redacted]	2/5	5 pm				2/6	8:50pm	10:05pm	29	05	X	
Washington, Ia.	6	"	[redacted]	"	4 pm				"	"	"	30	05		X
Columbus Jct.	1	"	[redacted]	"	6 pm				"	"	"	28	05		X

2000

I.C.C. Dkt. No. 29809

Exhibit

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS.

I C Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
George, Ia.	1	H	[redacted]	2/5	2:15pm				2/6	10:15pm	11 pm	32	45		X

2001

I.C.C. Dkt. No. 29809

Exhibit

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Murray, Ky.	1	C	Salable	2/3	7 pm	Champaign, Ill.	2/5	1 pm	2/6	9:36am	9:40am	20	40		X

2002

I.C.C. Dkt. No. 29809
Exhibit _____

1763

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

PENNSYLVANIA Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Logansport, Ind.	1	H	[redacted]	2/5	5 pm				2/6	5:35pm	5:40pm	24	40		X

1763

2003

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

B & O Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Wapakoneta, Ohio	1	S	[redacted]	2/4	4:30pm			C	2/5	1:22am	1:30am	33			X

2004

1764

I.C.C. Dkt. No. 29809

Exhibit _____

1,295

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & O Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Cincinnati, Ohio	1	S	Salable	2/5	6 am				2/6	4:55am	5 am	23			X

2005

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Livingston, Wis.	1	S	Salable	2/5	11 am				2/6	8:34am	8:37am	20	37		X

2006

1,296

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Lucerne, Colo.	1	S	[redacted]	2/2	4 pm	Valley, Neb.	2/5	1:30pm	2/6	3:10pm	3:40pm	26	10	X	
Goodrich, Colo.	1	"	"	"	5 pm	"	"	"	"	"	"	26	10	X	
Kerns, Colo.	1	"	"	"	4 pm	"	"	"	"	"	"	26	10	X	
Black Hollow, Colo.	1	"	"	"	4 pm	"	"	"	"	"	"	26	10	X	
So. Mitchell, Neb.	1	"	"	2/4	1:30pm	"	"	"	"	"	"	26	10		X
Schaller, Ia.	2	"	"	2/5	4 pm				"	"	"	23	20		X
Carroll, Ia.	4	H	"	"	"				"	"	"	23	20		X

2007

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C G W Railroad 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Readlyn, Ia.	1	H	[redacted]	2/5	5:30pm				2/6	4:55pm	5 pm	23	30		X

2008

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

G M & O Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Kansas City, Mo.	2	S	[redacted]	2/5	6 pm				2/6	11:15pm	11:21pm	29	21		X

2009

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C B & Q Railroad - 2/6/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Aledo, Ill.	1	H	[redacted]	2/5	2:20pm										
Bushnell, Ill.	2	"	[redacted]	"	4 pm				2/6	1:30pm	1:45pm	23	25	X	
									"	"	"	21	45	X	

2010

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 2/7/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Peoria	4	H	[redacted]	2/6	3 pm				2/7	2:05pm	2:25pm	23	35		X
Bloomington	3	"	[redacted]	"	5 pm				"	"	"	21	35		X

2011

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

MICHIGAN CENTRAL Railroad - 2/7/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Detroit, Mich.	1	S	[redacted]	2/5	5:15pm				2/7	2:45am	2:50am	33	35		X

2012

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C G W Railroad - 2/7/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Allison, Ia.	1	H	[redacted] 4	2/6	8:45pm				2/7	5:45pm	5:48pm	21	03		X

2013

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C R I & P Railroad - 2/7/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Des Moines	7	H	[redacted]	2/5	9 pm				2/7	7 am	7:55am	34	55		X
Des Moines	2	L	[redacted]	2/6	8 pm				"	10:10pm	11:35pm	27	25		X

2014

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C M St P & P Railroad - 2/7/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Sioux City, Ia.	10	H	[redacted]	2/5	5 pm				2/7	1 am	2:30am	33	30		X
Kerry, Ia.	6	"	"	"	9 pm				"	"	"	29	30		X
Coon Rapids, Ia.	2	"	"	"	9:15pm				"	8:15am	8:30am	35	15		X
Greeley, Ia.	2	"	"	2/6	10 am				"	"	"	23	10		X
Emmetsburg, Ia.	2	C	Salable	2/6	3 pm				"	11:50pm	11:30pm	32	30		X
Sheldon, Ia.	2	C		"	6 pm				"	"	"	29	30		X
Washington, Ia.	1	S	[redacted]	"	1 am				"	"	"	22	30		X
Grimes, Ia.	1	H	Salable	"	8 pm				"	"	"	27	30		X
Sioux City	13	H	[redacted]	"	5 pm				"	"	"	30	30		X

2015

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C & N W Railroad - 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
So. Omaha	2	C	Salable	2/6	8 pm				2/8	6:30am	6:50am	34	50		X
Ault, Colo.	1	S	"	2/4	2:45pm	Valley, Neb.	2/6	10 pm	"	"	"	32	50	X	
Collins, Colo.	1	S	"	"	2:30pm	"	"	"	"	"	"	32	50	X	
Galesville, Wis.	1	C	"	2/7	9 am				"	8:20pm	8:22pm	35	22		X
Ogden, Ia.	1	C	"	"	6 pm				"	8:18pm	9:10pm	26	10		X
Mo. Valley	3	C	"	"	8 pm				"	"	"	25	10		X
Moorhead	3	C	"	"	6 pm				"	"	"	26	10		X
Oakland, Neb.	11	"	"	"	3 pm				"	"	"	30	10		X
"	4	"	"	"	3 pm				"	8:15pm	10:05pm	31	05		X
Sioux City	2	H	"	"	4 pm				"	"	"	30	05		X
Hawarden, Ia.	14	C	"	"	1 pm				"	"	"	33	05		X
Sterling, Colo.	2	C	"	2/5	10 pm	Valley, Neb.	2/7	1:30pm	"	"	"	32	35		X
Peckham, Colo.	3	C	"	2/5	4 pm	"	2/7	"	"	"	"	32	35		X
Lexington, Neb.	1	C	"	2/6	4:45pm	"	"	1:30pm	"	"	"	32	35		X
Valley, Neb.	1	C	"	2/7	1:30pm				"	"	"	32	35		X
Ankeny, Ia.	1	C	"	"	7:45pm				"	"	"	26	20		X
Shelldahl, Ia.	3	C	"	"	7 pm				"	"	"	27	05		X
Ault, Colo.	1	S	"	2/4	2:45pm	Valley	2/7	1:30pm	"	"	"	32	35		X
Green Bay	5	H	[redacted]	2/6	5:15pm				2/7	10:15pm	10:50pm	29	35	X	
DeSmet, S. Dak.	2	S	Salable	2/4	5:45pm	So. St. Paul	2/6	4 pm	"	"	"	28	05		X
So. St. Paul	2	"	"	2/6	4 pm				"	"	"	30	50		X
Hawarden, Ia.	1	C	"	2/7	1 pm				"	11:35pm	1:50am	36	50		X
Berwick, Ia.	4	C	"	2/7	8 pm				2/8	"	1:50am 2/9	29	50		X
Marathon, Ia.	2	C	"	2/7	6 pm				"	"	"	31	50		X
Thor, Ia.	1	H	"	"	9:30pm				"	"	"	28	20		X

2016

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C & N W Railroad - 2/8/48 Continued

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Rutland, Ia.	3	C	Salable	2/7	11:30pm				2/8	11:35pm	1:50am 2/9	26	20		X
Auburn, Ia.	4	H	"	"	2:30pm				"	"	"	35	20		X
Kiron, Ia.	4	C	"	"	3:30pm				"	"	"	34	20		X
Schleswig, Ia.	8	C	"	"	5:30pm				"	"	"	32	20		X
Early, Ia.	1	H	"	"	4:30pm				-	-	-	33	20		X
Sac City, Ia.	4	C	"	"	6 pm				-	-	-	31	50		X

2017

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C M St P & P Railroad - 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Aspinwall, Ia.	1	H	Salable	2/7	8 pm				2/8	10:45pm	12:15am	28	15		X
Dedham, Ia.	1	"	"	"	6:15pm				"	"	"	30	-		X
Woodward, Ia.	3	"	"	"	4 pm				"	"	"	32	15		X
Madrid, Ia.	1	Mxd	"	"	11 pm				"	"	"	25	15		X
Cresco, Ia.	1	"	"	"	8 pm				"	"	"	28	15		X
Chester, Ia	3	C	"	"	6 pm				"	"	"	30	15		X
Preston, Minn.	2	C	"	"	3 pm				"	"	"	33	15		X
Sioux City	2	H	[redacted]	2/5	5 pm	Marion, Ia.	2/7	11 am	2/8	"	"	25	15		X
Woodward, Ia.	1	"	Salable	2/7	11:30am				"	"	"	24	45		X

2018

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C B & Q Railroad - 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Mitchell, Neb.	2	S	[redacted]	2/5	10 am	Lincoln, Neb.	2/6	9:30pm	2/8	4:37am	5:15am	31	45		X
Brush, Colo.	1	"	Salable	2/4	10 pm	"	"	"	"	"	"	31	45		X
Shenandoah, Ia.	2	C	"	2/7	4:30pm				"	6:35pm	7:15pm	26	45		X
Red Oak, Ia.	2	"	"	"	4 pm				"	"	"	27	15	X	
Co. Bluffs	4	C	"	"	3:45pm				"	"	"	28	-		X
Denver	1	C	"	2/2	8 pm	Lincoln	2/7	1 pm	"	"	"	30	15		X
Ord, Neb.	4	C	Salable	2/6	11:35am	"	"	1:30pm	"	"	"	29	45		X

2019

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C R I & P Railroad - 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Des Moines	5	H	[redacted]	2/7	10 pm				2/8	9:30pm	10:15pm	24	15		X
Peoria, Ill.	3	C	[redacted]	2/7	3 pm				"	6:05pm	6:12pm	27	12		X

2020

I.C.C. Dkt. No. 29809
Exhibit _____

1781

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

B & O Railroad - 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Zanesville, Ohio	1	S	[redacted]	2/5	5:30pm	Garrett, Ind.	2/7	1 am	2/8	4:15am	4:30am	[illegible]	30		X

2021

I.C.C. Dkt. No. 29809
Exhibit B

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & E I Railroad - 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Paris, Tenn.	1	C	Salable	2/6	9 pm				2/8	7:20am	7:30am	34	30		X
Nashville, Tenn.	2	C & L	[redacted]	2/6	5:30pm				"	2:20am	2:30am	33	-		X

2022

4782

I.C.C. Dkt. No. 29809

Exhibit _____

4783

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

PENNSYLVANIA Railroad / 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Effner, Ind.	2	H	[redacted]	2/6	[illegible] pm				2/8	2:55am	3 am	35	-		X

2023

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

A T & S F Railroad - 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Boise City, Okla.	1	C	Salable	2/5	7 am	Kansas City	2/7	5 am	2/8	6:06am	6:10am	25	10		X
Plattsburg, Mo.	3	C	Salable	2/7	6 pm				2/8	4:30pm	4:36pm	22	36		X
Kansas City	1	C	"	"	5 pm				"	"	"	23	36		X

2024

4784

I.C.C. Dkt. No. 29809

Exhibit

4785

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Fulton, Ky.	1	C	[redacted]	2/6	6 pm				2/8	5:20am	5:25am	35	25		X
Dubuque, Ia.	1	"		"	"				2/7	4:55pm	5:18pm	23	18		X
Sioux Falls	2	H	[redacted]	2/6	4 pm				2/7	"	"	25	18		X

2025

I.C.C. Dkt. No. 29809

Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINCIS

MONON Railroad - 2/8/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Rushville, Ind.	2	H	[redacted]	2/7	1 pm				2/8	11:37am	11:49am	22	49		X

2070

4786

I.C.C. Dkt. No. 29809

Exhibit _____

4864

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C M St P & P Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Date	Unloaded at U.S. Yards: Time Set	Unloaded at U.S. Yards: Time Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-hr Releases
Garner, Ia.	1	C	Salable	2/7	4:15pm				2/9	6:20am	6:45am	38	30	V	X
Sheldon	4	C	"	"	4 pm				"	"	"	36	20		
Spencer, Ia.	2	"	"	"	5 pm				"	"	"	37	20	V	
Garner, Ia.	4	"	"	"	6 pm				"	"	"	36	20		
Wesley	2		[redacted]	"	5 pm				"	"	"	37	20	V	
"	1		[redacted]	"	"				"	"	"	37	20	V	
"	1		[redacted]	"	"				"	"	"	37	20	V	

2027

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I C Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Date	Unloaded at U.S. Yards: Time Set	Unloaded at U.S. Yards: Time Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-hr Releases
Minton, Ia.	1	C	Salable [redacted]	2/7	1 pm				2/9	1:25am	2:20am	37	20	V	X

2028

4868

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
I C Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Fulton, Ky.	2	C	[redacted]	2/7	7 pm				2/9	5:40am	6:20am	35	20		X

2029

6874

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
I C Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Storm Lake, Ia.	1	C	Salable	2/7	5:30pm				2/9	1:25am	2:20am	32	50		X
Aurelia, Ia.	4	"	"	"	"					"	"	32	50		X
Denison, Ia.	3	"	"	"	3 pm					"	"	35	20		X
Newell, Ia.	1	"	"	"	5:40pm					"	"	32	40		X
Remsen, Ia.	1	"			3 pm					"	"	35	20		X
Calumet	1	"			3:45pm					"	"	34	30		X
Charles City, Ia.	1	"			8 pm					"	"	30	35		X

2030

6790

I.C.C. Dkt. No. 29809

Exhibit _____

1791

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C B & Q Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Kerns, Colo.	2	S	[redacted]	2/5	4 pm	Lincoln, Neb.	2/7	9:30pm	2/9	2:35	3:10am	29	40		X

1791

2031

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C & N W Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Columbus, Neb.	1	H	Salable	2/7	8:15pm				2/9	6:55am	8:15am	36			X
Renwick, Ia.	1	C	"	"	8 pm				"	"	"	36	15		X
Gilcrest, Ia.	2	C	"	2/6	4 pm	Valley, Neb.	2/7	11:30pm	"	"	"	32	45		X
Greeley, Colo.	2	C	"	2/6	4 pm	"	"	"	"	"	"	32	45		X
Lucerne, Colo.	4	C	"	"	3 pm	"	"	"	"	"	"	32	45		X
LaSalle, Colo.	2	C	"	"	4:30pm	"	"	"	"	"	"	32	49		X
Henderson, Colo.	2	S	"	"	4 pm	"	"	"	"	"	"	32	45		X
Galeton, Colo.	2	S	"	"	2 pm	"	"	"	"	"	"	32	45	X	
Wisner, Neb.	1	H	"	2/7	10:30pm				"	"	"	33	45		X
Ault, Colo.	1	S	"	2/5	4:30pm	Council Bluffs, Ia.	2/6	11 am	2/9	7:10pm	7:30pm	32	30		X

1792

2032

I.C.C. Dkt. No. 29809
Exhibit

1793

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. R. I & P. Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Rockford, Ia.	1	C	Salable	2/8	10 am				2/9	8:20pm	8:30 pm	21	30		X
Oelwein, Ia.	2	"	"	"	11 am				"	"	"	20	30		X
Atlantic, Ia.	2	"	"	2/7	11:45pm				"	7:45am	8:10 am	32	25		X
Palmer, Ia.	1	"	"	"	11:59pm				"	"	"	32	11		X

2033

1793

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
Nickel Plate Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Greentown, Ind.	1	H	[redacted]	2/7	9 pm				2/9	3:50am	3:55 am	30	55		X

2034

1794

I.C.C. Dkt. No. 29809
Exhibit _____

1795

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
Wabash Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Boonville, Mo.	2	C	Salable	2/7	6:45pm				2/9	3:50 am	3:55 am	33	10		X

2035

I.C.C. Dkt. No. 29809
Exhibit _____

1796

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
Grand Trunk Railroad - 2/9/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
St. Johns, Mich.	1	S	Salable	2/7	6:30 pm				2/9	1:50am	2:10 am	31	40		X

2036

1796

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. & N. W. Railroad - 2/10/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Sears, Neb.	1	S	Salable	2/7	11:30am	So. Omaha	2/9	5:05 pm	2/10	3:28pm	3:55 pm	22	50		X
Powell, Colo.	1	"	"	"	3:30pm	"	"	"	"	"	"	22	50		X
Breda, Ia.	4	C	"	2/9	7 pm				"	"	"	20	55	X	X
Schleswig, Ia.	1	"	"	"	5 pm				"	"	"	22	55		X
Green Bay	9	C B	[redacted]	"	6:50pm				"	8:45pm	9:35 pm	27	35	X	
Sterling, Colo.	1	C	Salable	2/6	10:55pm	Valley, Nebr.	2/8	10 pm	"	7:45am	8:08 am	34	08		X
Greeley, Colo.	5	"	"	2/7	4 pm	" "	"	"	"	"	"	34	08		X

2037

1797

1797

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. M. & St. P. Railroad - 2/10/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Stopped Enroute: Reloaded Date	Stopped Enroute: Reloaded Time	Unloaded at U.S. Yards: Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Maquoketa, Ia.	1	C	Salable	2/9	3 pm				2/10	2:10pm	2:50 pm	23	50	X	
Rock City, Ill.	1	H	"	"	3:30pm				"	"	"	23	20		X
Oxford Jct., Ia.	1	"	"	2/8	12:30pm	Oxford Jct., Ia.	2/9	1 pm	"	"	"	23	50		X
			Unloaded OXFORD JCT., Ia. Derailment							"	"	"	"		
Dixon, Ia.	1	"	Salable	2/9	1 pm				2/10	2:10pm	"	"	"		X
Monticello, Ia.	1	C	"	"	11 am				"	"	"	27	50	X	

2038

1798

1798

I.C.C. Dkt. No. 29609
Exhibit _____

1769

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
I. C. Railroad - 2/10/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Waterloo, Ia.	1	H	Salable	2/9	11 am				2/10	8:54am	9:10 am	22	10		X

1794

2039

I.C.C. Dkt. No. 29609
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. B. & Q. Railroad - 2/10/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Sargent, Neb.	1	C	Salable	2/7	9:10am	Lincoln, Neb.	2/8	10:30pm	2/10	2:45am	2:47am	29	17		X

2040

1800

I.C.C. Dkt. No. 29809
Exhibit_____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
Santa Fe Railroad - 2/10/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Care Hrs	Total Time Confined in Care Min	Moving 28-Hr. Law	Under 36-hr Releases
Oskaloosa, Ia.	4	H	[redacted]	2/9	5 pm				2/10	4:55pm	5:15 pm	24	15		X

2041

1801

I.C.C. Dkt. No. 29809
Exhibit_____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. R. I. & P. Railroad - 2/11/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Care Hrs	Total Time Confined in Care Min	Moving 28-Hr. Law	Under 36-hr Releases
Des Moines, Ia.	1	H	[redacted]	2/9	9 pm				2/10	10:50pm	10:55pm	25	55		X

2042

1802

I.C.C. Dkt. No. 29809
Exhibit _____

1803

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. B. & Q. Railroad - 2/11/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
S. St. Paul	1	S	Salable	2/10	4 pm				2/11	7:48pm	7:50 pm	27	50		X
Ft. Morgan, Colo.	2	C	" "	2/8	5 pm	Lincoln, Neb.	2/9	9:30pm	"	3 am	3:06 am	29	36		X

2043

1803

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. M. & St. P. Railroad - 2/11/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
W. Salem, Wis.	3	H	[redacted]	2/9	4:30pm				2/11	1:50am	2:35 am	34	05		X
Perry, Ia.	2	"	"	"	8 pm				"	"	"	30	35		X
Charles City, Ia.	1	C	Salable	2/10	10 am				2/11	1:30pm	1:45 pm	27	45		X
Monticello, Ia.	6	C	"	"	11 am				"	"	"	26	45	X	
Milwaukee, Wis.	2	C	"	"	4 pm				"	"	"	21	45		X
Madison, Wis.	1	H	"	"	2 pm				"	"	"	23	45		X

2044

1804

1804

I.C.C. Dkt. No. 29809
Exhibit_____

1305

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. & N. W. Railroad - 2/11/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Green Bay, Wis.	1	H	[redacted]	2/10	5:15pm				2/11	8:42pm	8:50 pm	27	35	X	
Carroll, Ia.	1	C	Salable	"	4 pm				"	8:35am	8:40 pm	28	40		X
Breda, Ia.	2	"	"	2/9	7 pm				"	3:55am	4:20 am	33	20		X
Greeley, Colo.	2	"	"	2/8	4 pm	Valley, Neb.	2/9	11:30pm	"	"	"	28	50		X
Algona, Ia.	1	"	"	2/9	9 pm				"	"	"	31	20		X

1805

2045

I.C.C. Dkt. No. 29809
Exhibit_____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
I. C. Railroad - 2/11/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Waverly, Ia.	1	H	[redacted]	2/10	8 pm				2/11	10:35pm	11:15 pm	26	15		X
Manchester, Ia.	2	"	"	"	6 pm				"	"	"	29	15		X
Sioux Falls, S. Dak.	2	"	[redacted]	"	4:30pm				"	"	"	30	45		X
Dubuque, Ia.	2	"	[redacted]	"	6 pm				"	"	"	29	15		X
"	4	"	"	2/9	6 pm				2/10	9:55pm	10:40 pm	28	40		X
Manchester, Ia.	2	"	"	"	"				"	"	"	"	0		X
Waverly, Ia.	2	"	"	"	4:15pm				"	"	"	30	25		X
Sioux Falls, S. Dak.	2	"	[redacted]	"	4:30pm				"	"	"	30	10		X

1806

2046

1306

I.C.C. Dkt. No. 29809
Exhibit _____

1807

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. G. W. Railroad - 2/11/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Allison, Ia.	1	H	[redacted]	2/10	3:30pm				2/11	7:12pm	7:20pm	27	50		X
"	1	"	Salable	"	3 pm				"	"	"	28	20		X

2047

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. R. I. & P. Railroad - 2/11/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Peoria, Ill.	2	H	Salable	2/10	3 pm				2/11	1 pm	1:08 pm	22	08		X
	2	C	[redacted]	"	"				"	"	"	22	08		X

2048

1808

I.C.C. Dkt. No. 29809
Exhibit _____

1809

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
Santa Fe Railroad - 2/12/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Oak Stk. Yds, Okla.	1	C	Salable	2/9	5 pm				2/12	4:33am	4:36 am	35	36		X

2049

I.C.C. Dkt. No. 29809
Exhibit _____

1810

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. R. I. & P. Railroad - 2/12/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
						To Feed At	Reloaded			Time					
				Date	Time		Date	Time	Date	Set	Unloaded	Hrs	Min		
Des Moines, Ia.	1	H	[redacted]	2/10	7 pm				2/12	12:05am	12 :10 am	29	10		X

2050

I.C.C. Dkt. No. 29809
Exhibit _____

1811

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
I. C. Railroad - 2/12/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Sioux City, Ia.	1	C	[redacted]	2/11	5 pm				2/12	10:52pm	11:24 pm	30	24		X
Waverly, Ia.	2	H	[redacted]	"	8:05pm				"	"	"	27	19		X

2051

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
N. Y. C. Railroad - 2/12/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Hutsonsville, Ill.	3	H	[redacted]	2/11	6 pm				2/12	8:35pm	8:49 pm	26	49		X

2052

1812

I.C.C. Dkt. No. 29809
Exhibit_____

1813

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. M. & O. Railroad, 2/12/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Odessa, Mo.	2	S	Selable	2/11	6 pm				2/12	10:41pm	10:48 pm	28	48		X

2053

1813

I.C.C. Dkt. No. 29809
Exhibit_____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. B. & Q. Railroad - 2/12/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Denver, Colo.	2	C	Salable	2/9	7:30pm	Lincoln, Neb.	2/10	7:30 pm	2/12	4 am	4:06 am	32	36		X
Perryville, Wis..	1	"	[redacted]	2/11	7 pm					9 pm	9:07 pm	26	07	X	
So. Omaha, Neb.	2	"		2/11	3:40pm				2/12	"	"	29	27		X

2054

1814

I.C.C. Dkt. No. 29809
Exhibit _____

1815

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. & N. W. Railroad - 2/12/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Eaton, Colo.	1	S	Salable	2/9	4 pm	Valley, Neb.	2/10	9:30am	2/12	8:15am	9:15am	35	45		X
Hardin, Colo.	1	"	"	"	3:45pm	" "	"	"	"	"	"	"	"		X
Sibley, Ia.	2	H	[redacted]	2/10	8 pm	Sioux City, Ia.	2/11	4 pm	"	3:45 pm	3:50 pm	23	50		X
Green Bay, Wis.	1	H S	"	2/11	5:15pm				"	3:06 pm	3:30 pm	22	15	X	

2055

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. M. & St. P. Railroad - 2/12/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Platville, Ia.	1	H	[redacted]	2/11	12 pm				2/12	9:08am	9:20 am	21	20		X
Strawberry Point, Ia.	1	C	Salable	"	9:30am				"	9:16pm	9:43 pm	36	13		X
Sioux Falls, S. Dak.	2	"	[redacted]	"	4:30pm				"	"	"	29	13		X
Cresco, Ia.	1	H	[redacted]	"	6:30pm				"	"	"	27	13		X
Decorah, Ia.	2	"	[redacted]	"	6 pm				"	"	"	27	43		X

2056

1816

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. M. & St. P. Railroad - 2/13/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Greeley, Ia.	1	H	[redacted]	2/12	10 am				2/13	9:12am	9:18 am	23	18		X

2057

1817

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
Santa Fe Railroad - 2/13/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Oskaloosa, Ia.	2	H	[redacted]	2/11	5 pm				2/13	3:20am	3:25 am	34	25		X

2058

1818

I.C.C. Dkt. No. 29809
Exhibit _____

1819

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
Michigan Central Railroad - 2/13/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Decatur, Mich.	2	H	[redacted]	2/11	5 pm				2/13	1:50am	2:05 am	33	05		X

2059

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. R. I. & P. Railroad - 2/13/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Des Moines, Ia.	1	H	[redacted]	2/11	8 pm				2/13	1:05am	1:10 am	29	10		X

2060

1820

I.C.C. Dkt. No. 29809
Exhibit _____

1821

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
I. C. Railroad - 2/13/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
George, Ia.	2	H	[redacted]	2/12	3 pm				2/13	8:50pm	10:15 pm	31	15		X
Sheldon, Ia.	1	"	"	"	7:10pm				"	"	"	27	05		X
Remsen, Ia.	1	"	"	"	3:45pm				"	"	"	30	30		X
Dubuque, Ia.	2	Mixed	"	"	6 pm				"	"	"	28	15		X
Manchester, Ia.	1	"	"	"	"				"	"	"	28	15		X
Waverly, Ia.	1	"	"	"	4 pm				"	"	"	30	15		X

2061

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. M. & St. P. Railroad - 2/14/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Canton, Minn.	2	H	Salable	2/12	2:01pm				2/14	1:10am	1:18 am	35	17		X
Wyoming, Ia.	1	"	[redacted]	2/13	3 pm				"	7:27	7:30	28	30		X
Bellevue, Ia.	1	"	"	"	6 pm				"	"	"	25	30		X
Britt, Ia.	2	"	"	"	7 pm				"	7:40pm	8:15 pm	25	15		X
Cresco, Ia.	1	"	"	"	6:30pm				"	"	"	25	45		X
Ft. Atkinson, Ia.	2	"	"	"	6 pm				"	"	"	26	15		X

2062

1822

I.C.C. Dkt. No. 29809
Exhibit _____

1823

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
Nickel Plate Railroad - 2/14/46

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Date	Time: Set	Time: Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-hr Releases
Greentown, Ind.	1	H	[redacted]	2/12	9 pm				2/14	6:06am	6:20 am	33	20		X

2063

I.C.C. Dkt. No. 29809
Exhibit _____

1824

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. B. & Q. Railroad - 2/14/46

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute: To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards: Date	Time: Set	Time: Unloaded	Total Time Confined in Cars: Hrs	Total Time Confined in Cars: Min	Moving 28-Hr. Law	Under 36-hr Releases
Giddings, Colo.	2	S	[redacted]	2/10	3 pm	So. Omaha, Neb.	2/12	11:50pm	2/14	3:05am	3:15 am	27	25		X

2064

I.C.C. Dkt. No. 29809
Exhibit _____

1825

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. R. I. & P. Railroad - 2/14/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Peoria, Ill.	1	H	Salable	2/13	3 pm				2/14	1:30pm	1:38 pm	22	38		X
Aledo, Ill.	2	"	[redacted]	"	4:30pm				"	"	"	21	08		X
Cambridge, Ill.	1	"	[redacted]	"	4 pm				"	"	"	21	38		X

2065

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
I. C. Railroad - 2/14/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Remsen, Ia.	1	H	[redacted]	2/13	3 pm				2/14	11:30pm	12:45 am	33	45		X
George, Ia.	1	"	[redacted]	"	2:16pm				"	"	"	34	45		X
Sheldon, Ia.	2	"	[redacted]	"	6:30pm				"	"	"	30	15		X
Sioux Falls, S. Dak.	1	"	[redacted]	"	4:30pm				"	"	"	32	15		X
"	1	S	Salable	"	"				"	"	"	32	15		X
Manchester, Ia.	3	H	[redacted]	"	6 pm				"	"	"	31	45		X
Dubuque, Ia.	1	Mixed	[redacted]	"	"				"	"	"	31	45		X

2066

1826

I.C.C. Dkt. No. 29809
Exhibit _____

1827

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. & N. W. Railroad - 2/14/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Onslow, Ia.	2	H	[redacted]	2/13	2 pm				2/14	11:46am	12:09 pm	22	09		X

1827

2067

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS
C. & N. W. Railroad - 2/14/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Sibley, Ia.	2	H	[redacted]	2/12	8 pm	Sioux City, Ia.	2/13	4:05pm	2/14	3:10pm	3:16 pm	23	11		X
Charlotte, Ia.	4	"	[redacted]	2/13	5 pm				"	2:36pm	2:44 pm	21	44		X
Green Bay, Wis.	2	"	[redacted]	"	"				"	8:20pm	8:30 pm	23	30		X

1828

2068

I.C.C. Dkt. No. 29809
Exhibit _____

1829

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

Penna. Railroad - 2/14/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Mt. Vernon, Ohio	1	S	[redacted]	2/11	6 pm	Crestline, Ohio	2/13	11 am	2/14	11:40am	11:46 am	24	46		X
Logansport, Ind.	1	H	[redacted]	2/13	5 pm				2/14	5:45pm	5:45 pm	24	45		X

2069

I.C.C. Dkt. No. 29809
Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

N. Y. C. Railroad - 2/14/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs	Min	Moving 28-Hr. Law	Under 36-hr Releases
Hutsonville, Ill.	2	H	[redacted]	2/13	3 PM				2/14	10:35pm	10:38 pm	31	38		X

2070

1830

RÉCORD

P.1831-1865

I.C.C. Dkt. No. 29809
Exhibit _____

1831

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

B. & O. Railroad - 2/15/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Zanesville, O.	1	S	[redacted]	2/12	5:30pm	Willard, O.	2/14	5 am	2/15	5:35am	5:40 am	24	40		X

2071

I.C.C. Dkt. No. 29809
Exhibit _____

1832

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C. B. & Q. Railroad - 2/15/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Lovell, Wyo.	3	C	Salable	2/10	4:30pm	Lincoln, Neb.	2/14	1:30pm	2/15	2:10pm	2:14 pm	24	44		X

2072

I.C.C. Dkt. No. 29809

Exhibit _____

18833

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C. M. & St. P. & P. Railroad - 2/15/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Ionia, Ia.	1	H	[redacted]	2/14	8 am				2/15	10:10am	10:26 am	26	26		X
Chester, Ia.	3	C	Salable	2/14	6 pm				"	9:08pm	10 pm	28	26		X
Sheldon, Ia.	2	H	[redacted]	"	"				"	"	"	28	26		X
Kimball, S. Dak.	5	C	Salable	"	10:45am				"	"	"	35	15		X
Wesley, Ia.	3	"	"	"	5:30pm				"	"	"	28	30		X
Britt, Ia.	1	H	[redacted]	"	5:45pm				"	"	"	28	15		X

1833

2073

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C. R. I. & P. Railroad - 2/15/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Date	Time Set	Time Unloaded	Total Time Confined in Cars Hrs	Total Time Confined in Cars Min	Moving 28-Hr. Law	Under 36-hr Releases
Peoria, Ill.	1	H	[redacted]	2/14	3 pm				2/15	2:40pm	2:46 pm	23	46		X
W. Liberty, Ia.	1	"	[redacted]	"	5 pm				2/15	"	"	21	46		X
Peoria, Ill.	1	C	Salable	"	2 pm				"	"	"	24	46		X
Des Moines, Ia.	2	H	[redacted]	"	10 pm				"	8:17pm	8:25 pm	22	25		X

1834

2074

I.C.C. Dkt. No: 29809

Exhibit _____

1835

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I. C. Railroad - 2/15/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Sheldon, Ia.	1	H	[redacted]	2/14	6:15pm				2/15	8:55pm	9:30 pm	27	15		X
Marcus, Ia.	2	C	Salable	"	4 pm				"	"	"	29	30		X
Sioux Falls, S. Dak.	1	H	[redacted]	"	4 pm				"	"	"	29	30		X
Knierim, Ia.	1	H	Salable	"	5:55pm				"	"	"	27	35		X
Waverly, Ia.	2	"	[redacted]	"	8 pm				"	"	"	25	30		X

2075

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C. & N. W. Railroad - 2/15/49

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Boone, Ia.	1	C	Salable	2/14	7 pm				2/15	5:15pm	6:20 pm	23	40		X
Ogden, Ia.	3	"	"	"	6 pm				"	"	"	24	20		X
Battle Creek, Mich.	1	"	"	"	5 pm				"	"	"	25	20		X
Schleswig, Ia.	2	"	"	"	"				"	"	"	25	20		X
Lake City, Ia.	2	"	"	"	3:30pm				"	"	"	26	50		X
Sioux City, Ia.	1	H	"	"	3 pm				"	"	"	27	20		X
Auburn, Ia.	2	C	"	"	2 pm				"	"	"	28	20		X
Sac City, Ia.	5	"	"	"	6 pm				"	"	"	24	20		X
Moorhead, Ia.	1	"	"	"	3:30pm				"	"	"	26	50		X
Denver, Colo.	5	"	"	2/10	6 pm	Valley, Neb.	2/14	1 pm	2/15	"	"	29	20		X
Shelbahl, Ia.	2	"	"	2/14	8 pm				"	"	"	22	20		X

2076

1836

I.C.C. Dkt. No. 29809

Exhibit _____

4837

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C. & N. W. Railroad - 2/15/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Kamrar, Ia.	1	C	Salable	2/15	4 am				2/16	1:10am	1:25 am	21	25		X
Rutland, Ia.	1	"	"	2/14	11:30pm				"	"	"	25	55		X
Renwick, Ia.	1	"	"	"	8 pm				"	"	"	29	25		X
Lake City, Ia.	1	"	"	"	3:30pm				"	"	"	33	55		X

2077

I.C.C. Dkt. No. 29809

Exhibit _____

STATEMENT

SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

Santa Fe Railroad - 2/16/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Time Date	Time Set	Time Unloaded	Hrs	Min		
Burdick, Kans.	1	C	Salable	2/14	2:30pm				2/16	1:35am	1:36 am	35	06		X

2078

1838

I.C.C. Dkt. No. 29809
Exhibit

1839

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

Penna. Railroad - 2/16/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs.	Min.	Moving 28-Hr. Law	Under 36-hr Releases
E Liverpool, Ohio	1	C H	Salable	2/12	7 pm	Crestline, Ohio	2/14	6 pm	2/16	3:38am	3:43 am	33	43		X

2079

I.C.C. Dkt. No. 29809
Exhibit

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

I. C. Railroad - 2/16/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded Date	Loaded Time	Stopped Enroute To Feed At	Reloaded Date	Reloaded Time	Unloaded at U.S. Yards Time Date	Set	Unloaded	Total Time Confined in Cars Hrs.	Min.	Moving 28-Hr. Law	Under 36-hr Releases
Fulton, Ky	1	C	[redacted]	2/14	7:30pm				2/16	6:15am	6:35 am	35	05		X

2080

1840

I.C.C. Dkt. No. 29809

Exhibit _____

1841

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C. B. & Q. Railroad - 2/16/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Denver, Colo.	4	C	Salable	2/9	6 pm	Lincoln, Neb.	2/14	9:45pm	2/16	4:50am	5:15 am	31	30		X
Wauneta, Neb.	1	"	"	2/13	6 pm	"	"	"	"	"	"	31	30		X
Sidney, Mont.	1	"	"	2/11	5:50pm	Minn. Transfer	2/15	4 am	"	11:52am	11:55 am	31	55		X

2081

I.C.C. Dkt. No. 29809

Exhibit _____

1842

STATEMENT
SHOWING ARRIVALS LIVE STOCK SHIPMENTS AT U. S. YARDS, CHICAGO, ILLINOIS

C. & N. W. Railroad - 2/16/48

Origin	No. of Cars	Kind of Stock	Consignee	Loaded		Stopped Enroute			Unloaded at U.S. Yards			Total Time Confined in Cars		Moving 28-Hr. Law	Under 36-hr Releases
				Date	Time	To Feed At	Reloaded Date	Reloaded Time	Date	Time Set	Time Unloaded	Hrs	Min		
Greeley, Colo.	2	C	Salable	2/13	4 pm	Valley, Neb.	2/14	9:45 pm	2/16	6:45am	7:30 am	33	45		X
LaSalle, Colo.	1	C	"	"	5 pm	"	"	8:15 pm	"	"	"	35	15		X
Norfolk, Neb.	1	H	"	2/14	7 pm				2/16	"	"	36	30		X
Sheldahl, Ia.	1	H	Salable	"	8 pm				2/16	"	"	35	30		X
Colo, Ia.	1	C	"	2/15	9 am				"	"	"	22	30		X
Pilger, Ia.	2	"	"	2/14	8 pm				"	"	"	35	30		X

2082

1843

~~I.C.C. Docket 29809~~
Exhibit No. 46
Witness:

EXHIBIT NO. 46

STATEMENT SHOWING SHIPMENTS, RECEIPTS AND VALUATION OF LIVESTOCK AT UNION STOCK YARDS, CHICAGO, ILL.

	Page Nos.
Receipts other then from Railroads, years 1920 to 1946, inclusive	1
Receipts via Railroads indicated, years 1920 to 1946, inclusive	2,3
Receipts and Valuation fro 1865 to 1946	4,5
Shipments other than by Railroads from 1920 to 1946, inclusive	6
Shipments via Railroads indicated from 1920 to 1946, inclusive	7,8
Shipments of All Livestock from 1865 to 1946, inclusive	9,10

Authority

Eighty-First Annual Report (1946) issued by the Union Stockyard and Transit Co. of Chicago.

Chicago
2-24-48
IFA

2083

1844

I.C.C. Docket 29809
Exhibit No. _____
Witness: _____

STATEMENT SHOWING RECEIPTS OF LIVE STOCK AT THE UNION STOCKYARDS, CHICAGO, ILLINOIS
OTHERWISE THAN BY RAILROADS, YEARS 1920 TO 1946

Item No.	Year	A Cattle	B Calves	C Hogs	D Sheep	E Horses	F Total	G (1) Total Cars	H Total Trucks
		Receipts	Receipts	Receipts	Receipts	Receipts	Receipts	Receipts	Receipts
		(No.of Heads)	(No.of Heads)	(No.of Heads)	(No. of Heads)	(No.of Heads)	(No.of Heads)	(No.of Heads)	(No.of Heads)
1	1920	7,213	2,042	33,108	2,606	3,836	48,805	-	-
2	1921	6,917	2,587	51,091	3,614	2,518	66,727	-	-
3	1922	12,624	3,769	51,838	6,315	2,054	76,600	-	-
4	1923	15,767	4,462	62,203	6,035	2,237	90,704	-	-
5	1924	20,191	3,954	53,944	9,509	1,762	89,360	-	-
6	1925	35,457	6,402	68,070	16,485	1,801	128,213	-	-
7	1926	51,848	7,585	92,487	21,564	1,920	175,404	-	-
8	1927	55,260	10,693	148,251	39,209	1,618	255,061	-	-
9	1928	71,014	23,540	304,957	62,521	2,019	464,051	-	-
10	1929	100,460	35,545	379,481	88,498	2,455	606,439	9,964	-
11	1930	129,117	45,962	462,678	125,947	2,745	766,449	12,522	-
12	1931	182,295	70,175	682,675	169,939	3,456	1,108,540	18,038	-
13	1932	298,259	89,093	1,110,156	268,158	5,477	1,771,143	29,125	-
14	1933	464,142	126,166	1,953,777	348,917	7,675	2,900,677	47,769	-
15	1934	667,472	174,125	1,986,699	354,632	10,671	3,193,599	55,208	-
16	1935	695,614	172,852	1,252,957	481,368	10,261	2,613,052	45,454	124,554
17	1936	777,381	156,930	1,625,389	367,267	9,387	2,936,354	53,705	137,930
18	1937	707,024	163,039	1,582,696	351,717	8,775	2,813,251	-	128,056
19	1938	782,870	139,907	1,751,608	346,962	6,113	3,027,460	-	135,407
20	1939	861,394	129,509	1,961,721	329,366	6,356	3,308,346	-	147,816
21	1940	1,029,965	131,527	2,668,995	294,922	6,298	4,131,407	-	170,073
22	1941	1,170,032	138,286	2,423,361	320,575	3,314	4,055,568	-	173,912
23	1942	1,234,148	142,252	2,628,627	346,862	3,449	4,335,338	-	174,039
24	1943	1,153,428	132,388	2,562,718	343,377	3,129	4,195,040	-	157,809
25	1944	1,128,494	145,985	2,622,684	326,318	3,249	4,226,730	-	147,028
26	1945	1,213,840	121,680	1,377,899	283,889	2,377	2,999,685	-	125,894
27	1946	1,161,848	105,905	1,542,230	373,326	966	3,190,275	-	119,780

AUTHORITY

Annual Reports 55 to 81 issued by the Union Stock Yard and Transit Company

For period 1920 to 1925, inclusive USY&T Co. reports indicated heading "Driven In".
" " 1926 to 1932, " " " " " " "Other than by Railroads".
" " 1933 to 1946, " " " " " " "Stock by Trucks"

2084

EXPLANATION OF REFERENCE MARK

(1) Carloads of live stock received by truck and computed on rail car basis.

1845

I.C.C. Docket 29809
Exhibit No. _____
Witness: _____

STATEMENT SHOWING RECEIPTS OF LIVESTOCK AT THE UNION STOCKYARDS, CHICAGO, ILLINOIS, BY RAIL VIA RAILROADS INDICATED

Item No.	Railroads	A 1920 Received (Cars)	B 1921 Received (Cars)	C 1922 Received (Cars)	D 1923 Received (Cars)	E 1924 Received (Cars)	F 1925 Received (Cars)	G 1926 Received (Cars)	H 1927 Received (Cars)	I 1928 Received (Cars)	J 1929 Received (Cars)	K 1930 Received (Cars)	L 1931 Received (Cars)	M 1932 Received (Cars)	N 1933 Received (Cars)
1	Alton	8,432	10,829	9,076	10,495	10,627	11,113	10,611	9,695	9,094	8,928	7,714	5,962	5,847	4,601
2	A.T.& S.F.	10,024	8,704	8,512	9,130	10,389	9,256	8,463	8,327	9,436	8,658	8,048	8,304	7,927	8,048
3	B.& O.	410	157	103	109	139	106	71	183	198	139	116	85	37	24
4	C.& O.	-	2	2	1	60	111	58	102	110	159	125	61	177	205
5	C.B.& Q.	44,831	45,915	51,276	57,636	55,048	50,594	51,836	46,110	41,751	39,547	35,680	32,739	30,912	34,517
6	C.& E.I.	4,941	4,636	4,159	3,769	3,330	3,104	2,685	2,916	2,695	2,531	1,796	1,245	1,488	1,228
7	C.G.W.	10,850	9,789	9,472	10,374	10,125	8,283	9,194	9,054	8,382	8,290	7,401	6,690	6,524	4,428
8	C.I.& L.	3,424	3,005	2,911	2,311	2,362	1,803	1,532	1,620	1,493	1,124	999	645	489	525
9	C. Jct.	5	2	-	-	1	2	5	1	2	4	3	3	8	21
10	C.M.St.P.& P.	51,901	51,848	51,218	58,647	58,538	49,477	52,832	49,686	46,952	44,266	40,148	42,147	26,962	24,667
11	C.& N.W.	57,069	59,796	59,001	67,968	68,583	57,572	59,710	52,080	52,966	51,283	50,250	49,488	34,019	30,123
12	C.R.I.& P.	29,945	32,860	34,156	39,950	40,190	32,485	32,310	34,524	31,304	29,084	28,418	26,322	21,210	20,501
13	C.C.C.& St.L.	-	-	-	-	-	-	-	-	-	-	-	-	-	-
14	Erie	620	361	283	279	314	247	232	273	248	171	134	80	56	34
15	G.T.	755	380	297	256	315	327	253	331	258	182	124	87	62	59
16	Ill.Cent.	26,692	24,194	27,409	26,713	24,447	21,483	20,101	19,546	18,063	18,243	16,458	15,321	9,462	9,815
17	I.H.B.	72	8	11	3	20	6	27	8	18	14	2	12	3	1
18	M.C.	516	335	351	255	279	464	231	312	437	447	406	133	40	86
19	M.ST.P.& S.S.M.	7,326	4,878	6,001	4,180	3,798	3,415	3,249	3,188	3,304	2,624	1,770	1,515	1,139	849
20	N.Y.C.	2,051	1,653	2,227	2,667	2,495	2,086	1,630	1,682	1,410	1,233	1,003	718	716	494
21	N.Y.C.& St.L.	343	321	437	460	601	567	352	449	472	429	351	190	82	113
22	P. R.R.	2,327	1,409	1,277	1,058	1,057	1,188	1,152	1,107	771	850	710	82	408	616
23	P.M.	314	147	145	127	140	159	163	146	142	122	95	483	69	50
24	Wabash	5,602	6,572	7,386	6,844	6,108	5,535	4,423	3,673	3,720	3,000	3,077	4,131	3,177	4,434
		267,955	267,802	275,712	303,228	298,966	259,083	261,320	245,013	233,166	221,328	204,828	196,443	149,714	145,439

2085

1846

I.C.C. Docket 29809
Exhibit No. _____
Witness: _____

STATEMENT SHOWING RECEIPTS OF LIVESTOCK AT THE UNION STOCKYARDS AT CHICAGO, ILLINOIS
BY RAIL VIA RAILROADS INDICATED

Item No.	Railroads	A 1934 Received (Cars)	B 1935 Received (Cars)	C 1936 Received (Cars)	D 1937 Received (Cars)	E 1938 Received (Cars)	F 1939 Received (Cars)	G 1940 Received (Cars)	H 1941 Received (Cars)	I 1942 Received (Cars)	J 1943 Received (Cars)	K 1944 Received (Cars)	L 1945 Received (Cars)	M 1946 Received (Cars)
1	Alton	3,758	2,354	2,136	2,522	1,724	1,881	2,158	2,120	2,085	2,899	2,408	1,308	499
2	A.T.& S.F.	8,879	5,535	4,679	5,578	5,149	5,070	5,450	4,883	5,962	7,875	8,619	7,296	5,262
3	B.& O.	32	93	36	46	71	9	7	17	27	57	253	22	42
4	C.& C.	310	402	466	872	824	624	646	630	930	1,092	2,833	501	369
5	C.B.& Q.	33,034	19,325	23,005	16,660	16,868	16,135	15,825	14,714	14,473	14,645	15,857	16,245	12,240
6	C.& E.I.	1,077	1,029	421	606	470	372	704	1,172	1,234	732	1,591	582	612
7	C.G.W.	4,294	2,987	5,903	4,639	4,571	2,406	2,307	1,889	1,992	2,069	2,248	2,493	2,066
8	C.I.& L.	139	309	346	462	411	352	269	174	168	380	827	185	94
9	C. Jct.	1	2	2	5	-	9	-	-	-	-	-	1	30
10	C.M.St.P.& P.	24,851	15,229	19,621	15,713	16,201	13,856	12,768	12,023	11,686	12,396	13,458	14,749	12,804
11	C.& N.W.	33,306	19,118	22,139	19,059	19,239	18,776	18,536	18,655	19,392	19,306	18,973	18,187	14,198
12	C.R.I.& P.	19,136	8,610	10,020	9,775	9,626	8,882	8,387	6,528	7,484	9,104	9,559	9,003	5,896
13	C.C.C.& St.L.	-	-	-	-	-	-	-	-	-	-	-	-	-
14	Erie	23	24	23	155	179	102	235	125	164	114	327	27	23
15	G.T.	125	120	81	104	59	64	66	136	122	197	200	105	152
16	Ill.Cent.	9,136	9,552	10,470	9,405	10,047	9,877	10,612	9,700	9,129	9,149	10,315	9,120	8,306
17	I.H.B.	5	1	-	8	5	6	-	3	11	1	9	270	-
18	M.C.	135	106	57	68	39	16	39	44	101	353	438	76	78
19	M.St.P.& S.S.M.	1,733	500	540	634	640	651	555	413	1,977	2,251	1,380	665	778
20	N.Y.C.	397	444	204	270	194	187	126	343	233	336	603	265	159
21	N.Y.C.& St.L.	156	99	82	134	53	88	128	196	290	515	921	211	131
22	P. R.R.	724	952	468	792	482	289	499	671	558	578	1,364	155	182
23	P.M.	71	63	53	48	24	16	20	48	41	93	192	71	69
24	Wabash	1,546	3,007	1,026	1,006	1,550	1,525	1,407	1,330	1,905	3,429	3,219	1,980	1,049
		45,870	89,941	102,586	91,361	88,386	81,193	80,766	75,275	79,964	86,771	95,674	83,457	65,139

AUTHORITY

Annual Reports 55 to 81 issued by the Union Stockyards and Transit Co., of Chicago, Illinois.

2086

1947.

I.C.C. Docket 29809
Exhibit No. _____
Witness: _____

STATEMENT SHOWING THE RECEIPTS AND VALUATION OF ALL LIVE STOCK AT THE UNION STOCKYARDS, CHICAGO, ILL., FOR THE TERM OF 81 YEARS ENDING DECEMBER 31, 1946

Item No.	Year	A Cattle	B Calves	C Hogs	D Sheep	E Horses	F Total	G Valuation
		Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)
1	1865-5 days	613	-	17,764	1,433		19,810	$ -
2	1866	393,007	-	961,746	207,987	1,553	1,564,293	42,185,328
3	1867	329,188	-	1,696,738	180,888	848	2,207,661	42,375,241
4	1868	324,524	-	1,706,782	270,891	1,902	2,304,099	52,506,288
5	1869	403,102	-	1,661,869	340,072	1,524	2,406,567	60,171,217
6	1870	532,964	-	1,693,158	349,853	3,537	2,579,512	62,090,631
7	1871	543,050	-	2,380,083	315,053	5,963	3,244,149	60,331,082
8	1872	684,075	-	3,252,623	310,211	12,145	4,259,054	87,500,000
9	1873	761,428	-	4,437,750	291,734	20,839	5,511,201	91,321,162
10	1874	843,966	-	4,258,379	333,655	17,588	5,453,588	115,049,140
11	1875	920,843	-	3,912,110	418,948	11,346	5,263,247	117,533,942
12	1876	1,096,745	-	4,190,006	364,095	8,159	5,659,005	111,185,650
13	1877	1,033,151	-	4,025,970	310,240	7,874	5,377,235	99,024,100
14	1878	1,083,068	-	6,339,654	310,420	9,415	7,742,557	106,101,879
15	1879	1,215,732	-	6,448,330	325,119	10,473	7,999,654	114,795,834
16	1880	1,362,477	-	7,059,555	335,810	10,398	8,788,240	143,057,626
17	1881	1,498,550	48,948	6,474,844	403,624	12,909	8,528,875	183,007,710
18	1882	1,582,530	24,965	5,817,504	628,887	13,856	8,067,742	196,670,221
19	1883	1,878,944	30,223	5,640,625	749,917	15,255	8,314,964	201,252,772
20	1884	1,817,697	52,353	5,351,967	801,630	18,602	8,042,249	187,387,680
21	1885	1,905,518	58,500	6,937,535	1,003,598	19,356	9,924,507	173,598,002
22	1886	1,963,900	51,290	6,716,761	1,008,790	27,599	9,770,340	166,741,754
23	1887	2,382,008	65,859	5,470,852	1,360,862	46,404	9,325,985	176,644,597
24	1888	2,611,453	96,086	4,921,712	1,515,014	55,333	9,199,688	182,202,789
25	1889	3,023,281	122,968	5,998,526	1,832,469	79,926	11,057,170	203,321,924
26	1890	3,484,280	175,025	7,663,829	2,182,667	101,566	13,607,367	231,344,879
27	1891	3,250,359	205,383	8,600,805	2,153,537	94,396	14,304,480	239,434,775
28	1892	3,571,796	197,576	7,714,435	2,145,079	86,998	13,715,884	253,836,502
29	1893	3,133,406	210,557	6,057,278	3,031,174	82,492	12,514,907	249,542,377
30	1894	2,974,363	160,949	7,483,228	3,099,725	97,415	13,815,680	228,153,029
31	1895	2,588,558	168,740	7,885,283	3,406,739	113,193	14,162,513	200,584,380
32	1896	2,600,476	138,337	7,659,472	3,590,655	105,978	14,094,918	187,745,655
33	1897	2,554,924	122,976	8,363,724	3,606,640	111,601	14,759,865	216,305,396
34	1898	2,480,897	132,733	8,817,114	3,529,439	118,754	15,138,937	229,301,296
35	1899	2,514,446	136,676	8,177,870	3,682,832	111,611	14,623,435	233,711,180
36	1900	2,729,046	136,310	8,109,064	3,548,885	99,010	14,622,315	262,154,272
37	1901	3,031,396	181,824	8,290,494	4,044,095	109,353	15,657,162	283,955,239
38	1902	2,941,559	251,747	7,895,238	4,515,716	102,100	15,706,360	312,834,386
39	1903	3,432,486	271,743	7,325,923	4,582,760	100,603	15,713,515	288,152,707
40	1904	3,259,185	267,499	7,238,746	4,504,630	105,949	15,376,009	264,124,607
41	1905	3,410,469	380,835	7,725,738	4,736,558	127,250	16,380,850	300,472,480
42	1906	3,329,250	413,269	7,275,063	4,205,449	126,979	15,950,010	317,467,535
43	1907	3,305,314	421,934	7,201,061	4,218,115	102,055	15,248,479	319,202,239
44	1908	3,039,206	421,671	8,131,465	4,351,889	92,138	16,036,369	306,566,518

(Concluded on Page 2)

2 087

I.C.C. Docket 29809
Exhibit No. _____
Witness: _____

STATEMENT SHOWING THE RECEIPTS AND VALUATION OF ALL LIVE STOCK AT THE UNION STOCKYARDS, CHICAGO, ILL., FOR THE TERM OF 61 YEARS ENDING DECEMBER 31, 1946

Item No.	Year	A Cattle	B Calves	C Hogs	D Sheep	E Horses	F Total	G Valuation
		Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)	Receipts (No. of Heads)
1	1909	2,929,805	409,714	6,619,018	4,441,424	91,411	14,491,372	323,607,543
2	1910	3,052,958	499,941	5,586,850	5,229,294	83,439	14,452,490	357,145,681
3	1911	2,931,631	521,512	7,103,160	5,736,244	104,545	16,397,492	339,484,690
4	1912	2,652,342	505,401	7,160,967	6,055,546	92,977	16,467,233	375,694,939
5	1913	2,513,074	375,382	7,570,936	5,902,798	90,615	16,452,807	409,134,674
6	1914	2,237,661	363,614	6,618,166	5,378,345	106,282	14,704,268	375,696,569
7	1915	2,262,752	422,221	7,652,071	3,510,015	165,253	14,012,312	370,936,156
8	1916	2,730,176	519,624	9,188,224	4,291,024	205,449	16,934,497	509,620,023
9	1917	3,209,427	610,844	7,168,852	3,595,228	107,311	14,691,662	630,612,550
10	1918	3,789,922	657,767	8,614,199	4,629,736	87,820	17,779,435	904,715,357
11	1919	3,502,400	751,003	8,678,476	5,243,957	45,762	18,215,603	880,853,691
12	1920	3,107,090	742,405	7,526,120	4,005,237	43,020	15,423,872	665,421,232
13	1921	2,793,294	746,244	8,147,646	4,734,408	33,723	16,455,315	427,291,748
14	1922	3,163,009	771,489	8,156,472	3,873,917	31,689	15,996,576	463,844,813
15	1923	3,157,100	760,751	10,460,134	4,097,833	26,065	18,501,883	504,151,375
16	1924	3,202,719	794,350	10,443,175	4,192,265	21,030	18,653,539	528,489,268
17	1925	3,023,387	847,762	7,995,963	3,968,670	17,683	15,853,466	541,873,746
18	1926	3,256,916	755,393	7,092,529	4,404,851	18,479	15,528,168	520,064,360
19	1927	2,672,425	710,398	7,724,216	3,629,320	15,732	15,152,091	492,627,471
20	1928	2,505,256	761,611	8,539,405	3,867,882	19,390	15,693,544	522,551,609
21	1929	2,388,422	672,073	8,192,951	3,784,866	18,826	15,057,135	521,375,764
22	1930	2,239,042	556,661	7,869,914	4,339,706	18,408	15,019,131	417,900,451
23	1931	2,286,556	546,746	7,941,340	4,488,431	16,852	15,281,427	293,345,493
24	1932	2,005,745	446,842	6,602,237	3,928,185	14,369	12,991,378	186,342,311
25	1933	2,066,659	440,324	7,791,626	3,536,177	16,105	13,850,891	187,305,842
26	1934	2,727,260	737,288	6,510,002	3,002,710	20,906	12,998,166	216,784,374
27	1935	1,972,180	456,766	3,600,343	2,940,721	19,365	8,989,395	250,561,099
28	1936	2,234,065	410,836	4,364,138	2,505,393	17,208	9,621,640	289,363,788
29	1937	1,980,992	386,068	3,968,398	2,500,966	13,422	8,849,846	293,078,815
30	1938	1,884,553	325,143	4,188,055	2,563,307	8,866	8,970,424	256,616,763
31	1939	1,818,494	312,052	4,263,810	2,498,869	7,948	8,901,173	249,463,937
32	1940	1,925,792	271,117	5,385,492	2,102,521	7,986	9,692,908	269,999,564
33	1941	2,035,409	243,724	4,633,712	2,178,518	3,760	9,095,123	348,531,743
34	1942	2,181,763	248,352	5,338,187	2,596,140	3,620	10,368,062	501,105,873
35	1943	2,143,129	216,899	5,791,541	2,389,871	3,653	10,545,093	549,494,037
36	1944	2,339,829	267,335	6,018,098	2,055,797	4,156	10,705,215	526,512,554
37	1945	2,390,676	229,584	3,516,182	1,874,566	3,101	8,014,109	507,443,642
38	1946	1,959,549	194,243	3,541,340	1,486,733	1,802	7,183,667	519,383,243
	Total	185,317,201	24,456,480	512,569,320	225,700,158	4,009,722	952,052,875	24,969,389,962
						Grand Total Combined Receipts and Shipments		1,199,918,770

AUTHORITY

Eighty-First Annual Report (1946) issued by the Union Stockyard and Transit Co. of Chicago.

2088

1849

I.C.C. Docket 29809
Exhibit No. _____
Witness: _____

STATEMENT SHOWING SHIPMENTS OF LIVE STOCK AT THE UNION STOCK YARDS, CHICAGO, ILLINOIS
OTHER THAN BY RAILROADS, YEARS 1920 TO 1946

Item No.	Year	A Cattle	B Calves	C Hogs	D Sheep	E Horses	F Total	G (1) Total Cars	H Total Trucks
		Shipped	Shipped	Shipped	Shipped	Shipped	Shipped	Shipped	Shipped
		(No.of Heads)	(No.of Heads)	(No.of Heads)	(No.of Heads)	(No.of Heads)	(No.of Heads)	(No.of Heads)	(No.of Heads)
1	1920	-	-	-	-	-	-	-	-
2	1921	-	-	-	-	-	-	-	-
3	1922	-	-	-	-	-	-	-	-
4	1923	-	-	-	-	-	-	-	-
5	1924	-	-	-	-	-	-	-	-
6	1925	-	-	-	-	-	-	-	-
7	1926	-	-	-	-	-	-	-	-
8	1927	-	-	-	-	-	-	-	-
9	1928	-	-	-	-	-	-	990	-
10	1929	-	-	-	-	-	67,090	1,442	-
11	1930	30,608	2,919	876	32,687	-	110,316	2,657	-
12	1931	57,939	6,354	4,724	41,262	37	129,180	3,703	-
13	1932	76,418	3,810	2,768	40,808	5,376	130,968	4,208	-
14	1933	87,119	3,162	4,130	29,200	7,357	160,863	4,686	-
15	1934	91,414	4,627	3,508	50,958	10,356	192,315	5,447	11,930
16	1935	118,339	15,131	2,565	46,015	10,265	241,983	7,244	14,014
17	1936	155,957	18,861	6,336	50,829	10,000	180,014	-	11,000
18	1937	125,272	27,139	3,791	17,760	6,052	182,560	-	10,791
19	1938	120,505	23,337	4,315	29,997	4,406	185,356	-	10,976
20	1939	122,961	19,331	15,522	23,883	3,709	183,433	-	11,218
21	1940	129,928	18,988	7,859	23,221	3,437	160,662	-	9,974
22	1941	116,293	13,533	9,420	19,304	2,112	171,460	-	10,007
23	1942	124,966	19,282	9,653	15,218	2,341	156,711	-	9,503
24	1943	120,911	10,537	10,863	12,299	2,101	157,585	-	8,913
25	1944	110,527	13,627	13,104	18,063	2,264	168,233	-	9,362
26	1945	116,016	21,194	10,223	18,520	2,280	240,162	-	11,229
27	1946	164,733	18,972	27,087	28,670	700			

AUTHORITY

Annual Reports 55 to 81 issued by the Union Stock Yard and Transit Company.

For period 1920 to 1925, inclusive USY&T Co. reports indicated heading "Driven In".
" " 1926 to 1932, " " " " " " "Other than by Railroads".
" " 1933 to 1946, " " " " " " "Stock by Trucks".

2089

EXPLANATION OF REFERENCE MARK

(1) Carloads of live stock received by truck and computed on rail car basis.

1850

I.C.C. Docket 29809
Exhibit No. _____
Witness: _____

STATEMENT SHOWING SHIPMENTS OF LIVESTOCK AT THE UNION STOCKYARDS, CHICAGO, ILLINOIS
BY RAIL VIA RAILROADS INDICATED

Item No.	Railroads	A 1920	B 1921	C 1922	D 1923	E 1924	F 1925	G 1926	H 1927	I 1928	J 1929	K 1930	L 1931	M 1932	N 1933
		Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)	Shipped (Cars)
1	Alton	516	263	266	272	251	256	235	187	218	186	99	78	68	74
2	A.T.& S.F.	431	324	356	357	367	394	226	91	104	96	83	65	58	55
3	B.& O.	11,923	16,821	13,823	16,652	17,628	15,251	15,258	13,904	11,909	11,939	12,206	11,842	8,045	8,050
4	C.& O.	201	203	53	24	2	4	3	2	15	55	529	1,208	922	746
5	C.B.& Q.	2,320	1,279	1,536	1,368	1,39	1,159	1,166	658	734	679	480	327	167	136
6	C.& E.I.	653	826	654	662	576	620	790	570	471	462	391	536	227	114
7	C.G.W.	434	137	158	137	224	147	196	164	223	165	147	70	14	58
8	C.I.& L.	1,258	1,766	1,435	1,478	1,099	894	1,222	864	830	631	567	430	275	155
9	C. Jct.	74	23	84	19	16	7	35	11	4	2	2	-	1	-
10	C.M.St.P.& P.	1,956	1,635	1,983	2,006	2,256	1,878	2,007	1,849	1,564	1,581	1,405	1,027	753	467
11	C.& N.W.	4,309	3,449	3,453	3,004	2,734	2,020	2,471	1,915	1,969	1,482	1,439	1,073	893	775
12	C.R.I.& P.	962	477	571	539	522	407	494	254	255	253	194	186	86	69
13	C.C.C.& St.L.	-	-	-	-	-	-	-	-	-	-	-	-	-	-
14	Erie	930	532	466	436	373	291	365	311	311	212	302	322	190	53
15	G.T.	1,842	952	1,481	909	949	639	691	452	391	296	170	209	170	103
16	Ill.Cent.	1,711	2,619	2,694	2,097	2,056	1,703	2,150	1,699	1,399	1,706	970	732	319	305
17	I.H.B.	-	-	-	2	-	1	2	-	-	-	-	3	-	-
18	M.C.	5,562	4,589	3,841	5,250	5,617	3,463	4,050	3,375	4,167	4,190	3,937	4,259	2,964	1,681
19	M.St.P.& S.S.M.	221	127	134	143	148	96	86	86	193	183	51	51	24	53
20	N.Y.C.	8,604	11,369	9,456	11,760	12,786	10,859	10,317	9,434	8,428	7,411	6,949	6,147	3,013	3,168
21	N.Y.C.& St.L.	13,765	11,411	11,375	11,360	8,739	8,291	9,335	8,579	8,450	7,329	8,412	8,839	7,680	6,694
22	P. R.R.	17,767	17,908	2,165	14,652	17,644	14,901	15,222	13,699	11,124	10,597	9,392	10,306	116	6,962
23	P.M.	150	268	332	285	333	304	261	193	210	260	239	311	7,692	99
24	Wabash	826	818	1,095	947	914	1,026	919	654	701	609	537	735	382	264
		76,549	77,801	72,396	74,359	76,624	64,621	67,601	55,951	53,545	50,334	48,501	48,756	34,059	30,098

2090

851

I.C.C. Docket 29809
Exhibit No. _____
Witness: _____

STATEMENT SHOWING SHIPMENTS OF LIVESTOCK AT THE UNION STOCKYARDS AT CHICAGO, ILLINOIS
BY RAIL VIA RAILROADS INDICATED

Item No.	Railroads	A 1934 Shipped (Cars)	B 1935 Shipped (Cars)	C 1936 Shipped (Cars)	D 1937 Shipped (Cars)	E 1938 Shipped (Cars)	F 1939 Shipped (Cars)	G 1940 Shipped (Cars)	H 1941 Shipped (Cars)	I 1942 Shipped (Cars)	J 1943 Shipped (Cars)	K 1944 Shipped (Cars)	L 1945 Shipped (Cars)	M 1946 Shipped (Cars)
1	Alton	32	26	35	38	30	32	25	22	15	15	19	12	30
2	A.T.& S.F.	47	48	33	34	32	25	25	26	11	34	25	106	51
3	B.& O.	7,593	5,068	5,741	4,521	5,312	5,312	5,128	4,927	4,625	6,849	6,141	7,273	7,347
4	C.& O.	762	401	374	439	522	958	1,238	1,263	1,298	1,077	1,031	604	838
5	C.B.& Q.	119	133	134	144	108	47	67	60	62	85	100	74	151
6	C.& E.I.	221	85	86	104	56	49	43	30	39	34	103	82	90
7	C.G.W.	46	36	23	26	28	38	30	17	11	26	31	20	25
8	C.I.& L.	153	130	118	89	71	55	25	26	50	153	104	261	116
9	C. Jct.	-	-	2	-	4	-	-	4	-	-	-	-	-
10	C.M.St.P.& P.	407	526	500	509	464	454	616	667	720	906	1,046	1,649	1,109
11	C.& N.W.	1,109	813	932	1,232	1,038	1,219	1,063	1,010	829	552	407	375	369
12	C.R.I.& P.	90	59	54	108	42	32	27	27	20	31	47	25	48
13	C.C.C.& St.L.	97	111	73	78	39	45	34	17	11	45	3	-	-
14	Erie	62	50	121	74	76	42	19	43	46	184	124	114	109
15	G.T.	146	167	215	266	320	406	458	329	523	847	749	939	1,097
16	Ill.Cent.	740	238	319	316	270	269	254	311	293	187	202	211	119
17	I.H.B.	-	-	-	-	-	-	-	-	-	-	-	-	-
18	L.S.	2,191	2,091	2,716	2,181	2,393	1,873	2,019	1,653	2,245	2,459	2,115	2,481	2,143
19	M.St.P.& S.S.M.	40	22	26	24	16	8	13	9	6	7	4	2	6
20	N.Y.C.	3,238	2,037	2,763	2,998	2,824	2,871	2,087	2,290	4,292	7,125	6,397	8,881	10,478
21	N.Y.C.& St.L.	6,519	4,833	5,279	4,442	4,391	4,265	4,573	4,620	4,684	7,985	6,623	6,756	6,501
22	P. R.R.	7,477	5,483	7,127	6,216	6,668	5,778	6,303	6,624	8,604	9,346	10,212	14,062	12,040
23	P.M.	205	117	188	114	118	131	111	28	36	89	63	617	1,374
24	Wabash	301	313	349	207	91	106	78	82	83	80	76	69	135
		31,595	23,387	27,208	24,160	24,921	24,015	24,326	24,083	28,503	28,116	35,622	44,613	44,166

AUTHORITY

Annual Reports 55 to 61 issued by the Union Stockyards and Transit Co., of Chicago, Illinois.

2091

1852

1852

I.C.C. Docket 29809
Exhibit No. _____
Witness: _____

Page 7

STATEMENT SHOWING THE SHIPMENTS OF ALL LIVE STOCK AT THE UNION STOCKYARDS, CHICAGO, ILL.,
FOR THE TERM OF 81 YEARS ENDING DECEMBER 31, 1946

Item No.	Year	A Cattle	B Calves	C Hogs	D Sheep	E Horses	F Total
		Shipments (No. of Heads)	Shipments (No. of Heads)	Shipments (No. of Heads)	Shipments (No. of Heads)	Shipments (No. of Heads)	Shipments (No. of Heads)
1	1865-5 days	-	-	-	-	-	-
2	1866	263,693	-	482,875	75,447	162	822,177
3	1867	203,560	-	750,789	50,275	387	1,013,031
4	1868	215,987	-	1,020,329	81,634	2,185	1,320,135
5	1869	294,717	-	1,086,305	108,690	1,538	1,491,250
6	1870	391,709	-	924,453	116,711	3,488	1,436,361
7	1871	401,927	-	1,162,286	135,084	5,482	1,704,779
8	1872	510,025	-	1,835,594	145,016	10,625	2,501,260
9	1873	574,181	-	2,197,557	115,235	18,540	2,905,513
10	1874	622,929	-	2,330,361	1.0,555	16,608	3,150,453
11	1875	696,534	-	1,568,643	243,604	11,129	2,533,910
12	1876	797,724	-	1,131,635	195,925	6,839	2,132,123
13	1877	703,402	-	951,221	155,354	6,598	1,816,575
14	1878	699,108	-	1,266,906	156,727	8,176	2,130,917
15	1879	726,903	-	1,692,361	159,266	9,289	2,587,819
16	1880	886,614	-	1,394,990	156,510	8,713	2,446,827
17	1881	936,713	33,465	1,289,979	253,938	11,108	2,526,903
18	1882	921,009	10,229	1,747,722	314,200	12,788	3,005,948
19	1883	966,758	12,671	1,319,392	374,463	14,698	2,687,982
20	1884	791,884	31,089	1,392,615	290,352	18,247	2,524,187
21	1885	744,093	33,610	1,797,446	260,277	18,582	2,854,008
22	1886	704,675	18,657	2,090,734	266,912	26,388	3,107,416
23	1887	791,483	15,956	1,812,001	445,094	46,155	3,110,689
24	1888	968,385	23,663	1,751,829	601,241	52,866	3,397,984
25	1889	1,259,971	35,576	1,786,659	711,315	73,311	3,866,832
26	1890	1,260,309	61,466	1,985,700	925,854	94,362	4,327,691
27	1891	1,066,264	48,331	2,962,514	688,205	87,273	4,852,587
28	1892	1,121,675	31,004	2,926,145	483,368	74,368	4,636,560
29	1893	900,163	13,832	2,149,410	442,865	70,011	3,576,281
30	1894	950,736	11,865	2,465,058	333,398	90,441	3,851,523
31	1895	785,092	9,882	2,100,613	474,646	109,146	3,479,379
32	1896	818,326	6,457	1,895,312	561,239	98,445	3,380,779
33	1897	843,392	11,217	1,629,984	636,110	101,006	3,223,709
34	1898	865,642	27,844	1,340,544	543,425	102,234	2,879,689
35	1899	811,874	18,187	1,689,439	386,991	100,047	3,006,538
36	1900	934,849	14,060	1,452,183	487,254	91,703	2,979,849
37	1901	1,031,576	19,387	1,300,962	763,292	102,738	3,217,955
38	1902	909,915	26,770	1,251,798	831,726	96,432	3,116,643
39	1903	1,269,455	26,244	1,237,554	1,000,109	94,768	3,628,130
40	1904	1,326,332	23,414	1,626,022	1,362,270	98,032	4,436,072
41	1905	1,410,213	26,627	2,026,106	1,355,865	108,633	4,929,644
42	1906	1,352,998	23,325	1,742,606	1,341,273	106,604	4,566,806
43	1907	1,452,074	24,837	1,711,902	1,148,724	89,534	4,423,071
44	1908	1,355,336	31,342	1,869,756	1,214,072	76,021	4,546,529

2092

(Concluded on Page 2)

I.C.C. Docket 29809
Exhibit No. [redacted]
Witness: _____

STATEMENT SHOWING THE SHIPMENTS OF ALL LIVE STOCK AT THE UNION STOCKYARDS, CHICAGO, ILL., FOR THE TERM OF 81 YEARS ENDING DECEMBER 31, 1946
(continued)

Page 10

Item No.	Year	A Cattle	B Calves	C Hogs	D Sheep	E Horses	F Total
		Shipments (No. of Heads)	Shipments (No. of Heads)	Shipments (No. of Heads)	Shipments (No. of Heads)	Shipments (No. of Heads)	Shipments (No. of Heads)
1	1909	1,267,679	29,576	1,663,993	940,321	75,976	3,977,545
2	1910	1,311,884	35,199	1,202,390	1,493,946	67,110	4,110,531
3	1911	1,216,522	27,951	1,526,722	1,263,423	89,924	4,144,572
4	1912	971,206	22,469	1,572,652	1,174,673	80,691	3,821,691
5	1913	962,449	16,461	1,672,646	1,449,692	81,495	4,204,743
6	1914	807,111	16,709	1,290,712	1,273,264	94,335	3,482,131
7	1915	381,703	10,342	1,132,946	256,005	146,442	1,931,436
8	1916	701,672	24,545	1,404,727	829,405	193,290	3,153,639
9	1917	835,027	32,171	1,219,328	836,426	100,103	3,023,055
10	1918	989,871	35,436	970,864	1,205,210	87,057	3,288,440
11	1919	1,171,167	50,340	1,100,635	1,309,005	43,492	3,674,639
12	1920	1,193,564	53,066	1,656,526	1,202,148	39,406	4,144,716
13	1921	1,109,609	53,153	2,170,433	1,351,753	29,924	4,714,872
14	1922	1,067,413	49,722	1,852,006	1,273,107	27,389	4,290,087
15	1923	1,653,541	51,216	2,369,501	1,413,936	22,407	4,910,603
16	1924	1,056,065	49,348	2,989,326	1,380,735	17,328	5,494,852
17	1925	943,549	58,426	2,395,193	1,106,956	14,649	4,520,775
18	1926	1,012,910	46,193	2,108,120	1,443,348	15,630	4,626,201
19	1927	901,024	36,999	2,112,732	1,036,271	13,789	4,102,815
20	1928	735,965	26,716	2,144,996	1,127,725	18,226	4,053,628
21	1929	729,421	28,496	1,831,244	1,117,660	17,894	3,724,735
22	1930	693,705	15,954	1,786,295	1,311,435	15,993	3,823,382
23	1931	776,896	31,605	1,700,212	1,425,951	10,553	3,947,217
24	1932	633,269	31,516	1,035,684	915,053	11,863	2,627,403
25	1933	612,567	18,366	603,861	752,914	13,221	2,000,969
26	1934	699,751	38,813	639,816	537,430	19,094	1,934,904
27	1935	532,423	64,325	517,726	561,736	17,731	1,693,943
28	1936	660,176	60,986	609,747	504,294	15,583	1,850,786
29	1937	595,650	54,096	525,919	400,355	11,272	1,587,292
30	1938	577,753	42,755	524,732	499,622	7,336	1,652,210
31	1939	560,251	24,393	466,365	488,213	6,002	1,547,724
32	1940	568,891	23,112	447,076	339,542	8,507	1,407,128
33	1941	569,488	22,256	372,708	321,707	3,833	1,289,994
34	1942	679,654	32,792	467,054	298,454	3,565	1,481,533
35	1943	904,540	37,511	583,726	294,090	3,688	1,823,555
36	1944	881,702	30,423	451,407	282,307	4,010	1,649,849
37	1945	1,054,396	54,622	428,612	373,855	3,096	1,914,583
38	1946	1,117,442	54,383	526,495	401,141	1,732	2,101,193
	Total	69,143,997	2,068,252	116,250,191	54,795,645	3,607,810	247,865,895

Grand Total Combined Receipts and Shipments 1,199,918,770

2093

AUTHORITY

Eighty-First Annual Report (1946) issued by the Union Stockyard and Transit Co. of Chicago.

EXHIBIT NO. 47

~~I.C.C. DOCKET 29809~~
EXHIBIT NO. 47C
WITNESS

STATEMENT SHOWING BASIC LIVESTOCK RATES AND MINIMUM WEIGHTS PRIOR TO EX PARTE 123 INCREASE ALSO INCLUDING EX PARTE 123, 148, 162 AND 166 INCREASES FOR REPRESENTATIVE MILEAGES IN WESTERN TRUNK LINE AND SOUTHWESTERN TERRITORIES ON CATTLE SINGLE-DECK, SHEEP AND HOGS DOUBLE-DECK (176 ICC 1). RATES ON HOGS IN SINGLE-DECK CARS ARE UNIFORMLY 115% AND ON SHEEP IN SINGLE-DECK CARS, 125% OF THE BASIC RATES.

(1) 17000 Part 9 scale,
(2) 5 per cent increase, Ex Parte 123, 226 I.C.C. 41, effective March 28, 1938.
(3) Plus 3 per cent, Ex Parte 148, 248 I.C.C. 545; suspended 255 I.C.C. 357, 256 I.C.C. 502, 258 I.C.C. 455 and 259 I.C.C. 159 to December 1, 1945 and for six months after legal termination of the war. 264 I.C.C. 702.
(4) 15 per cent increase, Ex Parte 162, 266 I.C.C. 537, effective October 13, 1947
*(5) 10 per cent interim increase, effective October 13, 1947, Ex Parte 166 (Rates shown increased 10% X-166, applicable to Charges.)
*(6) 20 per cent increase, effective January 5, 1948 (Rates shown increased 20% X-166, applicable to charges.)
*This does not present an accurate picture as the increases of 10 and 20 per cent under Ex Parte 166 is to be added to the total transportation charge, not to the rate.

Line No.	A Miles	B (1)	C (2)	D (3)	E (4)	F (5)	G (6)
1	50	15	16	16	18	19.8	21.6
2	100	20	21	22	24	26.4	28.8
3	200	27	28	29	32	35.2	38.4
4	300	32	34	35	39	42.9	46.8
5	400	37	39	40	45	49.5	54.0
6	500	42	44	45	51	56.1	61.2
7	600	46	48	49	55	60.5	66.0
8	700	50	53	55	61	67.1	73.2
9	800	54	57	59	66	72.6	79.2
10	900	58	61	63	70	77.0	84.0
11	1000	62	65	67	75	82.5	90.0
12	1100	66	69	71	79	86.9	94.8
13	1200	70	74	76	85	93.5	102.0
14	1300	74	78	80	90	99.0	108.0
15	1400	78	82	84	94	103.4	112.8
16	1500	82	86	89	99	108.9	118.8
17	1600	86	90	93	104	114.4	124.8
18	1700	90	95	98	109	119.9	130.8
19	1800	94	99	102	114	125.4	136.8
20	1900	98	103	106	118	129.8	141.6
21	2000	102	107	110	123	135.3	147.6

The minimum weights on livestock are based on so-called standard 36 ft. cars and are as follows:

Cattle	22,000	Hogs DD	24,000	Sheep DD	20,000
		Hogs SD	16,500	Sheep SD	12,000

Appropriate minimum weights are provided for cars of greater length than 36 feet 7 inches.

2094

2-24-48 IFA Chicago

I.C.C. DOCKET 29809
EXHIBIT NO.,
WITNESS

STATEMENT SHOWING BASIC LIVESTOCK RATES(17000 PART 9, 176 ICC 1) PRIOR TO EX PARTE 123 INCREASE ALSO INCLUDING EX PARTE 123, 162 AND 166 INCREASES FROM REPRESENTATIVE ORIGINS IN IOWA AND WISCONSIN TO CHICAGO, ILL.

(1) Rates published following 17000 Part 9.
(2) Rates published following 17000 Part 9, increased under Ex Parte 123, effective March 28, 1938
(3) Prior to January 1, 1947, Effective date of Ex Parte 162.
(4) Subsequent to January 1, 1947.
*(5) Effective October 13, 1947 (10% increase in rates indicated - 10% is applicable to charges under X-166).
*(6) Effective January 5, 1948 (20% increase in rates indicated - 20% is applicable to charges under X-166).
*This does not present an accurate picture as the increases of 10% and 20% under Ex Parte 166 is to be added to the total transportation charge, not to the rate.

Line	A To Chicago, Ill. FROM	B (1)	C (2)	D (3)	E (4)	F (5)	G (6)
1	IOWA						
2	ƒClinton	23	24	24	28	30.8	33.6
3	ƒDeWitt	24	25	25	29	31.9	34.8
4	ƒStanwood	26	27	27	31	34.1	37.2
5	ƒMt. Vernon	27	28	28	32	35.2	38.4
6	Cedar Rapids	28	29	29	33	36.3	39.6
7	Marshalltown	32	34	34	39	42.9	46.8
8	Tama	31	33	33	38	41.8	45.6
9	Nevada	34	36	36	41	45.1	49.2
10	Ames	34	36	36	41	45.1	49.2
11	Boone	34	36	36	41	45.1	49.2
12	Jefferson	35	37	37	43	47.3	51.6
13	Carroll	37	39	39	45	49.5	54
14	Denison	39	41	41	47	51.7	56.4
15	Logan	40	42	42	48	52.8	57.6
16	Missouri Valley	40	42	42	48	52.8	57.6
17	Council Bluffs	40	42	42	48	52.8	57.6
18	WISCONSIN						
19	Beloit	19	20	20	23	25.3	27.6
20	Janesville	20	21	21	24	26.4	28.8
21	Evansville	21	22	22	25	27.5	30
22	Madison	22	23	23	26	28.6	31.2
23	Lodi	24	25	25	29	31.9	34.8
24	Baraboo	25	26	26	30	33	36
25	Reedsburg	26	27	27	31	34.1	37.2
26	Elroy	27	28	28	32	35.2	38.4
27	Sparta	29	30	30	35	38.5	42
28	La Crosse	31	33	33	38	41.8	45.6

ƒ Pick-up service

Tariff Authority

C&NW GFD 16909, ICC 10178
" " 16909-A, ICC 10484
" " 16909-C, ICC 11104
" " 16908, ICC 10177
" " 16908-A, ICC 10650

2095

2-24-48
IFA
Chicago

1856

~~I. C. C. Docket 29809~~

Exhibit No. 50

Witness VanTuyen

EXHIBIT NO. 50

CHICAGO and NORTH WESTERN RAILWAY COMPANY

Cost per car for Terminal Service on Livestock from Proviso Yard to Union Stock Yards, Chicago, Illinois.

December 1947

Sheet 1 - Computation of cost per car

Sheet 2 - Analysis of live stock traffic

Sheet 3 - Maintenance of way and structures

Sheet 4 - Maintenance of equipment and transportation

Sheet 5 - General expense, payroll taxes and summary

Sheet 6 - Computation of adjusted operating ratio

Accounting Department,
February 24, 1948.

2096

1857

CHICAGO and NORTH WESTERN RAILWAY COMPANY

Computation of Cost Per Car of Handling Livestock
from
Proviso Yard to Union Stock Yards, Chicago, Illinois,
December 1947.

Line No.		
1	Operating expenses and payroll taxes per car from sheet 5	$15.39
2	Application of adjusted operating ratio to determine cost including taxes and return on investment:	
3	$15.39 divided by .8021 from sheet 6	$19.19
4	Trackage charges not included above	$ 3.00
5	Total cost per car	$22.19
6	Note: These costs do not include any charge for:	
	(a) Unloading stock at U.S. Yards	
	(b) Handling at Proviso Yard	

Accounting Department,
February 24, 1948.

2097

CHICAGO and NORTH WESTERN RAILWAY COMPANY

Analysis of Livestock Traffic to Union Stock Yards
December 1947.

Line No.	No. of Cars (a)	No. of Trains (b)	Number of Cars			
			U.S. Yards (c)	Omaha Packing Company (d)	Ashland Avenue Yard (e)	Total (f)
1	Exclusive Livestock Trains					
2	1 to 5	54	163	3	-	166
3	6 to 10	17	124	-	-	124
4	11 and over	19	351	-	-	351
5	Total	90	638	3	-	641
6	Trains Containing Livestock and Other Perishable Freight					
7	1 to 5	1	1	-	1	2
8	6 to 10	7	28	-	29	57
9	11 and over	25	272	25	216	513
10	Total	33	301	25	246	572
11	Total All Trains					
12	1 to 5	55	164	3	1	168
13	6 to 10	24	152	-	29	181
14	11 and over	44	623	25	216	864
15	Grand Total	123	939	28	246	1,213

Accounting Department,
February 24, 1948

1859

CHICAGO and NORTH WESTERN RAILWAY COMPANY

OPERATING EXPENSES CHARGEABLE TO LIVESTOCK DELIVERIES TO UNION STOCK YARDS, CHICAGO, DURING MONTH OF DECEMBER 1947.

	(a)	(b)	(c)
Line No.	Acct. No.	Description	Amount
1		MAINTENANCE OF WAY AND STRUCTURES	
2	201	Superintendence	$ 41
3	202	Roadway maintenance	57
4	208	Bridges, trestles & culverts	20
5	212	Ties	92
6	214	Rails	39
7	216	Other track material	57
8	218	Ballast	13
9	220	Track laying and surfacing	332
10	221	Fences, snowsheds and signs	9
11	227	Station and office buildings	29
12	229	Roadway buildings	1
13	231	Water stations	6
14	233	Fuel stations	4
15	235	Shops and enginehouses	35
16	247	Telegraph and telephone lines	8
17	249	Signals and interlockers	59
18	266	Road property - Depreciation	152
19	269	Roadway machines	2
20	271	Small tools and supplies	17
21	272	Removing snow, ice and sand	11
22	273	Public improvements - Maintenance	24
23	274	Injuries to persons	3
24	275	Insurance	2
25		Total Mtce. of Way and Structures	$ 1,013

Accounting Department,
February 24, 1948.

CHICAGO and NORTH WESTERN RAILWAY COMPANY

OPERATING EXPENSES CHARGEABLE TO LIVESTOCK DELIVERIES TO UNION STOCK YARDS, CHICAGO, DURING MONTH OF DECEMBER 1947.

Line No.	(a) Acct. No.	(b) Description	(c) Amount
1		MAINTENANCE OF EQUIPMENT	
2	301	Superintendence	$ 103
3	302	Shop machinery	56
4	304	Power plant machinery	8
5	305	Shop and power plant machinery - Depreciation	18
6	308	Steam locomotives - repairs	2,046
7	314	Freight train cars - repairs	487
8	331	Equipment depreciation	
9		Steam locomotives	177
10		Freight train cars	240
11	332	Injuries to persons	26
12	333	Insurance	9
13	334	Stationery and printing	1
14	335	Other expenses	1
15		Total Maintenance of Equipment	$ 3,172
16		TRANSPORTATION	
17	371	Superintendence	$ 233
18		Station clerical expenses	972
19	377	Yardmasters and yard clerks	23
20	379	Yard switch and signal tenders	7
21	389	Yard supplies and expenses	12
22	392	Train enginemen	3,475
23	394	Train fuel	1,896
24	397	Train water	56
25	398	Lubricants for train locomotives	67
26	399	Other supplies for train locomotives	26
27	400	Enginehouse expenses - train	476
28	401	Trainmen	5,145
29	402	Train supplies and expenses	156
30	404	Signal and interlocker operation	40
31	405	Crossing protection	45
32	410	Stationery and printing	55
33	414	Insurance	27
34	420	Injuries to persons	259
35		Total Transportation	$12,970

Accounting Department,
February 24, 1948.

CHICAGO and NORTH WESTERN RAILWAY COMPANY

OPERATING EXPENSES AND PAYROLL TAXES CHARGEABLE TO LIVESTOCK DELIVERIES TO UNION STOCK YARDS, CHICAGO, DURING MONTH OF DECEMBER 1947

	(a)	(b)	(c)
Line No.	Acct. No.	Description	Amount
1		GENERAL	
2	451	Salaries and expenses of general officers	$ 55
3	452	Salaries and expenses of clerks and attendants	525
4	453	General office supplies and expenses	52
5	454	Law expenses	41
6	457	Pensions	20
7	458	Stationery and printing	20
8	460	Other expenses	25
9		Total General	$ 738
10		SUMMARY	
11		Maintenance of way and structures	$ 1,013
12		Maintenance of equipment	3,172
13		Transportation	12,970
14		General	738
15		Total Operating Expenses	$17,893
16		Payroll taxes	$ 771
17		Grand total operating expenses and payroll taxes	$18,664
18		Number of cars	1,213
19		Cost per car	$ 15.39

Accounting Department,
February 24, 1948.

CHICAGO and NORTH WESTERN RAILWAY COMPANY

Computation of Adjusted Operating Ratio - Year 1947
Based on Earnings at 5-3/4% on Investment as of Dec.31, 1947

Line No.		
1	Total Investment as of Dec.31, 1947, less recorded depreciation and amortization	$534,331,312
2	Return at 5-3/4%	$ 30,724,050
3	Net Railway Operating Income 1947	$ 8,458,006
4	Amount below earning 5-3/4% return	$ 22,266,044
5	Railway Operating Revenues	$176,281,195
6	Adjusted Railway Operating Revenues (line 4 plus line 5)	$198,547,239
7	Deduct Net Rents Payable	$ 4,375,110
8	Balance Adjusted Railway Operating Revenues (line 6 minus line 7)	$194,172,129
9	Railway Operating Expenses and Payroll Taxes	$155,738,266
10	Adjusted Operating Ratio (line 9 divided by line 8)	80.21%

Accounting Department,
February 24, 1948.

1863

EXHIBIT NO. 51

~~I.C.C. Docket 29809~~
Exhibit No. 51
Witness Van Inger

CHICAGO and NORTH WESTERN RAILWAY COMPANY

INTERSTATE LIVESTOCK RATE INCREASES AND DESTINATION TERMINAL ALLOWANCE INCLUDED IN THE RATE

Line No.	
1	INTERSTATE LIVESTOCK RATE INCREASES
2	Interstate rates on livestock prescribed by the Interstate Commerce Commission in Livestock - Western District Rates, Docket 17000 Part 9, 176 I.C.C. 1, have been increased as follows:
3	5 Per cent increase, Ex Parte 123, 266 I.C.C. 41.
4	3 Per cent increase, Ex Parte 148, 248 I.C.C. 545: suspended 255 I.C.C. 357, 256 I.C.C. 502, 258 I.C.C. 455 and 259 I.C.C. 159 to December 1, 1945 and for six months after legal termination of the war, 264 I.C.C. 702.
5	15 Per cent increase, Ex Parte 162, 266 I.C.C. 537.
6	*10 Per cent interim increase, Ex Parte 166.
7	*20 Per cent interim increase, Ex Parte 166. (Supersedes increase shown in line 6.)
8	*Under Ex Parte 166 the increase is added to the total transportation charge and not to the rate.
9	DESTINATION TERMINAL ALLOWANCE
10	In Docket 24847, Chicago Live Stock Exchange v. Santa Fe et al., the Interstate Commerce Commission found the destination terminal allowance under the rate scales prescribed in Livestock - Western District Rates to be $10.80 per car and the following is the application of the subsequent rate increases thereto:
11	$10.80 increased 5 per cent equals $11.34 per car.
12	$11.34 increased 15 per cent equals $13.04 per car.
13	$13.04 increased 20 per cent equals $15.65 per car.

Accounting Department,
February 24, 1948.

I. C. C. DOCKET 29803

Exhibit No. 52

Witness FOMAN

EXHIBIT NO. 52

BEFORE THE INTERSTATE COMMERCE COMMISSION

SWIFT AND COMPANY

vs.

A. T. &S. F. Ry. et. al.

C. M. ST. P. & P. R. R. LIVE STOCK MOVEMENT AND COST THEREOF - BENSENVILLE TRAIN YARD TO UNION STOCK YARDS CHICAGO FOR MONTH OF DECEMBER, 1947

.M. St. P. & P. R. R. Co.
ffice of Vice President and Comptroller
hicago, Illinois, February 24, 1948

1865

ANALYSIS OF LIVESTOCK TRAFFIC TO CHICAGO STOCK YARDS
Month of December 1947

Line Number	Number of Cars (a)	Number of Trains (b)	Number of Cars		
			Total (c)	Live (d)	Other (e)
	Exclusive Livestock Trains				
1	1 to 5	3	6	6	-
2	6 to 10	2	16	16	-
3	11 and over	11	299	299	-
4	Total	16	321	321	-
5	Trains Containing Livestock and Other Perishable Freight				
6	1 to 5	7	30	17	13
7	6 to 10	12	92	34	58
8	11 and over	30	701	505	196
9	Total	49	823	556	267
10	Total All Trains				
11	1 to 5	10	36	23	13
12	6 to 10	14	108	50	58
13	11 and over	41	1,000	804	196
14	Total	65	1,144	877	267

1874

INDEX TO STREETS

Abbott E-10
Adair D-13
Air Hill B-13
Alberta B-13
Algona C-13
Alice B-13
Allison D-14
Almond B-10
Alpine F-14
Alta C-13
Alta Vista F-13
Althauser ..... I- 8
Altman C-16
Alumni C-11
Alva ..... J- 7
Angelle G-11
Apel ..... K- 7
Apple G-17
Argyle ..... H- 5
Arlington G-12
Asbury B-13
Ascension ..... J- 6
Ash K-11
Ashton pl B-13
Aspen H-17
Atlantic C-13
Auburn C-13
Audubon D-13
Avoca pl B-13
Avon C-13
Babcock ..... D- 6
Bake ..... G- 5
Barry ..... J- 3
Beach ..... M- 4
Bell K-14
Bellevue F-11
Belmond F-13
Bennett D-15
Blake E-11
Bluff I-16
Bonson F-14
Botsh E-14
Bradley D-16
Broadway G-9
Brook ..... K- 8
Brunsfick ..... F- 5
Bryant F-17
Buena Vista ..... H- 6
Burch D-15
Burden ..... H- 6
Burlington ..... E- 7
Burns B-17
Bush H-18
Caledonia pl G-14
Camp I-17
Cannon J-19
Cardiff G-14
Carlotta F-14
Carr ..... H- 5
Carrell ..... F- 7
Catharine F-12
Cedar ..... J- 2
Center F-13
Central av I-14
Chapel G-10
Charles ..... E- 7
Charter J-16
Cherry B-13
Chestnut G-12
Clara G-16
Clarke G-11
Clemenson ..... C- 6
Cleveland av F-17
Clifton D-14
Clinton ..... H- 6
Coales C-17
Collins B-16
College E-14
Columbia ..... I- 7
Commercial K-13
Concord C-16
Cooper G-14
Cornelia ..... F- 7
Cornell G-12
Courtland ..... K- 7
Crawford ..... D- 6
Crosby ..... K- 3
Cross ..... F- 8
Curtis E-16
Cushing ..... F- 9
Custer C-14
Cypress F-14
Davenport ..... F- 7
Davis ..... G- 4
Decatur ..... G- 9
Deborah D-13
Delaware D-13
Delhi E-14
Dell G-12
Dexter C-12
Diagonal ..... G- 8
Diamond ..... E- 7
Dillon E-17
Disney H-18
Division ..... G- 9
Doak ..... L- 5
Dodge I-16
Dorgan G-11
Douglas E-15
Dub. Cascade rd. I-17
Dunning E-17
Eagle ..... J- 7
Earl ..... J- 2
Edna E-12
Edson ..... I- 8
Edith ..... G- 5
Edwards ..... H- 8
Eighth east I-13
Eighth west I-13
Eighteenth east H-18
Elbow ..... F- 5
Eleventh east I-12
Eleventh west I-12
Elizabeth pl F-11
Ellis G-11
Elm J-12
Emerson ..... L- 5
Emmett J-15
English la G-18
Esther H-18
Euclid ..... H- 5
Fairmont ..... G- 8
Fairview pl G-12
Falcon C-18
Farley ..... J- 8
Farragut ..... M- 4
Fenelon pl H-15
Fangler ..... K- 8
Fifth east I-14
Fifth west I-14
Fifteenth east H-11
Fifteenth west I-11
Fillmore D-13
Fink ..... D- 5
Finley B-14
First I-15
Florence I-17
Forrest Lane E-14
Fourth east I-14
Fourth west I-14
Fourteenth east H-11
Fourteenth west H-11
Francis ..... G- 9
Franciscus D-11
Fremont D-16
Fulton G-11
Gandolfo G-16
Garfield av ..... I- 7
Gay ..... E- 7
George ..... J- 6
Gillespie A-14
Gillespie ..... D- 5
Gilmore G-13
Glen Oak E-14
Globe E-10
Gold F-10
Grace D-14
Grandview av (N) G-13
Grandview av (S) E-17
Greeley ..... F- 8
Green B-13
Grigg pl C-14
Groveland pl ..... H- 5
Grove Terrace H-13
Hale D-15
Halpin ..... H- 6
Hamilton F-11
Hancock G-17
Harlan ..... H- 5
Harold L-10
Harrison I-15
Harvard F-14
Hawthorne ..... M- 4
Hazel B-11
Hadley ct ..... H- 8
Hoec H-11
Helena G-12
Hempstead ..... F- 9
Henderson E-17
Henlon G-12
Hennepin ..... H- 7
Henry I-17
Hickory K-10
High Bluff ..... I- 8
Highland pl G-12
Hill H-11
Hill south F-16
Hogdon E-10
Hoyt C-11
Holly F-17
Hudson ..... E- 8
Humboldt ..... J- 8
Ida C-14
Iowa I-14
Irving B-13
Jackson I-15
James G-15
Jamison ..... K- 3
JeMarsoi G-13
John H-14
Johnson ..... I- 8
Jones I-15
Julien av G-13
Kane ..... E- 8
Karrick A-12
Kaufmann av ..... G- 9
Kackuk ..... E- 7
Kepler E-10
Kiene D-11
Kimball ..... M- 5
King ..... F- 8
Kirkwood F-11
Klein G-10
Klingenberg Terrace.. G-10
Knight ..... I- 9
Lafayette ..... D- 6
Langworthy F-15
Lauder ..... M- 4
Lawndale D-12
Lemon ..... K- 4
Levi H-15
Lewis G-12
Lexington ..... F- 9
Liebe ..... F- 5
Lincoln av ..... I- 9
Linden ..... K- 3
Locust I-15
Locust south I-15
Locust west G-11
Logan F-13
Lois F-16
Lorimar F-13
Lowell G-10
Lucretia J-12
Lull C-19
Lynn K-11
McClain D-14
McCormick C-14
McEvoy pl F-17
McKinley ..... K- 3
Jackson H-18
McPherson D-17
Madison G-11
Magnolia ..... F- 8
Main I-15
Malden ..... H- 6
Maple J-12
Maria ..... J- 1
Market J-14
Marquette pl ..... H- 7
Marsh C-10
Marshall ..... K- 7
Martha F-13
May pl G-12
Melrose Terrace E-14
Merchant Lane F-10
Merz ..... H- 7
Milwaukee ..... E- 5
Mineral B-14
Monroe ..... C- 8
Montcrest ..... E- 9
Montrose Terrace G-12
Morgan E-18
Moss ..... G- 6
Mt. Loretta av F-18
Mt. Pleasant E-14
Mueller ..... F- 7
Napier ..... F- 9
National ..... F- 6
Naedham pl G-14
Nevada B-11
Nightingale G-19
Ninth east I-13
Ninth west I-13
Nineteenth east H-10
Oak G-17
O'Hagan B-13
Olive G-13
O'Neil ..... G- 5
Oxford F-14
Pacific C-18
Park D-12
Parkway F-15
Paul F-10
Paulins F-16
Peabody F-16
Pear G-17
Pearl B-14
Pennsylvania A-14
Pesta ..... F- 7
Perry D-16
Pfotzer ..... H- 7
Pilot G-12
Pierce F-11
Pinard ..... G- 7
Pine J-12
Platt G-15
Pleasant ..... H- 7
Plum G-17
Plymouth F-19
Poplar A-12
Portland ..... E- 9
Prairie F-13
Prescott ..... K- 6
Primrose ..... E- 6
Prince ..... H- 5
Prospect H-13
Providence ..... I- 9
Putnam ..... G- 6
Queen ..... H- 8
Quigley Lane F-13
Quince H-16
Quincy ..... H- 8
Quinn H-17
Race ..... F- 6
Railroad I-17
Ramona F-18
Randall pl G-19
Range ..... J- 6
Reader F-16
Regent ..... H- 8
Rhomberg av I-10
Rider F-13
Ries ..... H- 7
Rikel H-13
Rising G-16
River K-16
Riverview ..... J- 7
Roberts F-14
Robin G-19
Robinson H-13
Rock G-14
Roland E-15
Roosevelt ..... L- 7
Rosalind F-10
Rose ..... G- 7
Rosedale av D-11
Rowan H-19
Ruby ..... E- 7
Rush F-18
Ruth ..... F- 8
St. Ambrose B-12
St. George G-18
St. Joseph C-16
St. Mary's H-15
Sabula ..... E- 7
San ..... E- 9
Salina I-16
Samuel H-19
Saunders ..... E- 5
Schiller ..... J- 8
Schlegel ..... E- 9
Schroeder F-10
Second west I-14
Seminary H-10
Seventh east I-13
Seventh west I-13
Seventeenth east H-11
Seventeenth west H-11
Seward ..... E- 9
Shalby H-10
Sheridan ..... H- 5
Shields I-15
Shiras C-17
Simpson C-17
Sixth east I-14
Sixth west I-14
Sixteenth east H-11
Sixteenth west H-11
Solon F-15
Southern av I-17
Southern Terrace D-11
Spring E-13
Spruce G-13
Stafford ..... J- 9
Stanton ..... L- 5
State F-18
Sterling D-17
Stelmore C-16
Stewart D-14
Stoltz ..... E- 6
Strauss ..... H- 6
Sullivan H-19
Summitt G-14
Sumner ..... M- 4
Sutter ..... H- 7
Sycamore J-11
Tenth east I-12
Tenth west I-12
Third west I-14
Thirteenth east H-12
Thirteenth west H-12
Thirtieth east ..... E- 5
Thirtieth west ..... F- 6
Thirty-second east.. E- 5
Thirty-second west.. E- 5
Thomas ..... I- 8
Tower K-14
Traut Terrace ..... G- 8
Treese H-19
Trexler ..... D- 6
Troy ..... I- 9
Twelfth east I-12
Twelfth west I-12
Twentieth east H-10
Twenty-eighth east.... F- 7
Twenty-eighth west.... F- 7
Twenty-fifth east ..... G- 8
Twenty-first east H-10
Twenty-fourth east.... G- 9
Twenty-fourth west.... G- 9
Twenty-ninth east ..... F- 6
Twenty-ninth west ..... F- 6
Twenty-second east.... H- 9
Twenty-seventh east.... F- 7
Twenty-sixth east ..... G- 8
Union H-16
Unga B-11
Valley H-17
Vernon E-12
Victoria F-19
Villa H-16
Vincent D-11
Viola ..... J- 7
Wabash ..... J- 2
Wall ..... J- 2
Wallace ..... E- 8
Waller A-17
Walnut C-16
Walsh D-15
Warren J-10
Wartburg C-11
Washington J-13
Water J-16
Wattles ..... J- 2
Wayne K-12
West B-14
Westview ..... G- 6
Whelan E-17
White I-14
Whittier ..... L- 6
Wilbur H-13
Williams E-11
Wilson F-13
Windsor av ..... J- 9
Winona F-14
Wood D-14
Woodworth E-10
Woolson F-16
Wunderlich ..... D- 6
York E-16

C.M.ST.P&P.
C.G.W.
I.C.
C.B&Q
Dubuque Pkg.Co Plant.

LINWOOD CEMETERY

PEOSTA

LAKE

ICE HARBOR

MISSISSIPPI RIVER

MAP
OF
CITY OF DUBUQUE

COPYRIGHTED

Published by
The Telegraph-Herald
DUBUQUE, IOWA

2114

OPERATING EXPENSES AND PAYROLL TAXES CHARGEABLE TO LIVESTOCK DELIVERIES UNION STOCK YARDS, CHICAGO, DURING MONTH OF DECEMBER, 1947

Line No.	Acct. No. (a)	Description (b)	Amount (c)
1		MAINTENANCE OF EQUIPMENT	
2	301	Superintendence	$ 78.90
3	302	Shop Machinery	172.74
4	304	Power Plant Machinery	52.91
5	305	Shop & Power Plant Machinery Depreciation	35.18
6	308	Steam Locomotive-Repairs	1,071.81
7	331	Steam Locomotive-Depreciation	125.54
8	332	Injuries to Persons	64.86
9	333	Insurance	.25
10	334	Stationery and Printing	5.81
11	335	Other Expenses	21.01
12		Total Maintenance of Equipment	$ 1,629.01
13		TRANSPORTATION	
14	371	Superintendence	$ 146.55
15		Station Clerical Cost	1,054.31
16	377	Yardmasters and Yard Clerks	573.03
17	378	Yard Conductors and Brakemen	3,413.01
18	379	Yard Switch and Signal Tenders	253.96
19	380	Yard Enginemen	2,195.01
20	382	Fuel for Yard Locomotives	1,445.13
21	385	Water for Yard Locomotives	107.84
22	386	Lubricants for Yard Locomotives	30.87
23	387	Other Supplies for Yard Locomotives	26.75
24	388	Enginehouse Expenses - Yard	503.39
25	389	Yard Supplies and Expenses	73.26
26	402	Train Supplies and Expenses	197.41
27	410	Stationery and Printing	77.48
28	411	Other Expenses	41.18
29	414	Insurance	3.90
30		Total Transportation	$10,143.08
31		GENERAL	
32	451	Salaries and Expenses of General Officers	$ 28.26
33	452	Salaries and Expenses	260.81
34	453	General Office Supplies and Expenses	14.15
35	454	Law Expenses	20.80
36	455	Insurance	.09
37	457	Pensions	3.43
38	458	Stationery and Printing	11.54
39	460	Other Expenses	13.70
40		Total General	$ 352.78
41		SUMMARY	
42		Maintenance of Equipment	$ 1,629.01
43		Transportation	10,143.08
44		General	352.78
45		Total Operating Expenses	12,124.87
46		Payroll Taxes	625.02
47		Grand Total Operating Expenses and Payroll Taxes	$12,749.89
48		Number of cars	1,144
49		Cost Per Car	$ 11.15

DETERMINATION OF COST PER CAR OF LIVE STOCK FROM BENSENVILLE TRAIN YARD DESTINED TO UNION STOCK YARDS, CHICAGO

Line No.	Items (a)	Amount (b)
1	OPERATING EXPENSES PER CAR	
2	Livestock Transfer Crews	$11.15
3	Classification - Bensenville Yard - Inbound Load ...	.75
4	Classification - Bensenville Yard - Return Empty ...	.75
5	Total	$12.65
6	Application of Operating Ratio (see below).....	$14.32
7	TRACKAGE CHARGES - NOT INCLUDED ABOVE	
8	I.H.B.R.R. - Loaded Car	$ .90
9	C.J. Ry. - Loaded Car	1.50
10	C.J. Ry. - Empty Return	1.50
11	I.H.B.R.R. - Empty Return	.90
12	Total Trackage Charges (Lines 8, 9, 10 and 11).	$ 4.80
13	GRAND TOTAL COST PER CAR (Lines 6 and 12)	$19.72

Note: These costs do not include any Maintenance of Way and Structures charges on C.M.ST.P.& P.R.R. for Livestock Transfers, nor car hire which at present has a per diem rate of $1.50 per car.

Also excludes unloading charge of Union Stock Yards and Transit Company of $1.73 for single-deck cars and $2.08 for double-deck cars as per Raasch's Tariff No. 20X I.C.C. 584 effective March 13, 1948 which includes the increases allowed under Ex Parte 162 and 166.

COMPUTATION OF SYSTEM OPERATING RATIO - YEAR 1947

Line No.	Items (a)	Amount (b)
14	Railway Operating Revenues	$231,478,568
15	Railway Operating Expenses and Payroll Taxes .	196,231,106
16	Operating Ratio (Line 15 ÷ Line 14)	84.8%

1868

~~I.C.C. 29809~~
Def. Ex. 53
Parts I and II

DEFENDANT'S EXHIBIT NO. 53

This exhibit includes maps of blueprints of the rail facilities and packing plants at each of the points named in paragraph VII of the complaint in I.C.C. Docket No. 29809 except the following:

Chippewa Falls, Wisconsin
Milburn, Illinois
Fort Atkinson, Wisconsin
Frankfort, Indiana
Peoria, Illinois
So. St. Paul, Minnesota
Terre Haute, Indiana
Sioux City, Iowa

With the exception of Sioux City at these eight points named above no packer receives any rail shipments of livestock at its plant. This fact is shown on Defendants' Exhibit 12.

A blueprint of the facilities at Sioux City, Iowa was introduced separately as Defendants' Exhibit_____.

These maps show:

1. Rail facilities at these points.
2. Location of any packing plant which takes rail deliveries of livestock at its plant.

2103

1869

MAP OF ANDERSON, INDIANA

CITY LIMITS 1947

N W E S

POINTS OF INTEREST

1 CITY HALL
2 ARMORY
3 MADISON COUNTY COURTHOUSE
4 ANDERSON PUBLIC LIBRARY
5 U. S. POST OFFICE
6 Y. W. C. A.
7 Y. M. C. A.
8 INDIANA R. R. BUS STATION
9 NEW YORK CENTRAL R. R. STATION
10 PENNSYLVANIA R. R. STATION
11 ST. JOHN'S HOSPITAL
12 ANDERSON COLLEGE
13 SENIOR HIGH SCHOOL
14 ST MARYS SCHOOL
15 ANDERSON COUNTRY CLUB
16 GRANDVIEW MUNICIPAL GOLF COURSE
17 HIGH SCHOOL ATHLETIC FIELD
18 ATHLETIC PARK
19 SHADYSIDE PARK
20 CITY DISPOSAL PLANT

DUFFEY'S INC.

SCHOOL ST. WILLOW ST. AMES ST. WEBSTER ST. CLAIRE ST. GROSS ST. PINE ST. MULBERRY ST. BIRCH ST. VINYARD ST.
BEECH ST. NORTH ST. CENTER ST. CLIFFORD ST.
INDIANA AVE. LAFAYETTE ST. SILVER ST. ALEXANDRIA ST. MARION ST. POPLAR ST. CRYSTAL ST. HILL ST.
ALDER ST. PLUM ST. OAK ST.
KILLBUCK CREEK PIKE ALEXANDRIA
MADISON AVE.
VAN BUSKIRK ROAD
MOSS ISLAND ROAD
WEST 8TH. ST. ROAD
SEPTON ST. HAZLETT ST. GRAND AVE. HARVEY ST. HIGH ST. 3RD. ST. 5TH. ST. 6TH. ST. 8TH. ST. 10TH. ST.
1 ST. ST. 2 ND. ST. 3 RD. ST. 4 TH. ST. 5 TH. ST. 6 TH. ST. 7 TH. ST. 8 TH. ST. 9 TH. ST. 10 TH. ST. 11 TH. ST. 12 TH ST. 13 TH. ST. 14 TH. ST. 15 TH. ST. 16 TH. ST. 17 TH. ST. 18 TH. ST. 19 TH ST. 20 TH. ST. 21 ST. ST. 22 ND ST. 23 RD. ST. 24 TH ST. 25 TH. 26 TH ST. 27 TH. ST. 29 TH. ST. 30 TH ST. 31 ST. 32 ND ST. 33 RD ST. 34 TH ST. 35 TH ST. 36 TH. ST. 37 TH ST. 38 TH. ST.
HENDRICKS ST. SHERMAN ST. JOHN ST. MORTON ST. LINCOLN ST.
ARROW AVE. SYCAMORE ST. LAUREL ST. HENRY ST. NICHOL AVE. LOCUST ST.
MILTON AVE. RUBBLE AVE. CENTRAL AVE. PARK AVE. COTTAGE AVE. GRAND DRIVE COLLEGE AVE. WALNUT ST. CHESTNUT ST. BUCKEYE AVE. NURSERY RD.
HOME AVE. CINCINNATI AVE. COLUMBUS AVE. LYNN ST.
C. I. R. R.
NOBLESVILLE
LEBANON
WHITE RIVER
NEW YORK CENTRAL R. R. PENNSYLVANIA R. R.
MOUNDS STATE PARK
MUNCIE
RAIBLE AVE. FOUNTAIN AVE. MARTINDALE AVE. WALTON AVE. DEWEY AVE. HALFORD AVE. PARK AVE. DUNLAP AVE. TERRHUNE AVE. PENNSYLVANIA AVE. FORKNER ST. CEDAR ST. MADISON AVE. HENDRICKS ST. SHERMAN ST. SHERIDAN ST. MORTON ST. LINCOLN ST. CHASE ST. BROWN ST. FAIRVIEW ST. DELAWARE ST. JACKSON ST. MERIDIAN ST. MAIN ST. WALNUT ST. JEFFERSON ST. GEORGE ST. MC KINLEY ST. NOBLE ST. CENTRAL ST. FLETCHER ST. PERRY ST. PITT ST. MONROE ST. PIKE ST. SCATTERFIELD ST. EAST LYNN ST. TERRACE PLACE FOREST PL. HAMILTON ST.
MARINE DRIVE
LONGVALE DRIVE NORTH PRIDE DRIVE SOUTH BROWN DRIVE FAIRVIEW DRIVE PINEWOOD DRIVE ELVA DRIVE
HAVERHILL ST. ANDOVER RD.
NEW YORK CENTRAL R. R.
INDIANAPOLIS
MUNCIE
MIDDLETOWN

P. 1869

2109

DE F. EXHIBIT NO

MAP OF THE CITY OF AUSTIN

1940

Street Index

AIRPORT DR., F-12
ALLEGHENY, G-2
ASH, F-7
BALDWIN, E-2
BANK, F-6
BAUDLER, C-4
BAUMAN AVE., I-2
BEAVER, F-10
BECKER, C-7
BRIDGE, F-2
BROWN, C-7
BROWNSDALE AVE., D-7
BRYAN, D-7
BRYAN ALLEY, D-7
BURR OAK DR., C-4
BUCHANAN, J-7
CARTER, E-10
CARTWAY, E-10
CEDAR, G-5
CENTER, D-9
CHATHAM, H-5
CLARK, D-8
CLAUSEN, I-2
CLEVELAND, H-6
COLLEGE, G-2
COLLINS, E-7
CORBITT PL., H-4
COURTLAND AVE., E-4
CRANE, J-7
DAWSON LE., F-7
DECKER AVE., F-11
DIVISION, F-5
DOBBINS, F-6
DRIESNER, F-7
DUNLAP, I-7
EAST, F-8
EBERHART DR., C-4
EIGHTH, F-2
ELLIS AVE., G-8
ELM, F-7
ELMER, C-7
EUCLID, D-1
FAIRVIEW PL., G-4
FIFTH, G-3
FIRST, C-4
FOSTER, B-7
FOURTH, G-3
FRANKLIN, H-5
FREEBORN, D-2
GARFIELD, H-5
GLEASON AVE., I-2
GRANT, H-6
GREENWICH, I-4
GROVE, E-2
HARMON AVE., I-2
HARRISON, I-7
HAYES, J-7
HERZOG, F-9
HICKORY, E-6
HIGH, F-4
HOLLISTER, I-3
HOPE, E-6
JACKSON, I-7
JAY, C-9
JOHNSON AVE., H-2
KENWOOD AVE., J-4
LAFAYETTE DR., H-5
LAKE, E-9
LANSING AVE., D-4
LEWIS, F-6
LINCOLN, H-6
LOCUST, C-1
LYNDALE AVE., E-2
MCKINLEY, F-7
MADISON, I-7
MAIN, F-6
MANKATO, D-4
MAPLE, F-3
MEDARY, D-3
MILL, E-4
MITCHELL, C-7
MONROE, I-7
MOSCOW, E-2
MYRTLE, C-3
NASSAU, E-4
NEOLA AVE., H-3
NICHOLSON AVE., H-3
NINTH, C-2
NORTH, A-7
OAK, F-7
OAKLAND AVE., F-8-9
OAKWOOD, G-9
OHIO, H-6
PADDEN AVE., I-2
PAGE AVE., G-2
PARK AVE., G-2
PARK ROADWAY, H-5
PARKVIEW PL., G-7
RAILWAY, H-7, F-9
RIVER ROAD, H-4
RIVER, G-6
RIVERVIEW, C-4
ROCHFORD, J-3
ROSENTHAL LE., H-6
ST. PAUL, G-6
SECOND, C-3
SEVENTH, C-1
SHAW, I-3
SIXTH, C-3
SLAVIN, G-9
SLAVIN AVE., F-9
STERLING AVE., F-1
SULLIVAN, B-7
TAYLOR, B-7
THIRD, C-3
TOLLEFSON, C-7
TYLER, J-7
VINE, D-4
WALNUT, D-3
WATER, E-4
WEST, I-3
WILSON AVE., D-9
WINONA, F-3

1945 CENSUS
GREATER AUSTIN
POPULATION
25,848

C.M.StP&P
C.G.W.
Hormel Unloading Docks
Geo. A. Hormel & Co.

Austin Municipal Airport

Fair Grounds

H. S. Athletic Field

RED CEDAR RIVER

CITY PARK

COMMUNITY PARK

LAFAYETTE PARK

SUTTON PARK

DOBBINS PARK

DOBBINS CREEK

TURTLE CREEK

ALL RIGHTS RESERVED MOWER COUNTY NEWS

P. 1871

Cedar Rapids
Chamber of Commerce
Cedar Rapids, Iowa

RED CEDAR RIVER

C.R.I.& P.
C.M.ST.P.& P.
C.& N.W.
I.C.

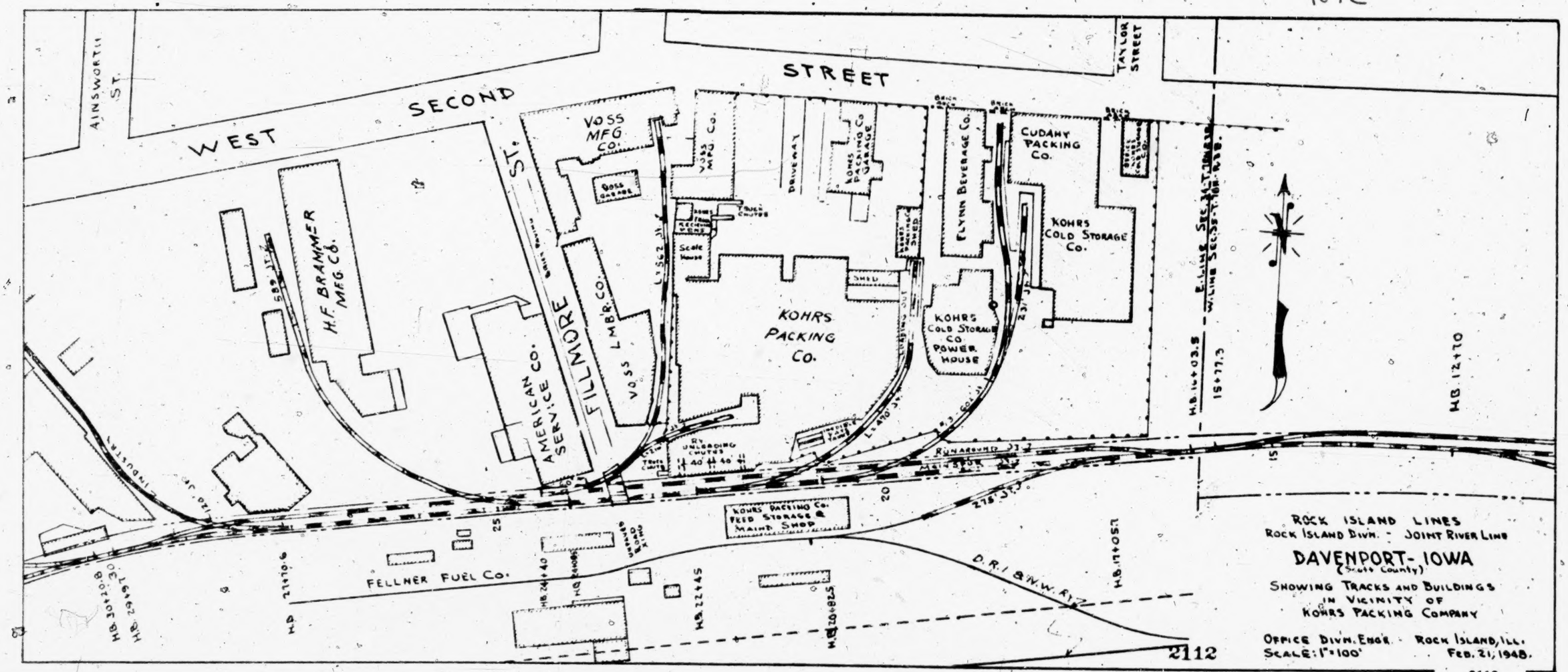
WILSON & CO. PLANT

MAP OF
CEDAR RAPIDS, IOWA
INDEX OF STREETS

P. 1871

THE TORCH PRESS, CEDAR RAPIDS, IOWA
2111

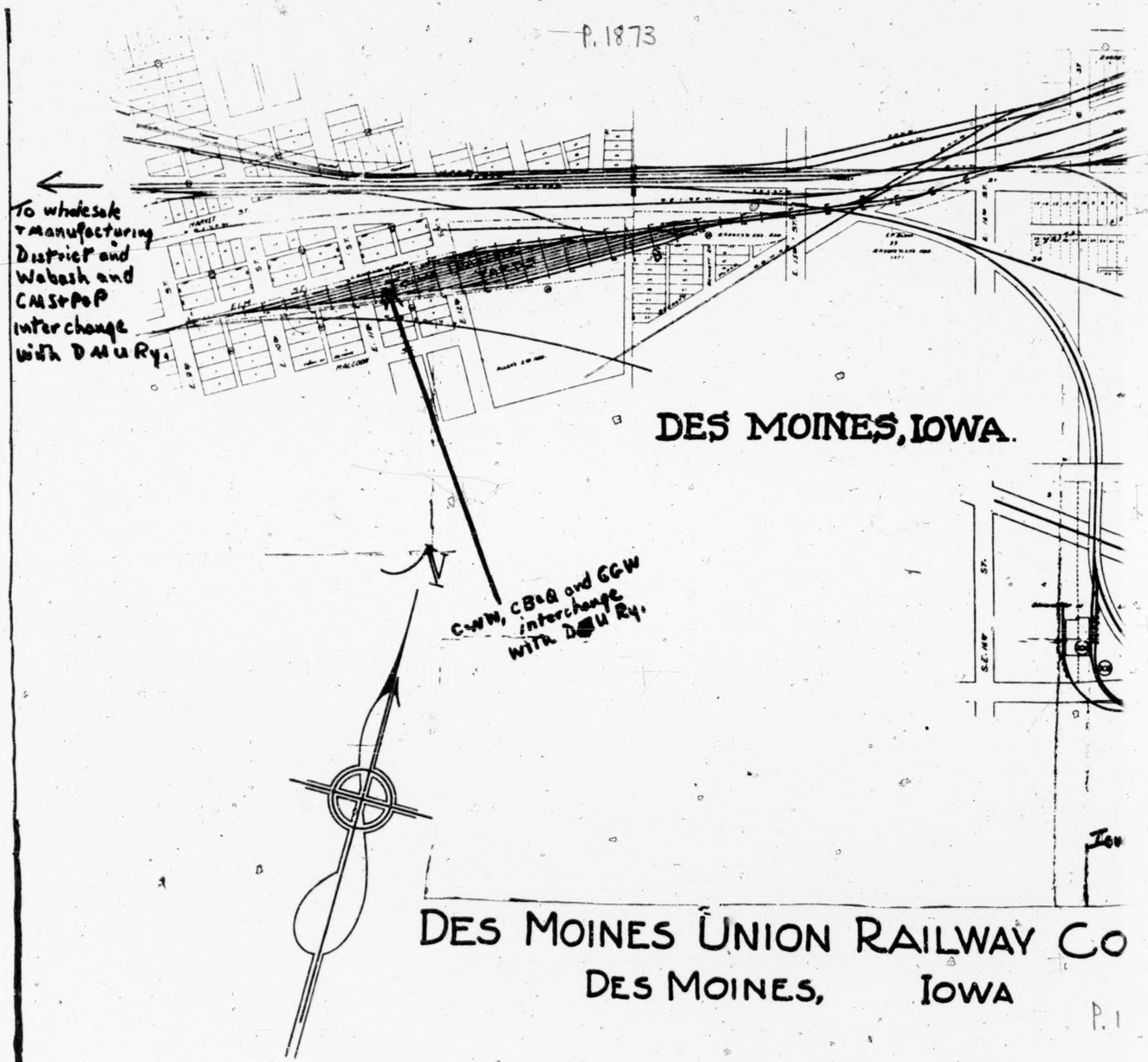
1872

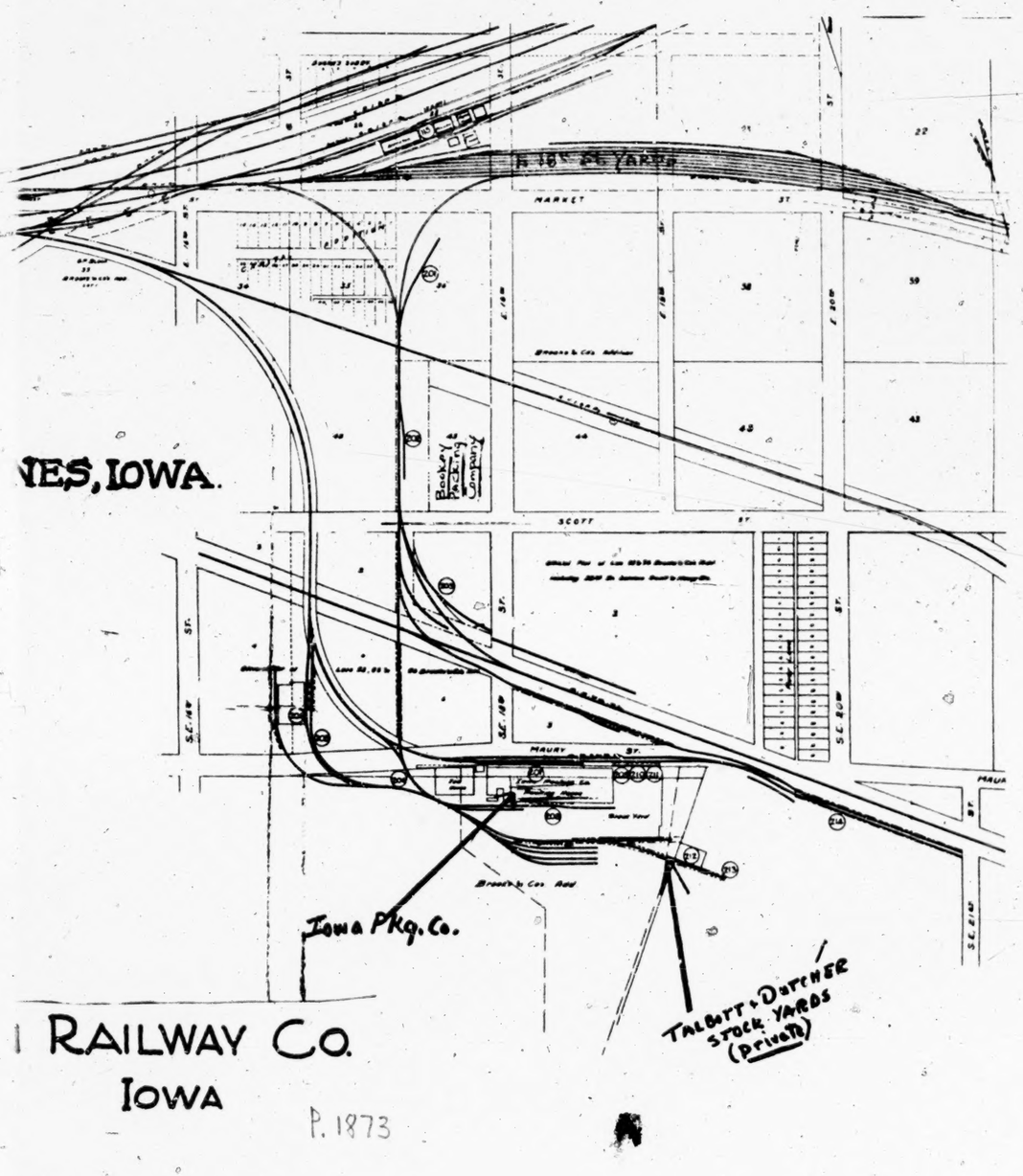

WEST SECOND STREET
AINSWORTH ST.
TAYLOR STREET
FILLMORE ST.
H.F. BRAMMER MFG CO.
AMERICAN SERVICE CO.
VOSS MFG CO.
VOSS LMB'R CO.
KOHRS PACKING CO.
KOHRS PACKING CO GARAGE
KOHRS COLD STORAGE CO POWER HOUSE
FLYNN BEVERAGE CO.
CUDAHY PACKING CO.
KOHRS COLD STORAGE CO.
KOHRS PACKING CO. FEED STORAGE & MAINT. SHOP
FELLNER FUEL CO.
D.R.I. & W.W. R'Y
INDUSTRY
RUNAROUND
ROCK ISLAND LINES
ROCK ISLAND DIVN. - JOINT RIVER LINE
DAVENPORT - IOWA
(Scott County)
SHOWING TRACKS AND BUILDINGS IN VICINITY OF KOHRS PACKING COMPANY
OFFICE DIVN. ENGR. ROCK ISLAND, ILL.
SCALE: 1" = 100'
FEB. 21, 1948.
2112

2112

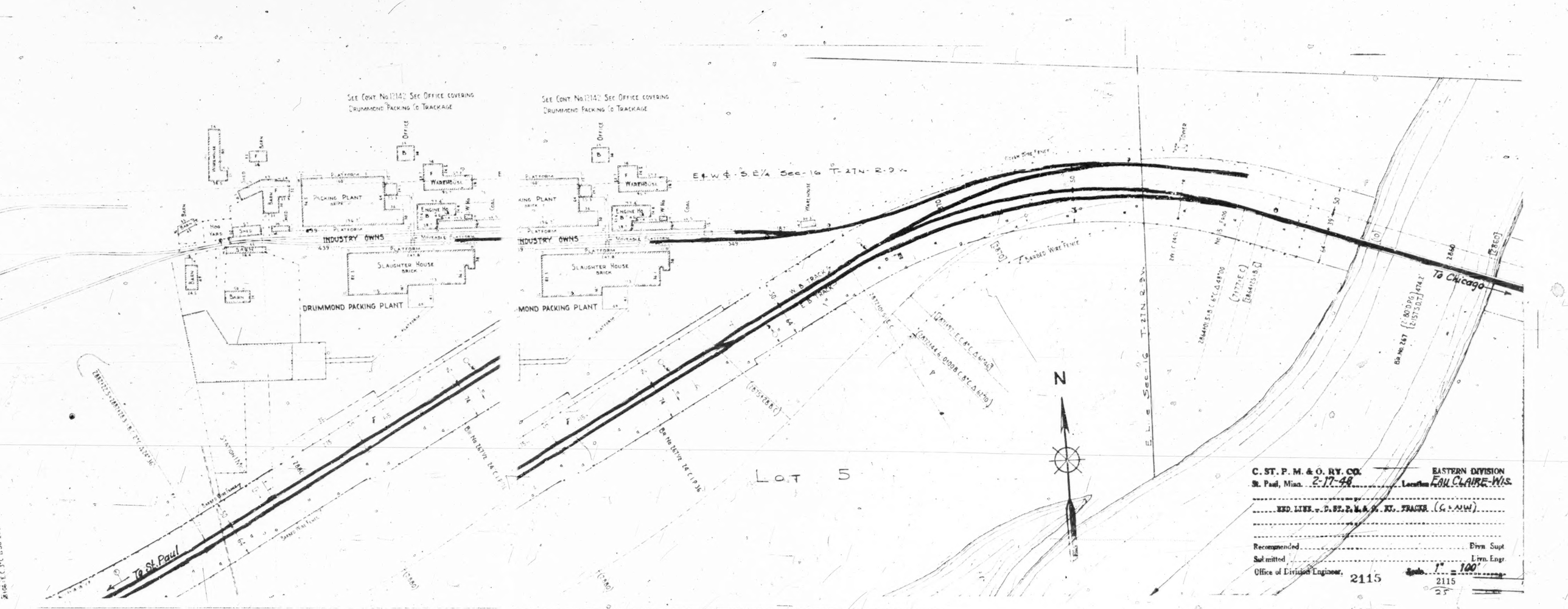
P. 1873

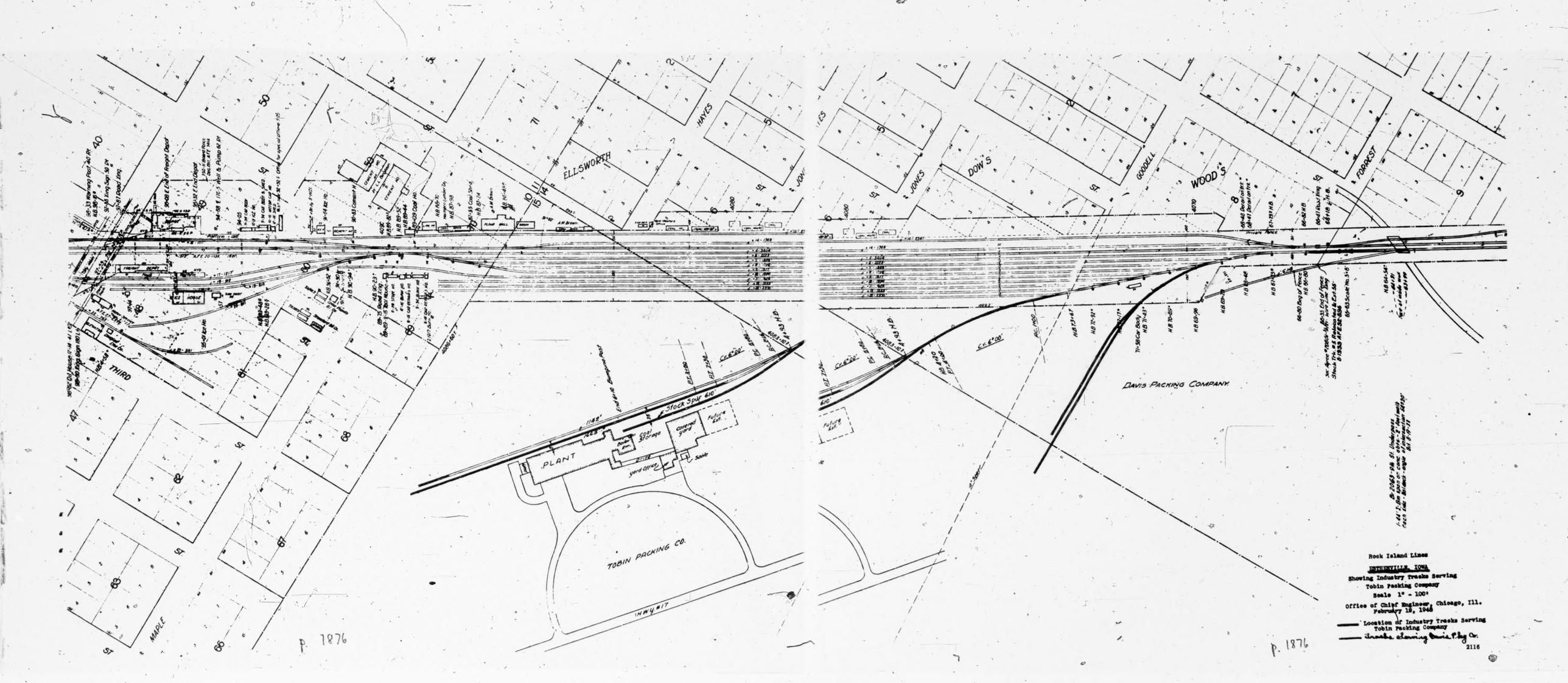
1873





2113


SEE CONT No 12142 SEC OFFICE COVERING DRUMMOND PACKING CO TRACKAGE
SEE CONT No 12142 SEC OFFICE COVERING DRUMMOND PACKING CO TRACKAGE
E & W ½ S.E¼ Sec-16 T-27N-R-9 W.
DRUMMOND PACKING PLANT
INDUSTRY OWNS
PACKING PLANT
WAREHOUSE
ENGINE HO
SLAUGHTER HOUSE BRICK
HOG YARD
SHED
BARN
PLATFORM
COAL
439
349
To St. Paul
To Chicago
E.B. TRACK
W.B. TRACK
Ea No 267
Ea No 265 1/2
Ea No 265 1/2 24 C (1°30')
LOT 5
N
E ½ Sec-16 T-27N R-9W
C. ST. P. M. & O. RY. CO.
EASTERN DIVISION
St. Paul, Minn. 2-17-48
Location EAU CLAIRE-WIS.
RED. LINE v. D. ST. P. M. & O. RY. TRACKS (G.A.N.W.)
Recommended
Div'n Supt
Submitted
Div'n. Engr
Office of Division Engineer.
Scale. 1" = 100'
2115
2115
25
1875


ELLSWORTH
HAYES
JONES
DOW'S
GODELL
WOOD'S
FORREST
THIRD
MAPLE
PLANT
TOBIN PACKING CO.
DAVIS PACKING COMPANY
Stock Spur 610
Coal Storage
Concrete yard
Future Ext.
Yard Office
Scale
HWY #17
Rock Island Lines
OTTUMWA, IOWA
Showing Industry Tracks Serving
Tobin Packing Company
Scale 1" - 100'
Office of Chief Engineer, Chicago, Ill.
February 15, 1946
Location of Industry Tracks Serving Tobin Packing Company
Tracks showing thus
2116
P. 1876
P. 1876

MAP OF EVANSVILLE INDIANA (P.1877)

KENTUCKY

EVANSVILLE ELEVATION
329.18 FEET ABOVE SEA LEVEL
WITH ZERO ON GOVERNMENT GAUGE
OR
388.22 FT. AT S.W. CORNER MAIN & FOURTH STS.

Red	ILLINOIS CENTRAL R.R.
Purple	L. & N. R.R.
Green	C. & E. I. R.R.
Blue	C. H. & D. — SHOP LINE
Brown	SOUTHERN R.R.
Yellow	N.Y.C. R.R. (Big Four & CI&WR)
Hellotrope	(MISSISSIPPI VALLEY BARGE LINE (Head Johnson Terminal)

CITY OF EVANSVILLE
NAMED IN HONOR OF
GEN. ROBERT M. EVANS
CHARTERED LATE IN 1818
INCORPORATED JANUARY 27, 1847.

SCALE
0 500 1000 1500 2000 2500
FEET

INCORPORATED AREA 8
MAXIMUM FLOOD STA
REMOVED JANUARY 31
53.74 FEET
RADIO STA. WGBF

COPYRIGHT 1845 BY E. E. BROMWELL
PHILADELPHIA, PENNA.

KEY
- INDICATES FIRE HOUSE
- INDICATES CHURCH
- INDICATES SCHOOL
- INDICATES CHURCH & SCHOOL

SMITH & BUTTERFIELD
305 - 307 MAIN ST.
EVANSVILLE, IND.
SOLE DISTRIBUTORS

P. 1877

2117

P.1878

1878

I C
M & St L
C G W
Ft D. Des M & So.
Tobin Pkg Co. plant

MAP OF FORT DODGE IOWA

1943

J. L. PARSONS, CITY ENGINEER — EDGAR A. WILLIAMS, DRAFTSMAN

SCALE 1" = 400'

P.1878

P.1878

2118

P. 1880

P. 1880

INDIANAPOLIS

P. 1880

Compiled, Engraved, Printed, and Published by
THE GEORGE F. CRAM COMPANY, INC.
Established 1867
Home Office and Plant, Indianapolis, Indiana

SCALE 0 1/4 1/2 1/4 1 MILE

LEGEND

- Indianapolis Boundary
- Other Municipal Boundaries
- Township Boundaries
- City Trolley and Bus Lines
- Interurban Bus Lines
- Steam Railroads
- House Numbers
- Parks and Playgrounds
- Public Buildings and Institutions
- Cemeteries
- Golf and Country Clubs
- (F) Fire Stations
- (52) Public Schools
- (T)20 Township Schools
- (A)(C)(L) Parochial Schools
- P.O. Post Offices
- State Highway Numbers (67)
- (40) U. S. Highway Numbers

COPYRIGHT 1948 THE GEORGE F CRAM COMPANY, INC. INDIANAPOLIS

1881

CITY OF JOPLIN MISSOURI

RETRACED BY IGWEAR 1931

EXHIBIT MAP OF CITY
Showing former limits also the two Annexed Areas, Sec 36 and the Villa Heights Area on the same Scale
Also showing Annexed Area in Sections 22 and 23 Twp 27N Range 33W Newton Co Mo
Being All of Sec 22 and NW¼ Sec 23

CROCKER PKG. CO.

CITY LIMIT

CREEK

JASPER CO.
NEWTON CO.

CITY LIMIT

NEW CITY LIMIT

CITY (OLD) LIMIT

EXHIBIT C SEC 36

STOCK YARDS

Mo. Pac. Spur

Ozark Memorial Cemetery

St. Louis & San Francisco Ry. Co.

Schiffendecker Park

NEW CITY LIMIT

EXHIBIT B
VILLA HEIGHTS AREA

P. 1881

JOPLIN STREET GUIDE—Each Block Starts with Even Hundred Number, as 100, 200, 300, Etc.

WEST OF MAIN STREET

Ruhyways—32nd to 36th St.
Joplin.
Wall.
Oakridge Drive—32nd to 36th St.
Pearl.
(Meridian Place — between Pearl and Byers, from 4th Street North).
Byers.
Moffet.
Sergeant.
Jackson.
Connor.
Chestnut—7th St. to 10th St.
Bird—15th to 26th St.
Gray—North of 7th St.
Murphy—South of 7th St.
Picher.
Empire
Annie Baxter—South of 17th St.
Porter.
Harlem—A to Perkins, 4th to 13th, 17th to 25th.
Maiden Lane.
Leckie—A to Perkins St.
McCoy—4th St. to Perkins St.
Cunningham—1st St. to 4th St.
Tyler—1st St. to 4th—10th to 26th St.
Adele—1st St. to 4th—10th to 26th St.
Willard—1st to 4th—7th to 26th St.
Oliver—1st St. to 4th St.
Roosevelt—7th St to 17th St.
McKinley—1st St. to 17th St.
Monroe—1st St. to 17th St.
Jefferson—7th St. to 17th St.
Winfield—7th St. to Perkins St.
Walnut—4th St. to Perkins St
Maple—7th St. to Perkins St.
Oak—4th St. to Perkins St.
Schifferdecker.
Washington—1st St. to Perkins St.
Mina—1st St. to Perkins St.
Adams—1st St. to Perkins St.
Cleveland—1st St. to Perkins St.

NORTH OF FIRST STREET—WEST OF MAIN

A Street.	Glenview Place.	Crest Drive.
B Street.	Hampton Place.	Laurel.
C Street.	Islington Place.	Valle Drive.
D Street.	Jaccard Place.	Lone Elm Road.
E Street	Kensington Place.	
F Street.		

SPECIAL NOTE

South Alley—The first street North of First — Maiden Lane to McCoy St.
Wilkins—The first street north of A—Maiden Lane to McCoy St.
Smith—A western extension of B—Maiden Lane to McCoy St.
Glover—The first street north of B—Maiden Lane to McCoy St.
Morgan—The first street north of Glover—Maiden Lane to McCoy St.
Perkins—The first street north of C—Porter to Cleveland.
Mohaska—Angles from 27th and Pearl southwest to 30th and Connor.
Pile—Angles from 26th and Pearl southwest to 27th and Moffet.
Luke—Angles from 31st and Moffet northwest to Mohaska.
Sabra—Angles from 32nd and Jackson northeast to Luke.

SOUTH OF FIRST STREET—EAST AND WEST OF MAIN

All Streets South of First and Broadway, running east and west, numbered numerically from 1 up.

EAST OF MAIN STREET

Virginia.
Pennsylvania.
Kentucky.
Grand.
Missouri.
Iowa.
Minnesota.
Ohio.
Indiana.
Illinois.
Wisconsin—South of 7th St.
School—North of 7th St.
Michigan.
Kansas—South of 7th St.
High—North of 7th St.
New Hampshire.
Club—4th St. to 7th St.
Vermont.
Elm—4th to 6th St.
Commercial—6th St. to 7th St.
Massachusetts—South of 7th St.
Terrace—6th to 7th St.
Rhode Island—South of 15th St.
St Louis—North of 8th St.
Connecticut—South of 8th St.
St. Charles—8th St. to Central St.
Park—North of 8th St.
Highland—North of 8th St.
Jersey—10th to 15th—20th to 32nd Sts.
Delaware—South of 15th St.
Forest—North of 7th St.
McConnell—7th St. to Central St.
Patterson—North of 7th St.
Carolina——10th St. to 20th St.
Brownell—7th St. to Central St.
Florida.
Mississippi—11th St. to 20th St.
Ozark—11th St. to Central St.
Texas—11th St. to 20th St.
Turk—7th St. to Central St.
Highview—7th St. to 17th St.
Frost—10th St. to 11th St.
Range Line.
Geneva—7th to 13th St.—Oak Ridge Addition.
Peters—7th to 13th St.—Oak Ridge Addition.
——7th to 13th—Oak Ridge Addition.
Waggoner—7th to 13th St.—Oak Ridge Addition.

EAST JOPLIN—North of Broadway

1. Hill.	4. North.	8. Laclede.
2. Depot.	4. Wilson.	9. Swope.
2. Valley.	5. Persimmon.	10. St. Mary's.
3. Furnace.	6. Connor Alley.	11. Alto.
3. Spring.	7. Bradford.	12. Corre De.
3. Finn.		

South of Broadway

1. Central	2. Second.	3. Jasper	4. Third.

NOTE

Broadway is the same as First Street from Main St. east.

NORTH OF FOURTH—EAST OF GRAND

Shortis Ave.	Division.	Comingo.
John.	Railroad.	Garden.
Galena.	School.	McKee.
Mineral.	Michigan.	St. Louis.
Cox.	High.	

Avenues reading west to east of St. Louis Ave. in Castle Rock and Royal Heights.

St. Louis Ave.	Independence Ave.	Ozark Ave.
St. Charles Ave.	Patterson Ave.	Miller Ave.
Park Ave.	Brownell Ave.	Turk Ave.
Highland Ave.	Florida Ave.	Highview Ave.
Forest Ave.	Lincoln Ave.	Range Line Road

Euclid Ave.—N. & S. Diagonal—U. S. 66—from St. Louis to Utica.

Streets reading south to north of Newman St in Castle Rock and Royal Heights.

Newman St.	Odessa St.	Utica St.
Hampton St.	Princeton St.	Vandalia St.
Islington St.	Quincy St.	Windsor St.
Kensington St.	Rolla St.	Xenia St.
Laurel St.	Salem St.	Yuma St.
Manitou St.	Trenton St.	Zora St.
Nashville St.		

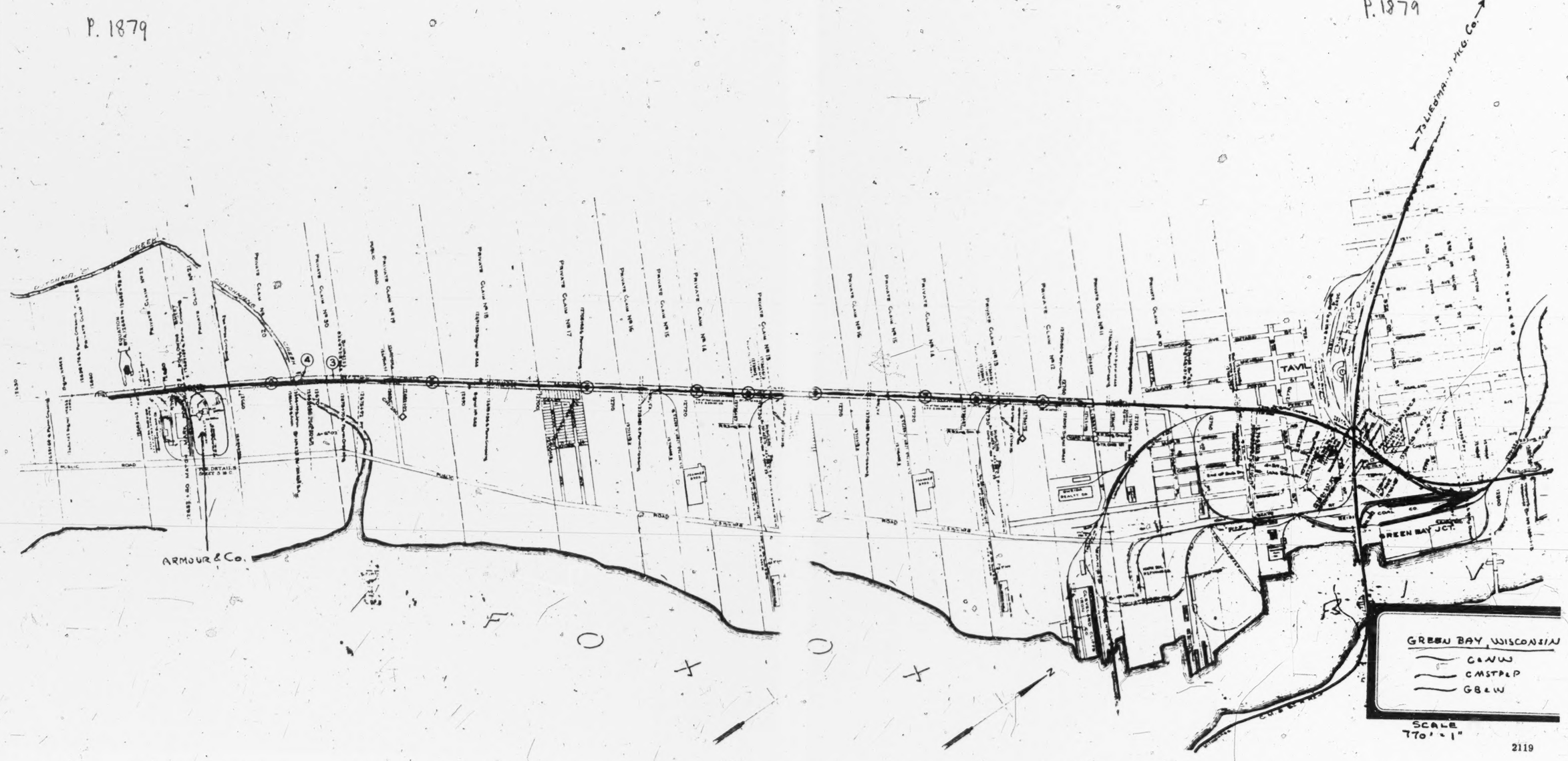
P. 1881

2121

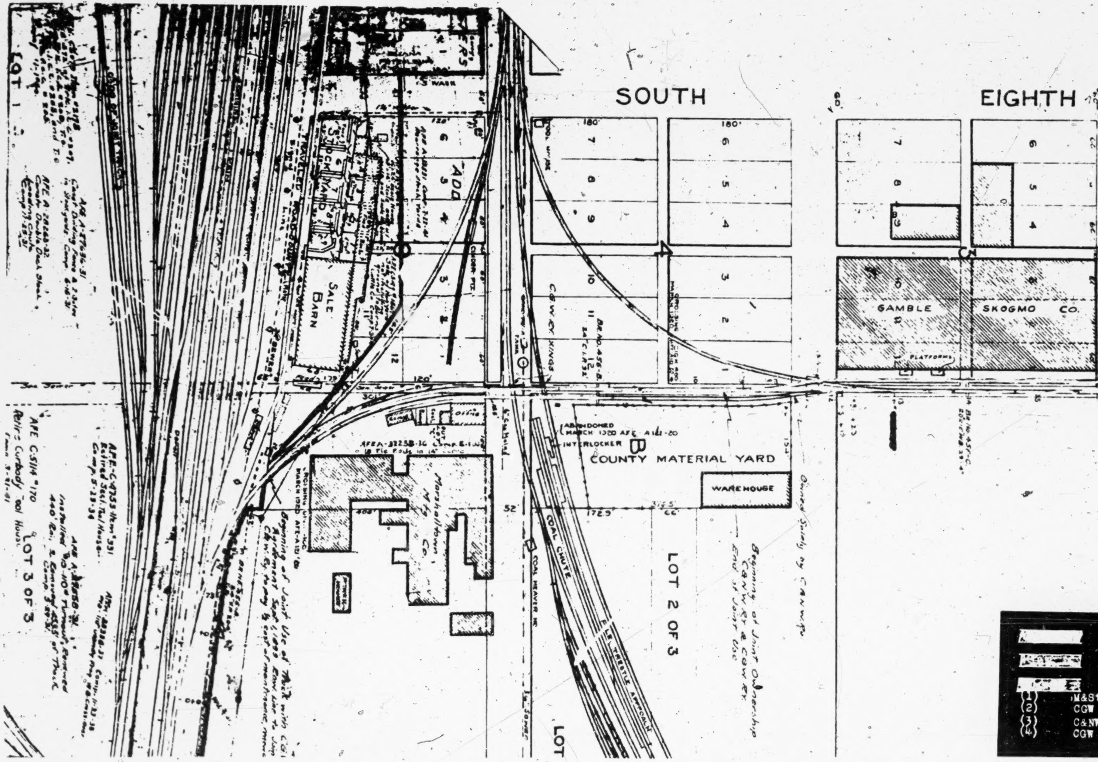
1

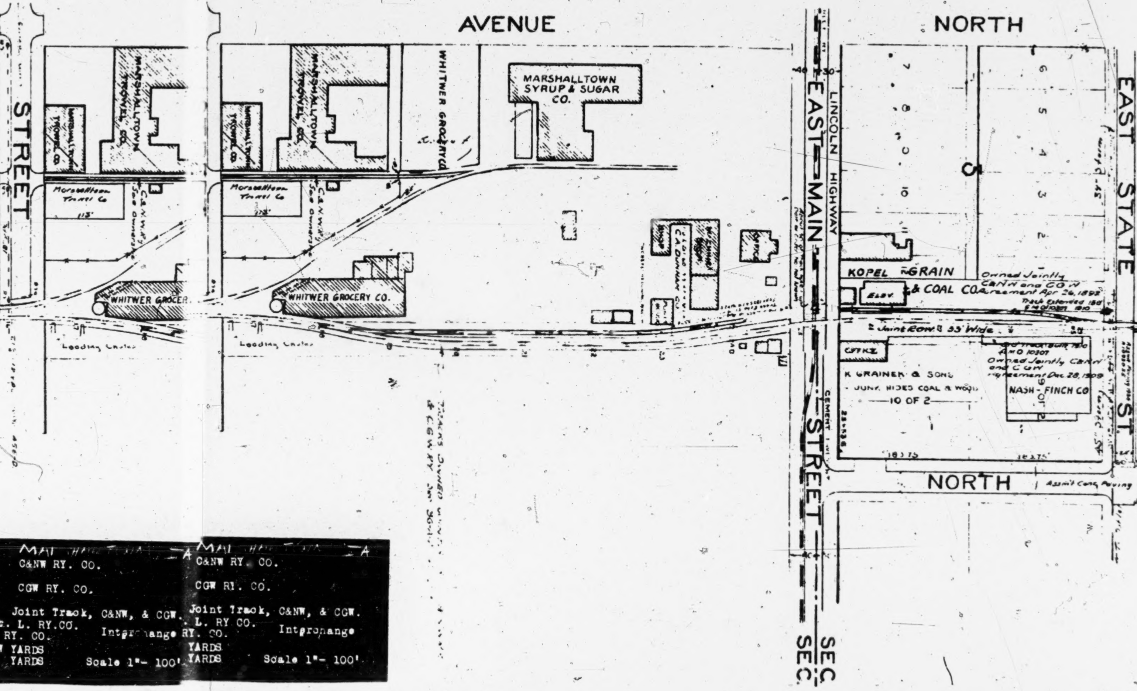
P. 1879

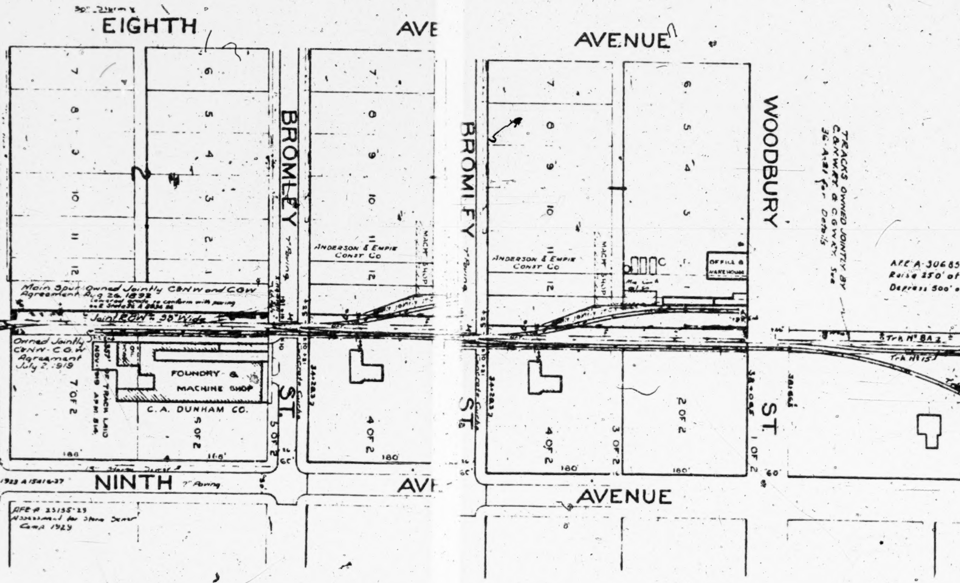
P. 1879

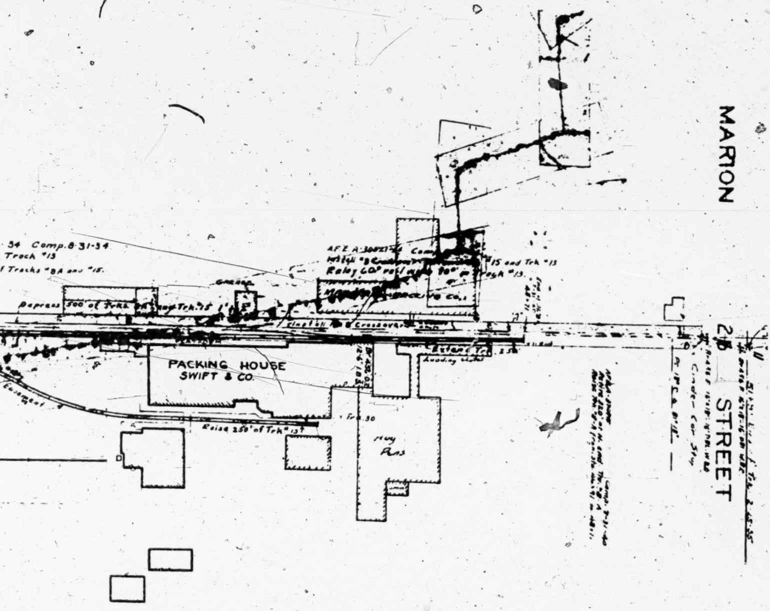


2119


SOUTH
EIGHTH
LOT 1
STOCK YARD
SALE BARN
ADD
C&W RY XINGS
GAMBLE SKOGMO CO.
PLATFORMS
ABANDONED MARCH 1920 AFE A141-20
INTERLOCKER
B
COUNTY MATERIAL YARD
WAREHOUSE
Marshalltown Mfg Co.
COAL CHUTE
COAL HEAVER
TRESTLE APPROACH
LOT 2 OF 3
LOT 3 OF 3
LOT
Beginning of Joint Ownership C&NW Ry & CGW Ry End of Joint Use
Owned Solely by C&NW Ry.
180'
120'
52'
172.9
(1) M&S
(2) CGW
(3) C&NW
(4) CGW


AVENUE
NORTH
STREET
MARSHALLTOWN TROWEL CO.
MARSHALLTOWN TROWEL CO.
Marshalltown Trowel Co
113'
C.&N.W.Ry See Owners
WHITWER GROCER.
WHITWER GROCERY CO.
WHITWER GROCERY CO.
Loading Chutes
MARSHALLTOWN SYRUP & SUGAR CO.
C.A. DUNNAN CO
SHOP
OFFICE
EAST MAIN STREET
LINCOLN HIGHWAY
KOPEL GRAIN & COAL CO.
ELEV.
Owned Jointly C&NW and CGW Agreement Apr 26, 1892
Track Extended 1910
Joint Row 33' Wide
OFFICE
K GRAINER & SONS
JUNK HIDES COAL & WOOD
10 OF 2
Owned Jointly C&NW and CGW Agreement Dec 28, 1909
NASH - FINCH CO
CEMENT
NORTH
Assm't Conc Paving
EAST STATE ST.
SEC. SEC.
Tracks owned by C.N.W. & C.G.W. RY
C&NW RY. CO.
CGW RY. CO.
Joint Track, C&NW, & CGW.
L. RY. CO.
RY. CO.
Interchange
YARDS
YARDS
Scale 1"- 100'


EIGHTH AVE
AVENUE
BROMLEY
BROMLEY
WOODBURY
NINTH
7" Paving
AVE
AVENUE
ST
ST
ST
7 8 9 10 11 12
6 5 4 3 2 1
Main Spur Owned Jointly C&NW and CGW
Agreement Aug 26, 1892
Lowered grade to conform with paving
Joint ROW = 30' Wide
Owned Jointly C&NW - C.G.W Agreement July 2, 1919
357' of Track Laid Nov 1919 APM 814
FOUNDRY & MACHINE SHOP
C.A. DUNHAM CO.
7 OF 2
5 OF 2
5 OF 2
4 OF 2
4 OF 2
3 OF 2
2 OF 2
1 OF 2
180'
168'
60'
1923 A 15416-27
AFE A 25155-25 Assessment for Storm Sewer Const 1925
ANDERSON & EMPIE CONST CO
MACH SHOP
OFFICE & WAREHOUSE
TRACKS OWNED JOINTLY BY C&NW.RY. & C.G.W.RY. See 36-A-21 for Details
AFE A-30685
Raise 350' of
Depress 500' o
Trk Nº 8A 2
Trk Nº 15
7" Paving
34+28.3
34+28.3
38+06


MARION
34 Comp. 8-31-34
Track #13
Tracks #8A and #15.
Depress 500' of Trk. 8A and Trk. #15 1'
A.F.E. A-30821-34 Comp.
Relay Co. rail
15 and Trk. #13
Track #13.
Co.
Crossover
Extend Trk. 25'
Loading chutes
PACKING HOUSE
SWIFT & CO.
Easement
Raise 250' of Trk. #13
Trk. 30
Hog Pens
2D STREET
Cinder Car Stg.

1886

LEHIGH PORTLAND CEMENT CO

NORTHWESTERN STATES PORTLAND CEMENT CO

J.E. DECKER & SONS PACKING CO

CREEK

LINE

EAST PARK

PARKERS WOODS

NORTH IOWA BRICK & TILE CO

MASON CITY BRICK & TILE CO

NATIONAL BRICK & TILE PLANTS 1 & 2

INDUSTRIAL ADDITION

NORTH IOWA FAIR ASSOCIATION

CHICAGO, ROCK ISLAND & PACIFIC RY

MASON CITY IOWA

1946

SCALE

J.E. Decker & Sons

- M&StL
- CGW
- C&NW
- CMStP&P
- Packing plant proper
- Cattle pens unloading
- Hog pens unloading

2125

1882

Santa Fe Deliveries to C.R.I.&P. For Cudahy Bros. Made Here

Santa Fe Deliveries to U.P. For Swift & Co. Made Here

Santa Fe Deliveries to K.C.S. For Wilson & Co. Made Here

Santa Fe Argentine Yard

Santa Fe Deliveries to K.C.S. (Henning St.) For Wilson & Co. Made Here

Santa Fe Deliveries to Mo. Pac. For Fowler Co. Made Here

Santa Fe Deliveries to Frisco For Armour & Co. Made Here

Kansas City, Kan. Stock Yards

CHICAGO JUNCTION

KANSAS RIVER

MISSOURI

MUNICIPAL AIRPORT

HARLEM

NORTH

EAST

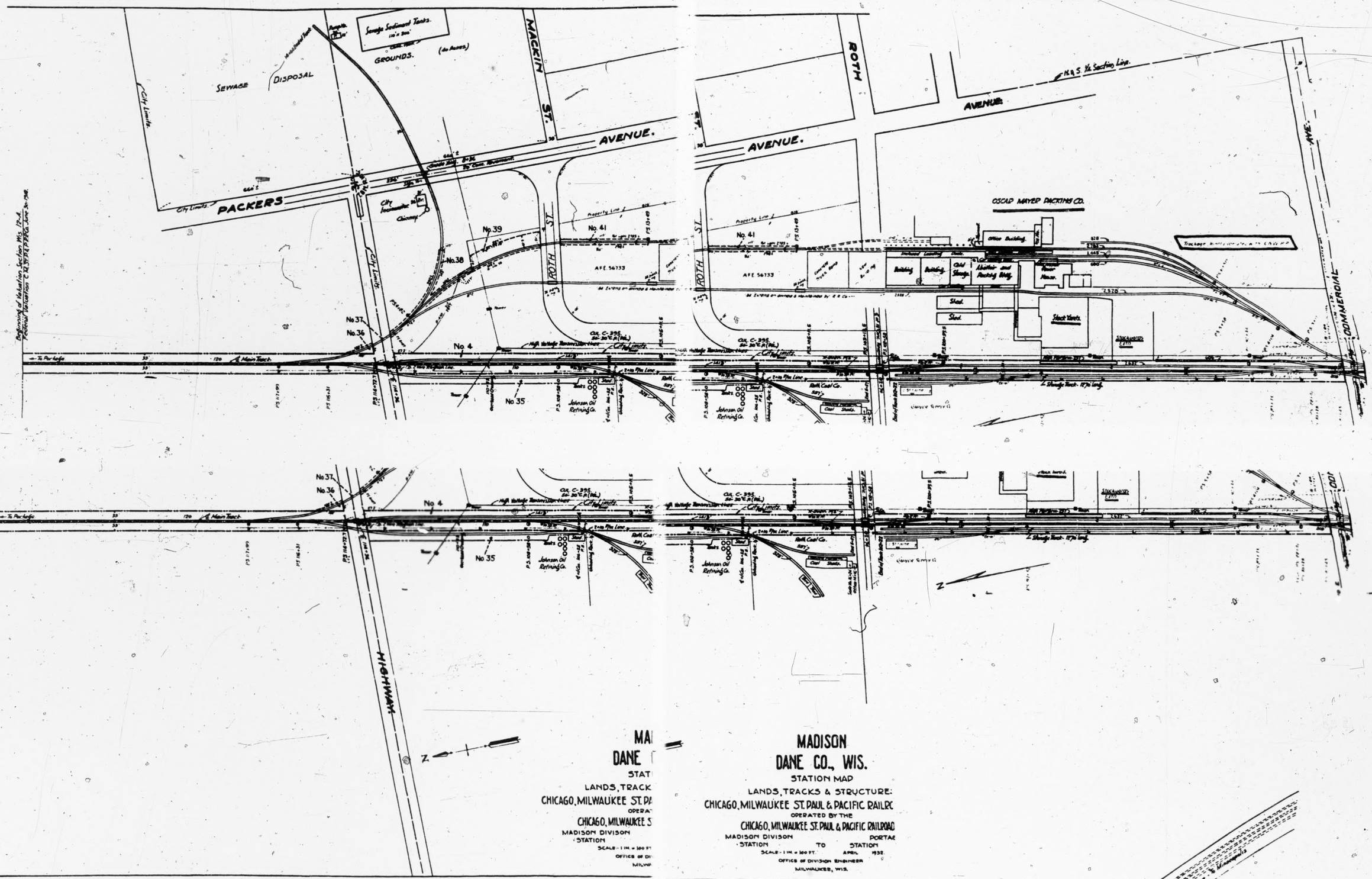
REF. EXHIBIT NO.
I.C.C. DKT. No. 29809

DRAFTING ROOM

316-16351
K.C. TERMINAL RY. CO.
RAILROAD MAP
OF
GREATER KANSAS CITY
BIRMINGHAM MO. TO CLARK JUNCTION KANSAS

(P. 1982)

2122


SEWAGE DISPOSAL
Sewage Sediment Tanks.
GROUNDS.
MACKIN ST.
AVENUE.
PACKERS
City Limits.
Property Line
No. 39
No. 41
No. 38
No. 37
No. 36
No. 4
No. 35
AFE 56733
ROTH ST.
Johnson Oil Refining Co.
OSCAR MAYER PACKING CO.
Office Building.
Shed.
Shed.
Stock Yards.
COMMERCIAL AVE.
N. & S. ¼ Section Line.
HIGHWAY
MADISON
DANE CO., WIS.
STATION MAP
LANDS, TRACKS & STRUCTURE:
CHICAGO, MILWAUKEE ST. PAUL & PACIFIC RAILRC
OPERATED BY THE
CHICAGO, MILWAUKEE ST. PAUL & PACIFIC RAILROAD
MADISON DIVISON
STATION TO STATION
SCALE - 1 IN. = 100 FT.
APRIL 1932.
OFFICE OF DIVISION ENGINEER
MILWAUKEE, WIS.

2123

MAP OF MILWAUKEE

AND OUTLYING DISTRICTS.

THE CHICAGO AND NORTH WESTERN RAILWAY

Stations and Terminal Facilities shown in red, indexed and described as follows:

1. New Butler Yard and Team Tracks.
2. Fonda, Station and Team Tracks.
3. Shorewood, Station and Team Tracks.
4. East North Avenue Team Tracks; Bradford Street.
5. Main Passenger Station—C. & N. W. Ry. Foot of Wisconsin Street.
6. Freight Station and Team Tracks, Third Ward.
   Foot Buffalo, Van Buren and Cass Streets.
   In Freight House No. 1 on Van Buren between Buffalo and Detroit Streets.
   Fruit House, on Buffalo Street at Van Buren.
   Out Freight House No. 2, on Jackson Street between Buffalo and Chicago Streets.
   In Freight House No. 3, on Jackson Street between Chicago and Menominee Streets.
   Local Freight Office, located between House 2 and 3 on Jackson Street at foot of Chicago Street.
7. C. & N. W. Railway Dock House, Foot South Water Street.
8. C. & N. W. Ry. Rialto Grain Elevator.
9. Marah Freight Yard, Foot National Avenue.
10. Florida Street Yard and Team Tracks, Fifth Ward. Florida Street at Barclay Street.
11. Allis Passenger Station, Foot National Avenue.
12. C. & N. W. Railway Kinnickinnic Grain Elevator.
13. St. Francis Team Tracks. Clement Avenue.
14. Madison Division Freight Yard and Greenfield Avenue Team Track, Washington Street and Kinnickinnic Avenue.
15. Lincoln Avenue Freight House and Team Tracks. Lincoln Avenue at Clinton Street.
16. Chase Yard and Shops.
17. Layton Park Freight House and Team Tracks.
18. Mitchell Yard, Menominee Valley Belt Line.
19. 47th Avenue Team Track.
20. West Allis Freight House, Passenger Station and Team Tracks.
21. State Fair Park, Team Tracks and Platform.
22. Cudahy, Freight and Passenger Station and Team Tracks.
23. South Milwaukee, Freight and Passenger Station and Team Tracks.
24. Carrollville, Freight and Passenger Station and Team Tracks.

C.& N.W. — Interchange between C.& N.W. and CMStP&P

C.M.ST.P.& P.

Milwaukee Stock Yards, Armour & Co., Zitron Bros., Plankington Packing Co.

Wisconsin Packing Company

Cudahy Bros., Cudahy, Wis.

COPYRIGHT 1911 CHICAGO AND NORTH WESTERN RY. CO.

2126

1886A

P. 1887

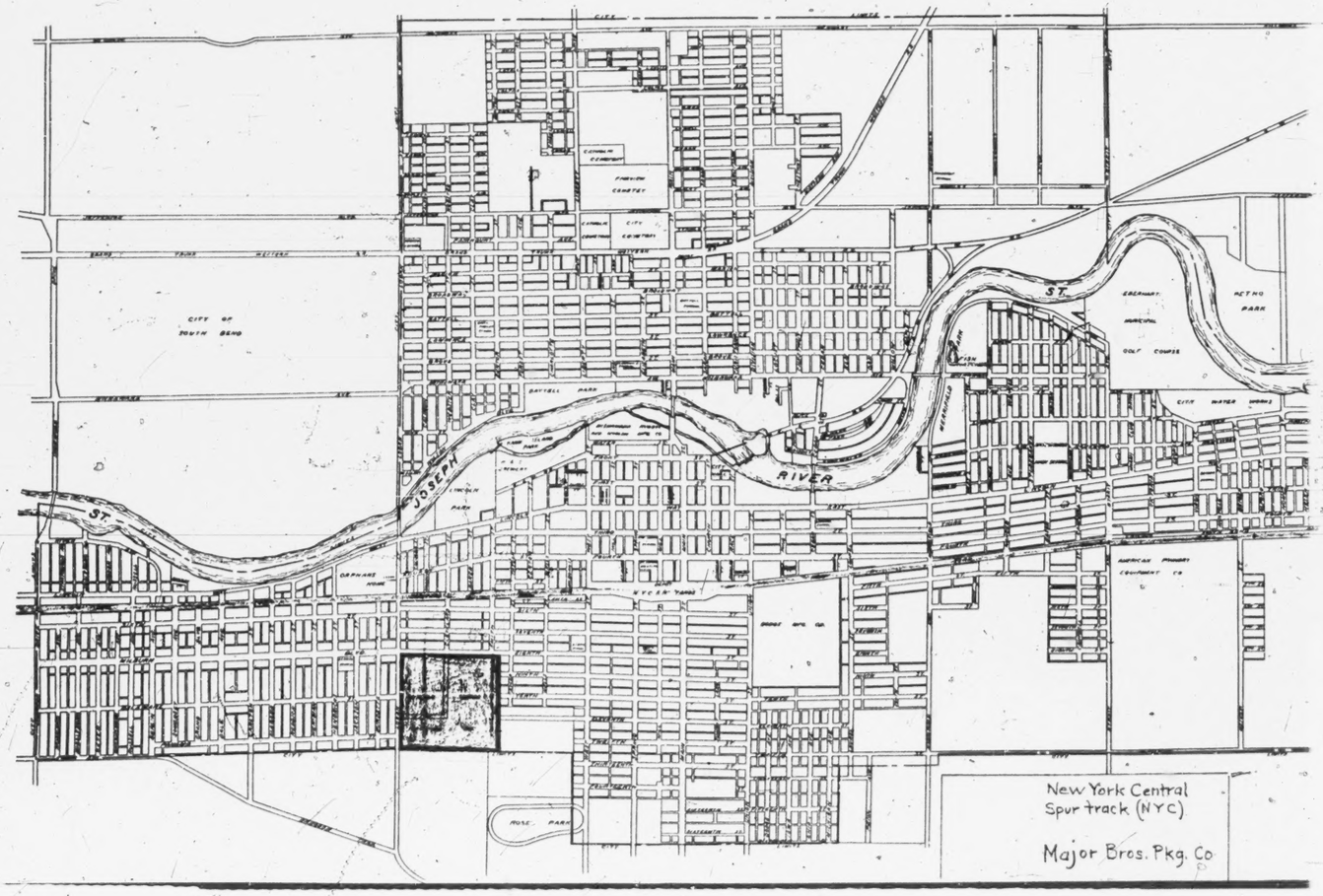
STREET MAP

OF

MISHAWAKA - INDIANA

FRANK J. MILLER - CITY ENG'R

MAYOR E. SPENCER WALTON



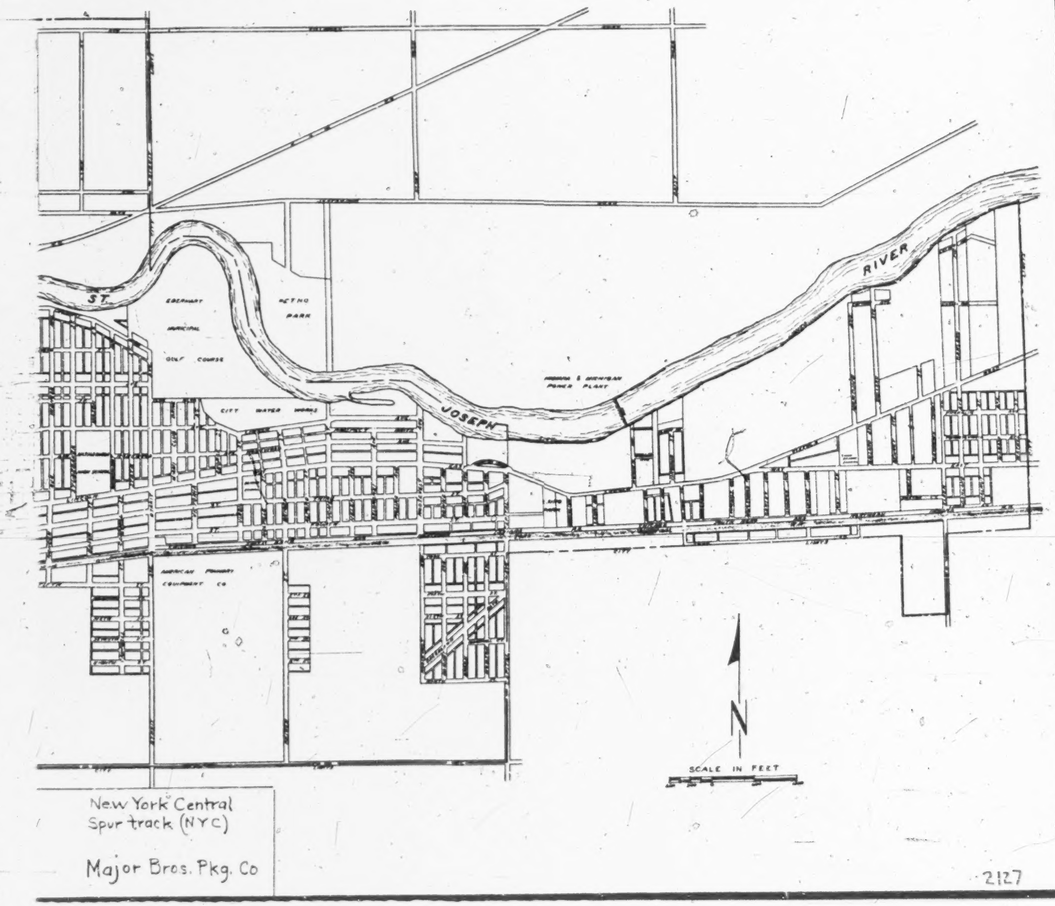
(P. 1887)

[illegible] MAP

- INDIANA

- CITY ENG'R

CER WALTON



2127

Farmers Terminal Packing Co. Property

Farmers Terminal Packing Co. Property

Farmers Terminal Packing Co. Property

Sec 26 T28N R22W

Sec 23 T28N R22W

Chicago, Burlington & Quincy R.R.

Prop. Extn. State Hwy #100

Cudahy Packing Co.

Owned by Industry

Platform

Fig. Bldg.

Cooler Building

Hog Ho.

Beef Ho.

Fan

Power Ho.

Scale House

MISSISSIPPI RIV.

INSERT

INSERT

SEE INSERT

SEE INSERT

RED ROCK

Depot (Closed)

Prop. Main Track No. 1

Prop. Main Track No. 2

Prop. Main Track No. 3

Prop. Main Track No. 4

Prop. Main Track No. 5

Prop. Main Track No. 6

Prop. Main Track No. 7

Prop. Main Track No. 8

Prop. Main Track No. 9

Prop. Main Track No. 10

Prop. Main Track No. 11

Prop. Main Track No. 12

Prop. Main Track No. 13

Prop. Main Track No. 14

Prop. Main Track No. 15

Prop. Main Track No. 16

Prop. Main Track No. 17

Prop. Main Track No. 18

Prop. Main Track No. 19

Prop. Main Track No. 20

Prop. Main Track No. 21

Prop. Main Track No. 22

Prop. Main Track No. 23

Prop. Main Track No. 24

Prop. Main Track No. 25

Prop. Main Track No. 26

Prop. Main Track No. 27

Prop. Main Track No. 28

Prop. Main Track No. 29

Prop. Main Track No. 30

Prop. Main Track No. 31

Prop. Main Track No. 32

Prop. Main Track No. 33

Prop. Main Track No. 34

Prop. Main Track No. 35

Prop. Main Track No. 36

Prop. Main Track No. 37

Prop. Main Track No. 38

Prop. Main Track No. 39

Prop. Main Track No. 40

Prop. Main Track No. 41

Prop. Main Track No. 42

Prop. Main Track No. 43

Prop. Main Track No. 44

Prop. Main Track No. 45

Prop. Main Track No. 46

Prop. Main Track No. 47

Prop. Main Track No. 48

Prop. Main Track No. 49

Prop. Main Track No. 50

Prop. Main Track No. 51

Prop. Main Track No. 52

Prop. Main Track No. 53

Prop. Main Track No. 54

Prop. Main Track No. 55

Prop. Main Track No. 56

Prop. Main Track No. 57

Prop. Main Track No. 58

Prop. Main Track No. 59

Prop. Main Track No. 60

Prop. Main Track No. 61

Prop. Main Track No. 62

Prop. Main Track No. 63

Prop. Main Track No. 64

Prop. Main Track No. 65

Prop. Main Track No. 66

Prop. Main Track No. 67

Prop. Main Track No. 68

Prop. Main Track No. 69

Prop. Main Track No. 70

Prop. Main Track No. 71

Prop. Main Track No. 72

Prop. Main Track No. 73

Prop. Main Track No. 74

Prop. Main Track No. 75

Prop. Main Track No. 76

Prop. Main Track No. 77

Prop. Main Track No. 78

Prop. Main Track No. 79

Prop. Main Track No. 80

Prop. Main Track No. 81

Prop. Main Track No. 82

Prop. Main Track No. 83

Prop. Main Track No. 84

Prop. Main Track No. 85

Prop. Main Track No. 86

Prop. Main Track No. 87

Prop. Main Track No. 88

Prop. Main Track No. 89

Prop. Main Track No. 90

Prop. Main Track No. 91

Prop. Main Track No. 92

Prop. Main Track No. 93

Prop. Main Track No. 94

Prop. Main Track No. 95

Prop. Main Track No. 96

Prop. Main Track No. 97

Prop. Main Track No. 98

Prop. Main Track No. 99

Prop. Main Track No. 100

Prop. Main Track No. 101

Prop. Main Track No. 102

Prop. Main Track No. 103

Prop. Main Track No. 104

Prop. Main Track No. 105

Prop. Main Track No. 106

Prop. Main Track No. 107

Prop. Main Track No. 108

Prop. Main Track No. 109

Prop. Main Track No. 110

Prop. Main Track No. 111

Prop. Main Track No. 112

Prop. Main Track No. 113

Prop. Main Track No. 114

Prop. Main Track No. 115

Prop. Main Track No. 116

Prop. Main Track No. 117

Prop. Main Track No. 118

Prop. Main Track No. 119

Prop. Main Track No. 120

Prop. Main Track No. 121

Prop. Main Track No. 122

Prop. Main Track No. 123

Prop. Main Track No. 124

Prop. Main Track No. 125

Prop. Main Track No. 126

Prop. Main Track No. 127

Prop. Main Track No. 128

Prop. Main Track No. 129

Prop. Main Track No. 130

Prop. Main Track No. 131

Prop. Main Track No. 132

Prop. Main Track No. 133

Prop. Main Track No. 134

Prop. Main Track No. 135

Prop. Main Track No. 136

Prop. Main Track No. 137

Prop. Main Track No. 138

Prop. Main Track No. 139

Prop. Main Track No. 140

Prop. Main Track No. 141

Prop. Main Track No. 142

Prop. Main Track No. 143

Prop. Main Track No. 144

Prop. Main Track No. 145

Prop. Main Track No. 146

Prop. Main Track No. 147

Prop. Main Track No. 148

Prop. Main Track No. 149

Prop. Main Track No. 150

Prop. Main Track No. 151

Prop. Main Track No. 152

Prop. Main Track No. 153

Prop. Main Track No. 154

Prop. Main Track No. 155

Prop. Main Track No. 156

Prop. Main Track No. 157

Prop. Main Track No. 158

Prop. Main Track No. 159

Prop. Main Track No. 160

Prop. Main Track No. 161

Prop. Main Track No. 162

Prop. Main Track No. 163

Prop. Main Track No. 164

Prop. Main Track No. 165

Prop. Main Track No. 166

Prop. Main Track No. 167

Prop. Main Track No. 168

Prop. Main Track No. 169

Prop. Main Track No. 170

Prop. Main Track No. 171

Prop. Main Track No. 172

Prop. Main Track No. 173

Prop. Main Track No. 174

Prop. Main Track No. 175

Prop. Main Track No. 176

Prop. Main Track No. 177

Prop. Main Track No. 178

Prop. Main Track No. 179

Prop. Main Track No. 180

Prop. Main Track No. 181

Prop. Main Track No. 182

Prop. Main Track No. 183

Prop. Main Track No. 184

Prop. Main Track No. 185

Prop. Main Track No. 186

Prop. Main Track No. 187

Prop. Main Track No. 188

Prop. Main Track No. 189

Prop. Main Track No. 190

Prop. Main Track No. 191

Prop. Main Track No. 192

Prop. Main Track No. 193

Prop. Main Track No. 194

Prop. Main Track No. 195

Prop. Main Track No. 196

Prop. Main Track No. 197

Prop. Main Track No. 198

Prop. Main Track No. 199

Prop. Main Track No. 200

Prop. Main Track No. 201

Prop. Main Track No. 202

Prop. Main Track No. 203

Prop. Main Track No. 204

Prop. Main Track No. 205

Prop. Main Track No. 206

Prop. Main Track No. 207

Prop. Main Track No. 208

Prop. Main Track No. 209

Prop. Main Track No. 210

Prop. Main Track No. 211

Prop. Main Track No. 212

Prop. Main Track No. 213

Prop. Main Track No. 214

Prop. Main Track No. 215

Prop. Main Track No. 216

Prop. Main Track No. 217

Prop. Main Track No. 218

Prop. Main Track No. 219

Prop. Main Track No. 220

Prop. Main Track No. 221

Prop. Main Track No. 222

Prop. Main Track No. 223

Prop. Main Track No. 224

Prop. Main Track No. 225

Prop. Main Track No. 226

Prop. Main Track No. 227

Prop. Main Track No. 228

Prop. Main Track No. 229

Prop. Main Track No. 230

Prop. Main Track No. 231

Prop. Main Track No. 232

Prop. Main Track No. 233

Prop. Main Track No. 234

Prop. Main Track No. 235

Prop. Main Track No. 236

Prop. Main Track No. 237

Prop. Main Track No. 238

Prop. Main Track No. 239

Prop. Main Track No. 240

Prop. Main Track No. 241

Prop. Main Track No. 242

Prop. Main Track No. 243

Prop. Main Track No. 244

Prop. Main Track No. 245

Prop. Main Track No. 246

Prop. Main Track No. 247

Prop. Main Track No. 248

Prop. Main Track No. 249

Prop. Main Track No. 250

Prop. Main Track No. 251

Prop. Main Track No. 252

Prop. Main Track No. 253

Prop. Main Track No. 254

Prop. Main Track No. 255

Prop. Main Track No. 256

Prop. Main Track No. 257

Prop. Main Track No. 258

Prop. Main Track No. 259

Prop. Main Track No. 260

Prop. Main Track No. 261

Prop. Main Track No. 262

Prop. Main Track No. 263

Prop. Main Track No. 264

Prop. Main Track No. 265

Prop. Main Track No. 266

Prop. Main Track No. 267

Prop. Main Track No. 268

Prop. Main Track No. 269

Prop. Main Track No. 270

Prop. Main Track No. 271

Prop. Main Track No. 272

Prop. Main Track No. 273

Prop. Main Track No. 274

Prop. Main Track No. 275

Prop. Main Track No. 276

Prop. Main Track No. 277

Prop. Main Track No. 278

Prop. Main Track No. 279

Prop. Main Track No. 280

Prop. Main Track No. 281

Prop. Main Track No. 282

Prop. Main Track No. 283

Prop. Main Track No. 284

Prop. Main Track No. 285

Prop. Main Track No. 286

Prop. Main Track No. 287

Prop. Main Track No. 288

Prop. Main Track No. 289

Prop. Main Track No. 290

Prop. Main Track No. 291

Prop. Main Track No. 292

Prop. Main Track No. 293

Prop. Main Track No. 294

Prop. Main Track No. 295

Prop. Main Track No. 296

Prop. Main Track No. 297

Prop. Main Track No. 298

Prop. Main Track No. 299

Prop. Main Track No. 300

Prop. Main Track No. 301

Prop. Main Track No. 302

Prop. Main Track No. 303

Prop. Main Track No. 304

Prop. Main Track No. 305

Prop. Main Track No. 306

Prop. Main Track No. 307

Prop. Main Track No. 308

Prop. Main Track No. 309

Prop. Main Track No. 310

Prop. Main Track No. 311

Prop. Main Track No. 312

Prop. Main Track No. 313

Prop. Main Track No. 314

Prop. Main Track No. 315

Prop. Main Track No. 316

Prop. Main Track No. 317

Prop. Main Track No. 318

Prop. Main Track No. 319

Prop. Main Track No. 320

Prop. Main Track No. 321

Prop. Main Track No. 322

Prop. Main Track No. 323

Prop. Main Track No. 324

Prop. Main Track No. 325

Prop. Main Track No. 326

Prop. Main Track No. 327

Prop. Main Track No. 328

Prop. Main Track No. 329

Prop. Main Track No. 330

Prop. Main Track No. 331

Prop. Main Track No. 332

Prop. Main Track No. 333

Prop. Main Track No. 334

Prop. Main Track No. 335

Prop. Main Track No. 336

Prop. Main Track No. 337

Prop. Main Track No. 338

Prop. Main Track No. 339

Prop. Main Track No. 340

Prop. Main Track No. 341

Prop. Main Track No. 342

Prop. Main Track No. 343

Prop. Main Track No. 344

Prop. Main Track No. 345

Prop. Main Track No. 346

Prop. Main Track No. 347

Prop. Main Track No. 348

Prop. Main Track No. 349

Prop. Main Track No. 350

Prop. Main Track No. 351

Prop. Main Track No. 352

Prop. Main Track No. 353

Prop. Main Track No. 354

Prop. Main Track No. 355

Prop. Main Track No. 356

Prop. Main Track No. 357

Prop. Main Track No. 358

Prop. Main Track No. 359

Prop. Main Track No. 360

Prop. Main Track No. 361

Prop. Main Track No. 362

Prop. Main Track No. 363

Prop. Main Track No. 364

Prop. Main Track No. 365

Prop. Main Track No. 366

Prop. Main Track No. 367

Prop. Main Track No. 368

Prop. Main Track No. 369

Prop. Main Track No. 370

Prop. Main Track No. 371

Prop. Main Track No. 372

Prop. Main Track No. 373

Prop. Main Track No. 374

Prop. Main Track No. 375

Prop. Main Track No. 376

Prop. Main Track No. 377

Prop. Main Track No. 378

Prop. Main Track No. 379

Prop. Main Track No. 380

Prop. Main Track No. 381

Prop. Main Track No. 382

Prop. Main Track No. 383

Prop. Main Track No. 384

Prop. Main Track No. 385

Prop. Main Track No. 386

Prop. Main Track No. 387

Prop. Main Track No. 388

Prop. Main Track No. 389

Prop. Main Track No. 390

Prop. Main Track No. 391

Prop. Main Track No. 392

Prop. Main Track No. 393

Prop. Main Track No. 394

Prop. Main Track No. 395

Prop. Main Track No. 396

Prop. Main Track No. 397

Prop. Main Track No. 398

Prop. Main Track No. 399

Prop. Main Track No. 400

Prop. Main Track No. 401

Prop. Main Track No. 402

Prop. Main Track No. 403

Prop. Main Track No. 404

Prop. Main Track No. 405

Prop. Main Track No. 406

Prop. Main Track No. 407

Prop. Main Track No. 408

Prop. Main Track No. 409

Prop. Main Track No. 410

Prop. Main Track No. 411

Prop. Main Track No. 412

Prop. Main Track No. 413

Prop. Main Track No. 414

Prop. Main Track No. 415

Prop. Main Track No. 416

Prop. Main Track No. 417

Prop. Main Track No. 418

Prop. Main Track No. 419

Prop. Main Track No. 420

Prop. Main Track No. 421

Prop. Main Track No. 422

Prop. Main Track No. 423

Prop. Main Track No. 424

Prop. Main Track No. 425

Prop. Main Track No. 426

Prop. Main Track No. 427

Prop. Main Track No. 428

Prop. Main Track No. 429

Prop. Main Track No. 430

Prop. Main Track No. 431

Prop. Main Track No. 432

Prop. Main Track No. 433

Prop. Main Track No. 434

Prop. Main Track No. 435

Prop. Main Track No. 436

Prop. Main Track No. 437

Prop. Main Track No. 438

Prop. Main Track No. 439

Prop. Main Track No. 440

Prop. Main Track No. 441

Prop. Main Track No. 442

Prop. Main Track No. 443

Prop. Main Track No. 444

Prop. Main Track No. 445

Prop. Main Track No. 446

Prop. Main Track No. 447

Prop. Main Track No. 448

Prop. Main Track No. 449

Prop. Main Track No. 450

Prop. Main Track No. 451

Prop. Main Track No. 452

Prop. Main Track No. 453

Prop. Main Track No. 454

Prop. Main Track No. 455

Prop. Main Track No. 456

Prop. Main Track No. 457

Prop. Main Track No. 458

Prop. Main Track No. 459

Prop. Main Track No. 460

Prop. Main Track No. 461

Prop. Main Track No. 462

Prop. Main Track No. 463

Prop. Main Track No. 464

Prop. Main Track No. 465

Prop. Main Track No. 466

Prop. Main Track No. 467

Prop. Main Track No. 468

Prop. Main Track No. 469

Prop. Main Track No. 470

Prop. Main Track No. 471

Prop. Main Track No. 472

Prop. Main Track No. 473

Prop. Main Track No. 474

Prop. Main Track No. 475

Prop. Main Track No. 476

Prop. Main Track No. 477

Prop. Main Track No. 478

Prop. Main Track No. 479

Prop. Main Track No. 480

Prop. Main Track No. 481

Prop. Main Track No. 482

Prop. Main Track No. 483

Prop. Main Track No. 484

Prop. Main Track No. 485

Prop. Main Track No. 486

Prop. Main Track No. 487

Prop. Main Track No. 488

Prop. Main Track No. 489

Prop. Main Track No. 490

Prop. Main Track No. 491

Prop. Main Track No. 492

Prop. Main Track No. 493

Prop. Main Track No. 494

Prop. Main Track No. 495

Prop. Main Track No. 496

Prop. Main Track No. 497

Prop. Main Track No. 498

Prop. Main Track No. 499

Prop. Main Track No. 500

Prop. Main Track No. 501

Prop. Main Track No. 502

Prop. Main Track No. 503

Prop. Main Track No. 504

Prop. Main Track No. 505

Prop. Main Track No. 506

Prop. Main Track No. 507

Prop. Main Track No. 508

Prop. Main Track No. 509

Prop. Main Track No. 510

Prop. Main Track No. 511

Prop. Main Track No. 512

Prop. Main Track No. 513

Prop. Main Track No. 514

Prop. Main Track No. 515

Prop. Main Track No. 516

Prop. Main Track No. 517

Prop. Main Track No. 518

Prop. Main Track No. 519

Prop. Main Track No. 520

Prop. Main Track No. 521

Prop. Main Track No. 522

Prop. Main Track No. 523

Prop. Main Track No. 524

Prop. Main Track No. 525

Prop. Main Track No. 526

Prop. Main Track No. 527

Prop. Main Track No. 528

Prop. Main Track No. 529

Prop. Main Track No. 530

Prop. Main Track No. 531

Prop. Main Track No. 532

Prop. Main Track No. 533

Prop. Main Track No. 534

Prop. Main Track No. 535

Prop. Main Track No. 536

Prop. Main Track No. 537

Prop. Main Track No. 538

Prop. Main Track No. 539

Prop. Main Track No. 540

Prop. Main Track No. 541

Prop. Main Track No. 542

Prop. Main Track No. 543

Prop. Main Track No. 544

Prop. Main Track No. 545

Prop. Main Track No. 546

Prop. Main Track No. 547

Prop. Main Track No. 548

Prop. Main Track No. 549

Prop. Main Track No. 550

Prop. Main Track No. 551

Prop. Main Track No. 552

Prop. Main Track No. 553

Prop. Main Track No. 554

Prop. Main Track No. 555

Prop. Main Track No. 556

Prop. Main Track No. 557

Prop. Main Track No. 558

Prop. Main Track No. 559

Prop. Main Track No. 560

Prop. Main Track No. 561

Prop. Main Track No. 562

Prop. Main Track No. 563

Prop. Main Track No. 564

Prop. Main Track No. 565

Prop. Main Track No. 566

Prop. Main Track No. 567

Prop. Main Track No. 568

Prop. Main Track No. 569

Prop. Main Track No. 570

Prop. Main Track No. 571

Prop. Main Track No. 572

Prop. Main Track No. 573

Prop. Main Track No. 574

Prop. Main Track No. 575

Prop. Main Track No. 576

Prop. Main Track No. 577

Prop. Main Track No. 578

Prop. Main Track No. 579

Prop. Main Track No. 580

Prop. Main Track No. 581

Prop. Main Track No. 582

Prop. Main Track No. 583

Prop. Main Track No. 584

Prop. Main Track No. 585

Prop. Main Track No. 586

Prop. Main Track No. 587

Prop. Main Track No. 588

Prop. Main Track No. 589

Prop. Main Track No. 590

Prop. Main Track No. 591

Prop. Main Track No. 592

Prop. Main Track No. 593

Prop. Main Track No. 594

Prop. Main Track No. 595

Prop. Main Track No. 596

Prop. Main Track No. 597

Prop. Main Track No. 598

Prop. Main Track No. 599

Prop. Main Track No. 600

Prop. Main Track No. 601

Prop. Main Track No. 602

Prop. Main Track No. 603

Prop. Main Track No. 604

Prop. Main Track No. 605

Prop. Main Track No. 606

Prop. Main Track No. 607

Prop. Main Track No. 608

Prop. Main Track No. 609

Prop. Main Track No. 610

Prop. Main Track No. 611

Prop. Main Track No. 612

Prop. Main Track No. 613

Prop. Main Track No. 614

Prop. Main Track No. 615

Prop. Main Track No. 616

Prop. Main Track No. 617

Prop. Main Track No. 618

Prop. Main Track No. 619

Prop. Main Track No. 620

Prop. Main Track No. 621

Prop. Main Track No. 622

Prop. Main Track No. 623

Prop. Main Track No. 624

Prop. Main Track No. 625

Prop. Main Track No. 626

Prop. Main Track No. 627

Prop. Main Track No. 628

Prop. Main Track No. 629

Prop. Main Track No. 630

Prop. Main Track No. 631

Prop. Main Track No. 632

Prop. Main Track No. 633

Prop. Main Track No. 634

Prop. Main Track No. 635

Prop. Main Track No. 636

Prop. Main Track No. 637

Prop. Main Track No. 638

Prop. Main Track No. 639

Prop. Main Track No. 640

Prop. Main Track No. 641

Prop. Main Track No. 642

Prop. Main Track No. 643

Prop. Main Track No. 644

Prop. Main Track No. 645

Prop. Main Track No. 646

Prop. Main Track No. 647

Prop. Main Track No. 648

Prop. Main Track No. 649

Prop. Main Track No. 650

Prop. Main Track No. 651

Prop. Main Track No. 652

Prop. Main Track No. 653

Prop. Main Track No. 654

Prop. Main Track No. 655

Prop. Main Track No. 656

Prop. Main Track No. 657

Prop. Main Track No. 658

Prop. Main Track No. 659

Prop. Main Track No. 660

Prop. Main Track No. 661

Prop. Main Track No. 662

Prop. Main Track No. 663

Prop. Main Track No. 664

Prop. Main Track No. 665

Prop. Main Track No. 666

Prop. Main Track No. 667

Prop. Main Track No. 668

Prop. Main Track No. 669

Prop. Main Track No. 670

Prop. Main Track No. 671

Prop. Main Track No. 672

Prop. Main Track No. 673

Prop. Main Track No. 674

Prop. Main Track No. 675

Prop. Main Track No. 676

Prop. Main Track No. 677

Prop. Main Track No. 678

Prop. Main Track No. 679

Prop. Main Track No. 680

Prop. Main Track No. 681

Prop. Main Track No. 682

Prop. Main Track No. 683

Prop. Main Track No. 684

Prop. Main Track No. 685

Prop. Main Track No. 686

Prop. Main Track No. 687

Prop. Main Track No. 688

Prop. Main Track No. 689

Prop. Main Track No. 690

Prop. Main Track No. 691

Prop. Main Track No. 692

Prop. Main Track No. 693

Prop. Main Track No. 694

Prop. Main Track No. 695

Prop. Main Track No. 696

Prop. Main Track No. 697

Prop. Main Track No. 698

Prop. Main Track No. 699

Prop. Main Track No. 700

Prop. Main Track No. 701

Prop. Main Track No. 702

Prop. Main Track No. 703

Prop. Main Track No. 704

Prop. Main Track No. 705

Prop. Main Track No. 706

Prop. Main Track No. 707

Prop. Main Track No. 708

Prop. Main Track No. 709

Prop. Main Track No. 710

Prop. Main Track No. 711

Prop. Main Track No. 712

Prop. Main Track No. 713

Prop. Main Track No. 714

Prop. Main Track No. 715

Prop. Main Track No. 716

Prop. Main Track No. 717

Prop. Main Track No. 718

Prop. Main Track No. 719

Prop. Main Track No. 720

Prop. Main Track No. 721

Prop. Main Track No. 722

Prop. Main Track No. 723

Prop. Main Track No. 724

Prop. Main Track No. 725

Prop. Main Track No. 726

Prop. Main Track No. 727

Prop. Main Track No. 728

Prop. Main Track No. 729

Prop. Main Track No. 730

Prop. Main Track No. 731

Prop. Main Track No. 732

Prop. Main Track No. 733

Prop. Main Track No. 734

Prop. Main Track No. 735

Prop. Main Track No. 736

Prop. Main Track No. 737

Prop. Main Track No. 738

Prop. Main Track No. 739

Prop. Main Track No. 740

Prop. Main Track No. 741

Prop. Main Track No. 742

Prop. Main Track No. 743

Prop. Main Track No. 744

Prop. Main Track No. 745

Prop. Main Track No. 746

Prop. Main Track No. 747

Prop. Main Track No. 748

Prop. Main Track No. 749

Prop. Main Track No. 750

Prop. Main Track No. 751

Prop. Main Track No. 752

Prop. Main Track No. 753

Prop. Main Track No. 754

Prop. Main Track No. 755

Prop. Main Track No. 756

Prop. Main Track No. 757

Prop. Main Track No. 758

Prop. Main Track No. 759

Prop. Main Track No. 760

Prop. Main Track No. 761

Prop. Main Track No. 762

Prop. Main Track No. 763

Prop. Main Track No. 764

Prop. Main Track No. 765

Prop. Main Track No. 766

Prop. Main Track No. 767

Prop. Main Track No. 768

Prop. Main Track No. 769

Prop. Main Track No. 770

Prop. Main Track No. 771

Prop. Main Track No. 772

Prop. Main Track No. 773

Prop. Main Track No. 774

Prop. Main Track No. 775

Prop. Main Track No. 776

Prop. Main Track No. 777

Prop. Main Track No. 778

Prop. Main Track No. 779

Prop. Main Track No. 780

Prop. Main Track No. 781

Prop. Main Track No. 782

Prop. Main Track No. 783

Prop. Main Track No. 784

Prop. Main Track No. 785

Prop. Main Track No. 786

Prop. Main Track No. 787

Prop. Main Track No. 788

Prop. Main Track No. 789

Prop. Main Track No. 790

Prop. Main Track No. 791

Prop. Main Track No. 792

Prop. Main Track No. 793

Prop. Main Track No. 794

Prop. Main Track No. 795

Prop. Main Track No. 796

Prop. Main Track No. 797

Prop. Main Track No. 798

Prop. Main Track No. 799

Prop. Main Track No. 800

Prop. Main Track No. 801

Prop. Main Track No. 802

Prop. Main Track No. 803

Prop. Main Track No. 804

Prop. Main Track No. 805

Prop. Main Track No. 806

Prop. Main Track No. 807

Prop. Main Track No. 808

Prop. Main Track No. 809

Prop. Main Track No. 810

Prop. Main Track No. 811

Prop. Main Track No. 812

Prop. Main Track No. 813

Prop. Main Track No. 814

Prop. Main Track No. 815

Prop. Main Track No. 816

Prop. Main Track No. 817

Prop. Main Track No. 818

Prop. Main Track No. 819

Prop. Main Track No. 820

Prop. Main Track No. 821

Prop. Main Track No. 822

Prop. Main Track No. 823

Prop. Main Track No. 824

Prop. Main Track No. 825

Prop. Main Track No. 826

Prop. Main Track No. 827

Prop. Main Track No. 828

Prop. Main Track No. 829

Prop. Main Track No. 830

Prop. Main Track No. 831

Prop. Main Track No. 832

Prop. Main Track No. 833

Prop. Main Track No. 834

Prop. Main Track No. 835

Prop. Main Track No. 836

Prop. Main Track No. 837

Prop. Main Track No. 838

Prop. Main Track No. 839

Prop. Main Track No. 840

Prop. Main Track No. 841

Prop. Main Track No. 842

Prop. Main Track No. 843

Prop. Main Track No. 844

Prop. Main Track No. 845

Prop. Main Track No. 846

Prop. Main Track No. 847

Prop. Main Track No. 848

Prop. Main Track No. 849

Prop. Main Track No. 850

Prop. Main Track No. 851

Prop. Main Track No. 852

Prop. Main Track No. 853

Prop. Main Track No. 854

Prop. Main Track No. 855

Prop. Main Track No. 856

Prop. Main Track No. 857

Prop. Main Track No. 858

Prop. Main Track No. 859

Prop. Main Track No. 860

Prop. Main Track No. 861

Prop. Main Track No. 862

Prop. Main Track No. 863

Prop. Main Track No. 864

Prop. Main Track No. 865

Prop. Main Track No. 866

Prop. Main Track No. 867

Prop. Main Track No. 868

Prop. Main Track No. 869

Prop. Main Track No. 870

Prop. Main Track No. 871

Prop. Main Track No. 872

Prop. Main Track No. 873

Prop. Main Track No. 874

Prop. Main Track No. 875

Prop. Main Track No. 876

Prop. Main Track No. 877

Prop. Main Track No. 878

Prop. Main Track No. 879

Prop. Main Track No. 880

Prop. Main Track No. 881

Prop. Main Track No. 882

Prop. Main Track No. 883

Prop. Main Track No. 884

Prop. Main Track No. 885

Prop. Main Track No. 886

Prop. Main Track No. 887

Prop. Main Track No. 888

Prop. Main Track No. 889

Prop. Main Track No. 890

Prop. Main Track No. 891

Prop. Main Track No. 892

Prop. Main Track No. 893

Prop. Main Track No. 894

Prop. Main Track No. 895

Prop. Main Track No. 896

Prop. Main Track No. 897

Prop. Main Track No. 898

Prop. Main Track No. 899

Prop. Main Track No. 900

Prop. Main Track No. 901

Prop. Main Track No. 902

Prop. Main Track No. 903

Prop. Main Track No. 904

Prop. Main Track No. 905

Prop. Main Track No. 906

Prop. Main Track No. 907

Prop. Main Track No. 908

Prop. Main Track No. 909

Prop. Main Track No. 910

Prop. Main Track No. 911

Prop. Main Track No. 912

Prop. Main Track No. 913

Prop. Main Track No. 914

Prop. Main Track No. 915

Prop. Main Track No. 916

Prop. Main Track No. 917

Prop. Main Track No. 918

Prop. Main Track No. 919

Prop. Main Track No. 920

Prop. Main Track No. 921

Prop. Main Track No. 922

Prop. Main Track No. 923

Prop. Main Track No. 924

Prop. Main Track No. 925

Prop. Main Track No. 926

Prop. Main Track No. 927

Prop. Main Track No. 928

Prop. Main Track No. 929

Prop. Main Track No. 930

Prop. Main Track No. 931

Prop. Main Track No. 932

Prop. Main Track No. 933

Prop. Main Track No. 934

Prop. Main Track No. 935

Prop. Main Track No. 936

Prop. Main Track No. 937

Prop. Main Track No. 938

Prop. Main Track No. 939

Prop. Main Track No. 940

Prop. Main Track No. 941

Prop. Main Track No. 942

Prop. Main Track No. 943

Prop. Main Track No. 944

Prop. Main Track No. 945

Prop. Main Track No. 946

Prop. Main Track No. 947

Prop. Main Track No. 948

Prop. Main Track No. 949

Prop. Main Track No. 950

Prop. Main Track No. 951

Prop. Main Track No. 952

Prop. Main Track No. 953

Prop. Main Track No. 954

Prop. Main Track No. 955

Prop. Main Track No. 956

Prop. Main Track No. 957

Prop. Main Track No. 958

Prop. Main Track No. 959

Prop. Main Track No. 960

Prop. Main Track No. 961

Prop. Main Track No. 962

Prop. Main Track No. 963

Prop. Main Track No. 964

Prop. Main Track No. 965

Prop. Main Track No. 966

Prop. Main Track No. 967

Prop. Main Track No. 968

Prop. Main Track No. 969

Prop. Main Track No. 970

Prop. Main Track No. 971

Prop. Main Track No. 972

Prop. Main Track No. 973

Prop. Main Track No. 974

Prop. Main Track No. 975

Prop. Main Track No. 976

Prop. Main Track No. 977

Prop. Main Track No. 978

Prop. Main Track No. 979

Prop. Main Track No. 980

Prop. Main Track No. 981

Prop. Main Track No. 982

Prop. Main Track No. 983

Prop. Main Track No. 984

Prop. Main Track No. 985

Prop. Main Track No. 986

Prop. Main Track No. 987

Prop. Main Track No. 988

Prop. Main Track No. 989

Prop. Main Track No. 990

Prop. Main Track No. 991

Prop. Main Track No. 992

Prop. Main Track No. 993

Prop. Main Track No. 994

Prop. Main Track No. 995

Prop. Main Track No. 996

Prop. Main Track No. 997

Prop. Main Track No. 998

Prop. Main Track No. 999

Prop. Main Track No. 1000

NEWPORT, MINN

C.M.St.P.&P.R.R. Co (Main Line)

Spur track to Cudahy (C.M.St.P&P)

[redacted]

SCALE

166' = 1"

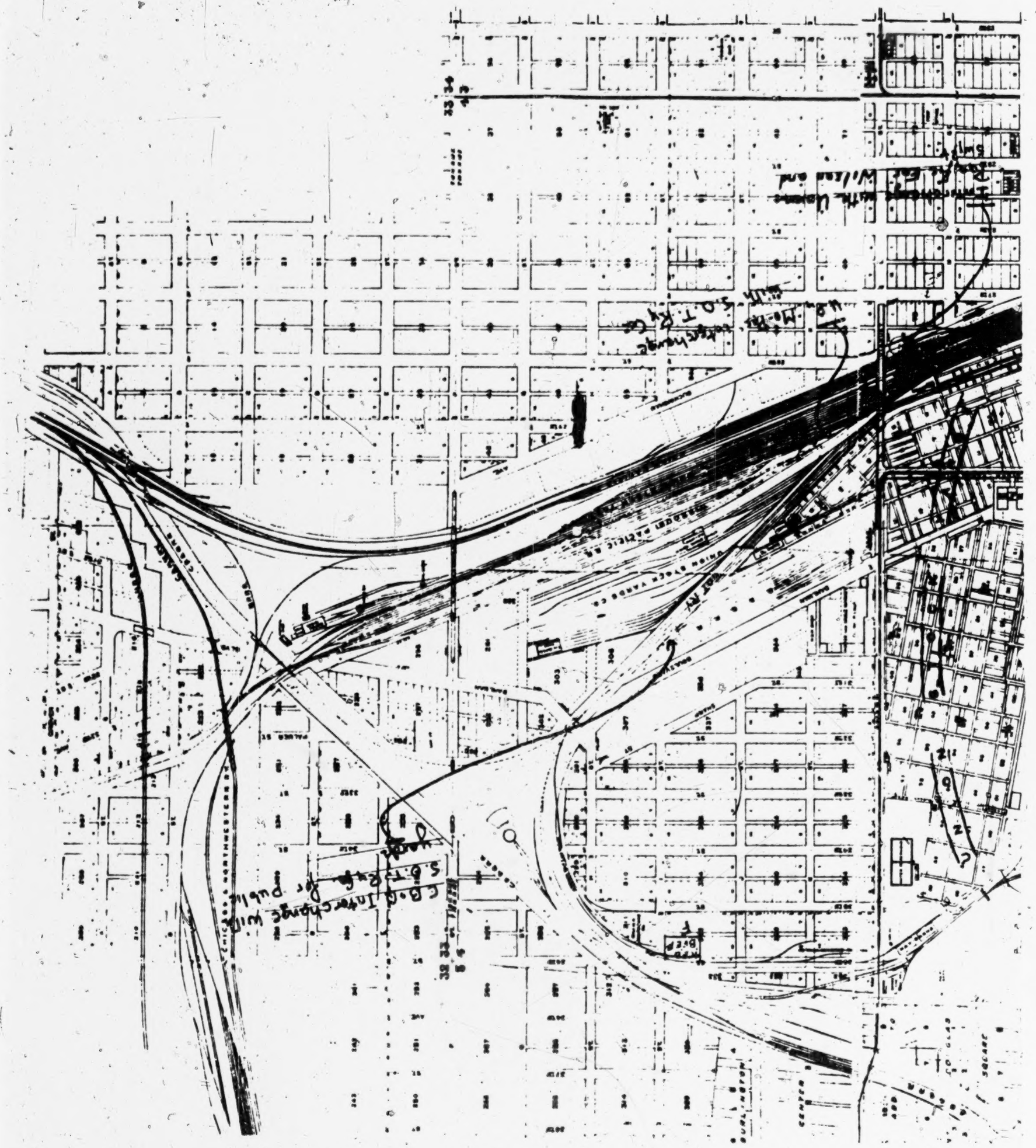
DEF. EXHIBIT No

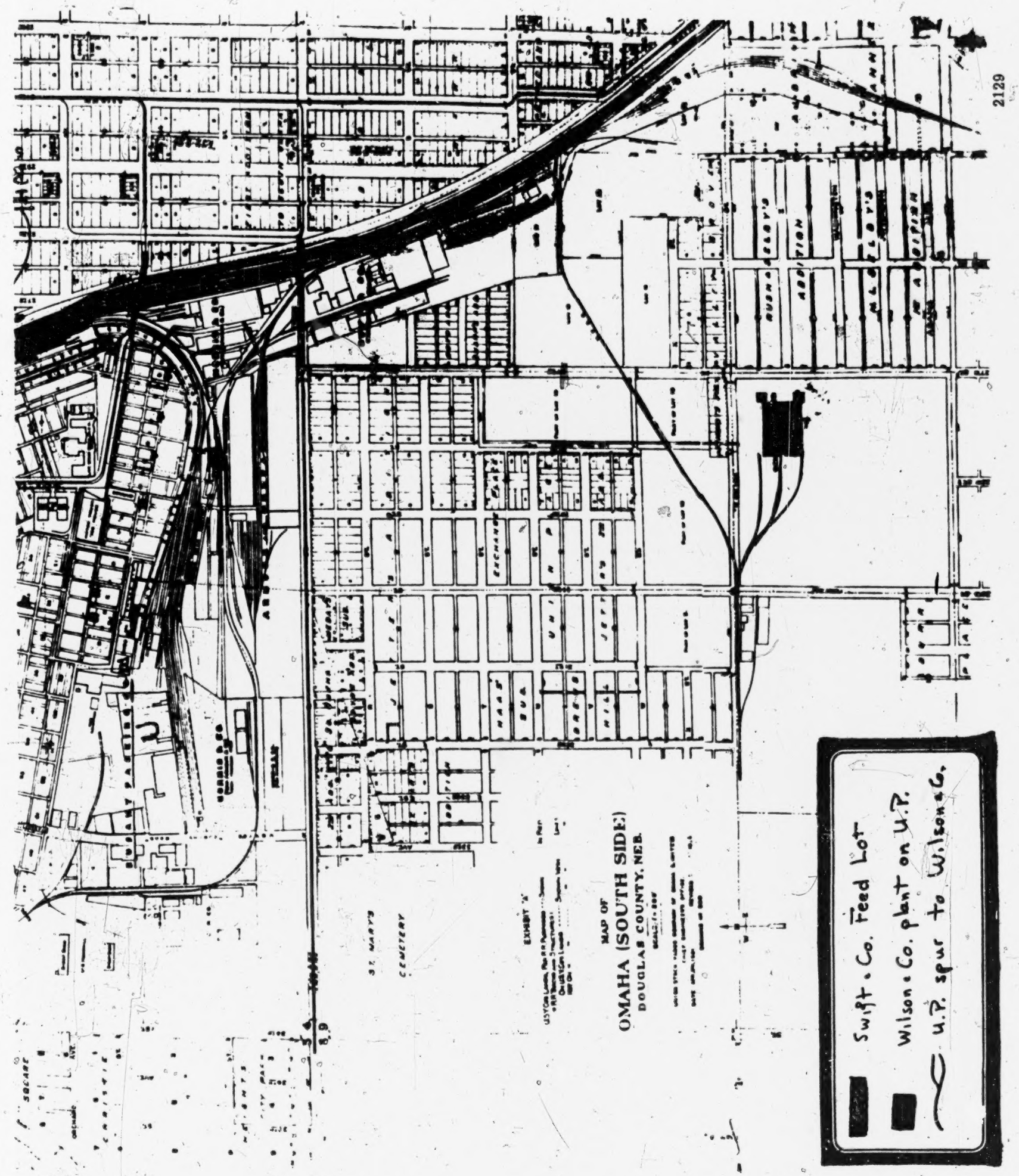
I.C.C. DKT. No. 29809

4A

2128

1889




MAP OF
OMAHA (SOUTH SIDE)
DOUGLAS COUNTY, NEB.
Swift & Co. Feed Lot
Wilson & Co. plant on U.P.
U.P. spur to Wilson & Co.

C.B.&Q. INTERCHANGE (TRACK #3)

C.B.&Q. R.R. INTERCHANGE (POCKET TRACK)

BURLINGTON & ROCK ISLAND TRANSFER TRACK

R.I. INTERCHANGE

33' WIDTH LEASED FROM R.I.

PROPERTY LINE

PRESENT TRACKAGE

C.M.St.P.&P. INTERCHANGE

SO. IOWA AVE.

49 Gen. Office

Cold Storage

Hog Cooling

Hog Killing

Hog Pens

Machine Shop 73

Sheep Pens

Cattle Pens

Stock Barn

Sheep Shed

Feed Storage

Storage 56

Creamery

Open Reservoir

PLAT OF OTTUMWA PLANT
JOHN MORRELL & CO.
DER EXHIBIT No
I.C.C. DKT No 29809

1890

(P. 1890)

SCALE

2130

1893

CITY LIMITS

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY

ILLINOIS CENTRAL R.R.

SISSON'S HOME LOT ADD.

BUENA VISTA COLLEGE

SUNSET PARK

CHAUTAUQUA PARK

TOURIST PARK

HUBERS ADD.

GATES AND 2ND ADD.

SKEWIS ADD.

HIGHWAY 5 AND 71

STORM LAKE, IOWA
JANUARY 1935
V. FLINDT
CIVIL ENGINEER

SCALE 1" = 200 FT.

2133

P. 1893

MAP OF STORM LAKE IOWA

TERMINAL R.R. ASSN. OF ST. LOUIS

ST. LOUIS-EAST ST. LOUIS TERMINAL DISTRICT AND VICINITY

1947 SCALE 1 MILE

— LEGEND —

- Terminal R.R. Assn. Trackage
- Other Railroads
- Terminal R.R. Assn. Classification Yards
- Railroad Train Yards
- Interchange Points with Terminal R.R. Assn.
- Railroad Freight Depots
- Terminal R.R. Assn. Public Delivery Yards Listed by Street Locations
- Stations — See Alphabetical List

ST. LOUIS NATIONAL STOCK YARDS

HUNTER PACKING COMPANY

ST. LOUIS INDEPENDENT PACKING CO.

MISSISSIPPI VALLEY STOCK YARDS

DEF EXHIBIT No
I.C.C. DKT No 29807

LOCATIONS

TERMINAL R.R. ASS'N. CLASSIFICATION YARDS

BRENTON AVE.	ST. LOUIS	L-18
CARROLL AVE.	ST. LOUIS	K-19
E. ST.	EAST ST. LOUIS	M-14
ELEVENTH ST.	ST. LOUIS	L-16
LESPERANCE ST.	ST. LOUIS	L-16
MADISON ST.	ST. LOUIS	M-13
MADISON	VENICE	M-11
NO. R.	EAST ST. LOUIS	M-13
NO. S.	EAST ST. LOUIS	M-13

TERMINAL R.R. ASS'N. PUBLIC DELIVERY YARDS

ANTELOPE ST.	ST. LOUIS	J-18
BARTON ST.	ST. LOUIS	L-18
BRANCH ST.	ST. LOUIS	L-18
BREMEN AVE.	ST. LOUIS	L-18
CARR ST.	ST. LOUIS	M-16
CHOUTEAU AVE.	ST. LOUIS	M-16
COMPTON AVE.	ST. LOUIS	J-18
EASTON AVE.	ST. LOUIS	G-11
FLORA ST.	ST. LOUIS	M-13
FLORISSANT AVE.	ST. LOUIS	J-11
GRAND BLVD.	ST. LOUIS	L-11
GRATIOT ST.	ST. LOUIS	L-15
LADUE ROAD	ST. LOUIS COUNTY	D-13
LESPERANCE ST.	ST. LOUIS	L-16
MISSOURI AVE. - EAST	ST. LOUIS	M-14
NORTH MARKET ST.	ST. LOUIS	M-15
O'FALLON ST.	ST. LOUIS	M-16

TERMINAL R.R. ASS'N. PUBLIC DELIVERY YARDS

PACIFIC AVE., GRANITE CITY		P-9
PRAIRIE DUPO		L-19
SECOND ST.	MADISON	M-11
SIXTEENTH ST.	ST. LOUIS	L-16
TENTH ST.	ST. LOUIS	L-16
STATE ST.	EAST ST. LOUIS	M-13
TYLER ST.	ST. LOUIS	M-13
UNION BLVD.	ST. LOUIS	F-11
VICTOR ST.	ST. LOUIS	L-16

TERMINAL R.R. ASS'N. INTERCHANGE WITH

	FROM	TO T.R.R.A. ST. L.
ALTON R.R.	M-13	M-13
ALTON & SOUTHERN R.R.	O-16	O-16
BALTIMORE & OHIO R.R.	M-16	M-16
	M-13	M-13
C.C.C. & ST. L. RY.	M-11	M-11
C. & E. I. RY.	M-11	M-11
C.B. & Q. R.R. (EAST)	M-16	M-16
C.B. & Q. R.R. (WEST)	M-13	M-13
C.R.I. & P. RY.	K-11	K-11
E. ST. L. JUNCTION R.R.	M-3	M-16
		M-16
ILLINOIS CENTRAL R.R.	O-17	O-17
		M-13
	M-E	M-11
ILLINOIS TERMINAL R.R.	L-12	L-12
	M-13	M-13

TERMINAL R.R. ASS'N. INTERCHANGE WITH

	FROM	TO T.R.R.A. ST. L.
LITCHFIELD & MADISON RY.	O-11	M-11
	M-16	M-13
L. & N. R.R.	K-11	K-11
	M-16	M-13
MANUFACTURERS RY.	L-17	L-18
MO. PACIFIC R.R. (WEST)	M-16	M-16
MO. PACIFIC R.R. (SOUTH)	L-16	L-16
MO. PACIFIC R.R. (ILL. DIVISION)	L-21	R-11
MO.-KANSAS-TEXAS R.R.	K-8	R-11
GULF MOBILE & OHIO R.R.	M-17	M-18
N.Y. CHICAGO & ST. LOUIS R.R.	O-11	M-11
PENNSYLVANIA R.R.	O-13	M-11
	M-13	M-11
ST. L. & BELLEVILLE ELEC. RY.	M-13	P-18
ST. L. & O'FALLON RY.	P-14	P-18
ST. L. & OHIO RIVER R.R.	O-16	O-16
ST. L. - SAN FRANCISCO RY.	M-15	K-15
ST. L. SOUTHWESTERN RY.	O-17	O-17
		M-16
SOUTHERN RY.	O-16	M-16
	M-16	M-11
	K-16	M-11
	M-13	M-13
WABASH RY. (WEST)	L-13	M-13
	M-13	M-13
WABASH RY. (EAST)	M-13	M-11

RAILROAD TRAIN YARDS

ALTON R.R.	M-18
BALTIMORE & OHIO R.R.	M-13
C.C.C. & ST. L. RY.	M-13
C. & E. I. RY.	K-11
C.B. & Q. R.R. (EAST)	M-16
C.B. & Q. R.R. (WEST)	M-16
C.R.I. & P. RY.	K-11
ILLINOIS CENTRAL R.R.	O-17
ILLINOIS TERMINAL R.R.	O-11
LITCHFIELD & MADISON RY.	O-11
LOUISVILLE & NASHVILLE R.R.	M-11
MO. PACIFIC R.R. (WEST)	K-16
MO. PACIFIC R.R. (SOUTH)	L-16
MO. PACIFIC R.R. (ILL. DIVISION)	L-21
MO.-KANSAS-TEXAS R.R.	K-8
GULF MOBILE & OHIO R.R.	M-17
N.Y. CHICAGO & ST. LOUIS R.R.	O-11
PENNSYLVANIA R.R.	M-12
ST. L. & BELLEVILLE ELEC. RY.	P-18
ST. L. & O'FALLON RY.	P-18
ST. L. & OHIO RIVER R.R.	O-17
ST. L. - SAN FRANCISCO RY.	P-16
ST. L. SOUTHWESTERN RY.	O-17
SOUTHERN RY.	O-16
WABASH RY. (WEST)	K-16
WABASH RY. (EAST)	M-13

RAILROAD FREIGHT DEPOTS

ALTON R.R.	M-18
BALTIMORE & OHIO R.R.	M-13
C.C.C. & ST. L. RY.	M-13
C. & E. I. RY.	K-11
C.B. & Q. R.R. (EAST)	M-16
C.B. & Q. R.R. (WEST)	M-16
C.R.I. & P. RY.	M-16
ILLINOIS CENTRAL R.R.	M-15
ILLINOIS TERMINAL R.R.	L-14
LITCHFIELD & MADISON RY.	M-14
LOUISVILLE & NASHVILLE R.R.	M-14
MO. PACIFIC R.R. (SOUTH)	M-16
MO.-KANSAS-TEXAS R.R.	M-13
GULF MOBILE & OHIO R.R.	M-15

TERMINAL R.R. ASS'N. JOINT FREIGHT DEPOTS

GRANITE CITY JUNCTION	M-9
WABASH RY. (WEST)	M-14
	M-16
WABASH RY. (EAST)	M-3

STATIONS

ALPHA	M-21
ARLOE	G-15
BADEN	R-9
BENAVIS	N-8
BENTON	G-15
BILLMAN SPUR	C-19
BIXBY	M-21
BRENTWOOD	D-16
BROOKLYN	M-12
BUSSEN SPUR	E-21
CAHOKIA	M-18
CARONDELET	J-20
CHELTENHAM	N-5
CARRIE AVE.	K-10
CLAYTON	E-19
CLIFF CAVE	G-21
CLIFTON HEIGHTS	G-18
COAPMAN	P-16
COLLOPY SPUR	C-19
DELMAR AVE.	G-13
DUPO	L-21
EAST CARONDELET	J-21
EAST ST. LOUIS	O-15
EDEN	G-11
ELLENDALE	E-16
FAIRMONT CITY	R-12
FALLING SPRINGS	M-21
FERGUSON	F-7
GLENDALE	C-18
GRANITE CITY	N-9
GRANT	D-20
GRASSO SPUR	G-21
GRATIOT	G-15
GUMPOIS	E-19
GREGG STATION	E-15
HILLCREST	G-21
HOWARD	N-15
HYDRAULIC	E-19
JEFFERSON BARRACKS	G-21
JENNINGS	N-9
KIRKWOOD	N-19
KOBERMAN	E-18
KOCH	G-21
LACKLAND	B-10

STATIONS

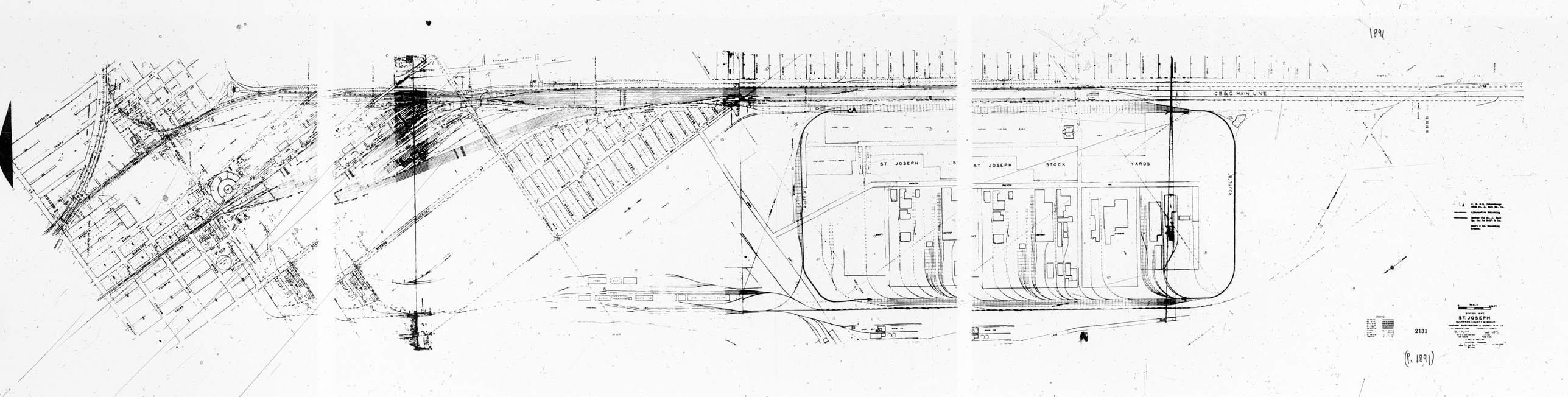
LADUE	D-13
LAKE JUNCTION	E-16
LINDENWOOD	F-16
LUTHER	K-10
MADISON	M-10
MAES SPUR	G-21
MAPLEWOOD	E-16
MARYLAND HEIGHTS	A-10
MILE POST 6	R-19
MITCHELL	R-5
MONSANTO	N-17
MUTUAL	F-17
NAMEOKI	P-8
NATIONAL CITY	M-13
NATIONAL STOCK YARDS	O-13
NORTH DUPO	L-20
OAKLAND	B-18
OLD ORCHARD	D-17
OLIVETTE	C-12
OVERLAND	D-10
PRAIRIE DUPO	L-19
PROSPECT HILL	J-8
RANKIN	Q-13
RICHMOND HEIGHTS	D-16
ROCK HILL	D-15
ROCK ISLAND JUNCTION	D-11
ROSEDALE	G-12
ROSELAKE	Q-13
SHELLCO	F-21
SHREWSBURY	E-17
SIGNAL HILL	R-16
SKILLMAN	E-18
SUGAR LOAF	M-21
TOLSON	M-16
TOWER GROVE	J-15
TUXEDO PARK	D-16
UNIVERSITY CITY	E-12
VALLEY JUNCTION	M-17
VENICE	M-11
VULCAN	J-21
WASHINGTON PARK	R-18
WEBSTER GROVES	C-17
WELLSTON	G-11
WHITEHOUSE	G-21
WILLOWS	P-18

1892

(P. 1891)

WYETH (MUNICIPAL)
SSOURI
URI
RIVER
U.S. GOVERNMENT
HARBOR
OFFICIAL
ST JOSEPH

(P. 1891)


1891
ST JOSEPH
STOCK
YARDS
ROUTE B
ROUTE A
CB&Q MAIN LINE
2131
(P. 1891)

SEE NEXT CARD FOR:

p. 1894
1895

SEE CARD 38 for:

p. 1896

[fol. 2138] EXHIBIT 55

UNITED STATES DEPARTMENT OF AGRICULTURE

Miscellaneous Publication No. 222

Washington, D. C., March 1935

THE DIRECT MARKETING OF HOGS

(Prepared in the Bureau of Agricultural Economics)

Foreword

The marked expansion in the direct marketing of hogs in the last decade gave rise to a number of troublesome questions and problems to which the Bureau of Agricultural Economics for some time has been giving attention. These questions took on added importance in connection with programs considered under the Agricultural Adjustment Act and the Secretary of Agriculture requested that the study be completed as soon as possible. Additional funds for this purpose were provided by the Agricultural Adjustment Administration, and the research staff of the Bureau was augmented with specialists made available through the courtesy of State agricultural colleges in the leading hog-producing States. Generous cooperation was received throughout the study from various types of marketing agencies, slaughterers, and producers.

The study shows that the development of direct marketing of hogs is associated with the expansion and shifts in the areas of corn and hog production and with the decentralization of the packing industry. Its growth has been facilitated by the extension of good roads and the rise of motor transportation as well as by more favorable freight rates on hog products than on live hogs. The lower labor costs usually found in smaller cities and towns also have contributed to the decentralization of the packing industry and to the growth of direct marketing.

Direct marketing has not lowered the general level of hog prices, nor has it operated to reduce returns to producers. The sharp decline in hog prices in recent years was due to the drastic reduction in consumer income associated

with the decline in the general price level, and to reduced foreign demand for American hog products. It has not reduced competition for hogs. There are no fixed price differences between public markets and interior points. A rise or decline in hog prices is at least as likely to occur first at interior points as at public markets. Direct marketing has not increased marketing costs nor widened the margins between prices of hogs and prices of hog products, nor has it deprived public markets of supplies of the various qualities of hogs sufficient for registering prices for the different grades. In general, the study shows that direct marketing has not operated to the disadvantage of hog producers. It does point out, however, that direct [fol. 2139] marketing has substantially reduced the number of hogs received for sale at public markets which has adversely affected the interests of stockyard operators and market agencies at some public markets.

While there are some regional and local differences, they are matters of degree and do not alter the main conclusions.

While the conclusion is thus reached that direct marketing does not operate to the disadvantage of producers, the study does show that some practices in hog marketing generally should be corrected and that additional services should be provided. Recommendations covering these points are contained in the following report.

Nils A. Olsen, Chief, Bureau of Agricultural Economics.

Summary, Conclusions, and Recommendations

Direct marketing of hogs, or of any other class of livestock, for slaughter, is sale to slaughterers at places other than recognized public-stockyard markets where generally the services of livestock commission agents are utilized by the sellers and where the privilege of trading in livstock is equally available to all who wish to buy or sell.. Direct sales may be made to the sluaghterer or his agent in the localities where the livestock is produced, at some point not recognized as a public market, or the sale may be made on delivery to the slaughtering place. The term "direct marketing" also applies to the movement of stockers, feed-

ers, and breeding stock, with transfer of ownership through sale other than at public stockyards. This study, however, deals primarily with the direct marketing of slaughter hogs.

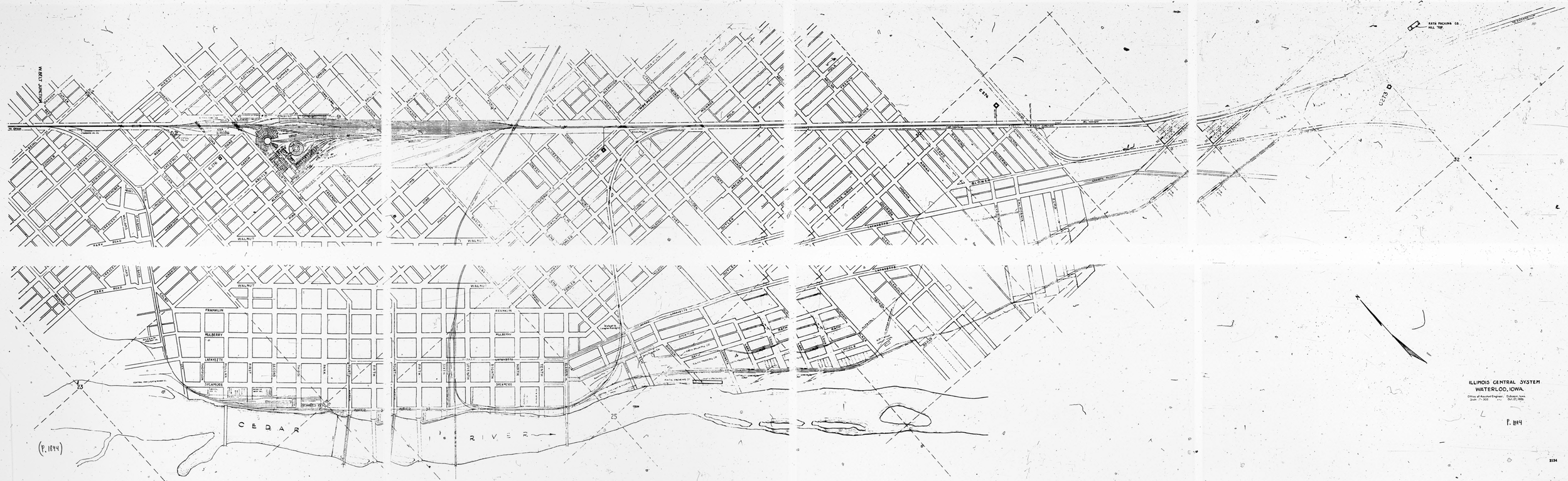
This method of marketing for commercial slaughter is as old as hog marketing itself and is much older than public stockyards. In recent years it has grown rapidly, direct purchases of hogs having increased from 12,802,000 hogs, or 24 percent of the total of federally inspected slaughter in 1923, to 20,708,000, or 44 percent of the total in 1933. Meanwhile, the number of cattle sold direct increased from 10 percent to 17 percent of the total slaughtered under Federal inspection, calves from 14 to 26 percent, and sheep and lambs from 15 to 21 percent. Slaughter under Federal inspection, it should be noted, represents a large part of all slaughter. It represented nearly 64 percent of all hogs slaughtered in 1933, 61 percent of cattle and calves, and 80 percent of sheep and lambs.

One result of the growth of direct marketing is that an increased volume of hogs moving from producer to slaughter is diverted from public markets instead of going through them, thus causing a decline in the volume of business at these markets. It is apparent, especially with respect to some public markets, that this tends to reduce the profits and impair the investment in plant, equipment, and trained personnel of public stockyards, some of which have served, and have been an important part of, the livestock industry of this country for more than half a century.

The growth of direct marketing has raised a number of questions of wide importance to packers, owners of public stockyards, commission men, and others interested in live- [fol. 2140] stock marketing, and especially to hog producers. Among these are the following:

Are hogs of higher quality bought direct, and are those of lower quality shipped to public markets? If so, does the lower average price of the latter establish the price at which the better hogs are bought direct? Has the level of hog prices been reduced by the increase in direct marketing?

Is competition effective among buyers? The term "effective competition" is here assumed to mean that individual buyers, in order to get the requisite volume of hogs for slaughter, are obliged to pay the producer a price substantially as high as justified by the level of prices at which



ILLINOIS CENTRAL SYSTEM
WATERLOO, IOWA.

Office of Assistant Engineer, Dubuque, Iowa.
Scale 1" = 200' " " Oct. 27, 1905.

P. 1844

(P. 1844)

2134

hog products can be sold, and that this price to the producer would be at least as favorable as the price he would get, after deducting transportation costs, yardage, fees, commissions, and other charges, as a result of the competition that would prevail among slaughterers, if public-market packers bought substantially all their hogs at public markets.

Another important question is whether direct marketing weakens competition at public markets and depresses the level of hog prices at these markets, and thereby results in lower prices to producers both for the hogs that are sold direct and for those sold at public markets.

The Growth of Direct Marketing

The significance of recent developments and present trends in direct marketing can perhaps be studied to best advantage against the background of historical change, especially those changes that are related to and are parts of the economic development of the country, and particularly of its livestock industry. These changes in marketing must also be considered in relation to such factors as transportation facilities and rates, accessibility of slaughtering and meat-distributing centers to producing areas, shifts in areas of principal production and their distance from the main centers of consumption, and relative advantages of rival processors and of competing distributors seeking to operate their respective businesses as profitably as possible.

The "drover" and the early slaughtering plants.—Before the development of railroads, livestock was usually driven to market or place of slaughter. If the producer found the distance too great, or his animals for sale too few in number, or the risk of "driving" them too big, he ordinarily could sell them to a "drover." The drover's functions and services were gradually modified with changing conditions, until today his nearest counterpart is found in the local buyer. This and other methods of livestock marketing in common use before the Civil War constituted "direct marketing" within the now-common meaning of this term.

As the distance over which livestock could be moved on foot advantageously was necessarily limited, slaughtering

plants were established in most of the trading centers in or near the principal areas of livestock production. In a sense, the counterpart of these plants today is found in the "local packers." Certain centers, Cincinnati for example, that were especially well located with respect to river transportation and centers of livestock production, soon ceased to be strictly local and became important packing centers.

[fol. 2141] Railroad transportation and the rise of large livestock centers.—As railroad transportation came into extensive use about 1850 for the movement of livestock, a fundamental change took place in organization and channels of livestock marketing. Important centers developed for transportation, trade, and industry of many kinds, and, among these, the business of slaughter and trade in livestock. These centers also became important in banking and credit, wholesale distribution, recording of prices and market movements, and dissemination of trade information—all of which were necessary functions in the expanding livestock industry.

The handling of rapidly growing numbers of live animals for packing plants at these centers required business organization, physical facilities, and trained personnel, on a scale beyond that of any center in earlier years. Enterprising business men set about to meet these requirements. Hence, the establishment of the Chicago public stockyards, which began operation in 1865, those of Kansas City, in 1871, those in Sioux City, in 1884, and most of the other principal public markets before 1900. Since that year many others have been organized until there are now 100 listed public stockyards, but more than half of these centers are relatively small in point of number of livestock handled.

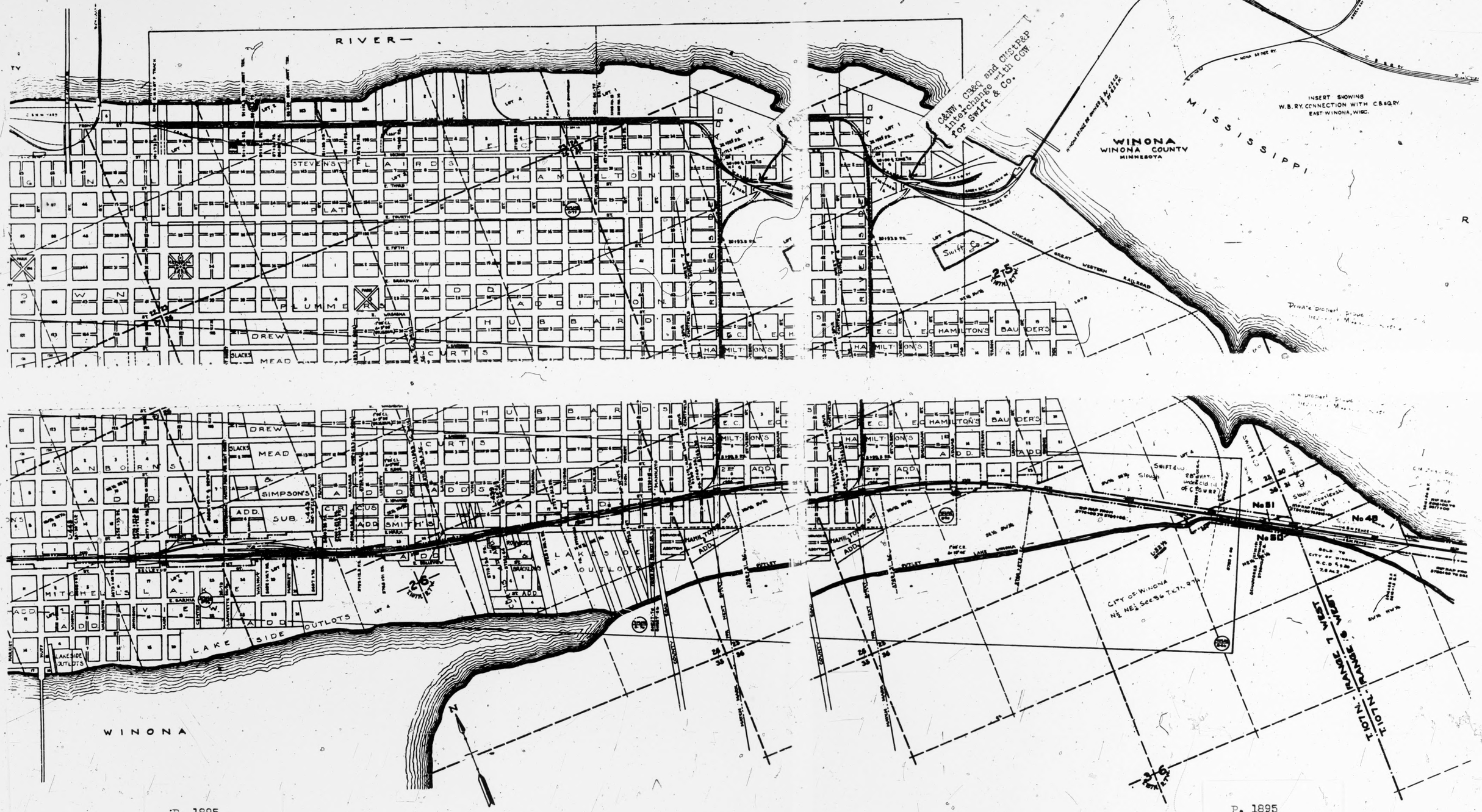
Along with the rise of public-market packers and public stockyards, another market agency came into prominence—the commission agency, the primary function of which is to serve as agent for the livestock shipper in effecting the sale of his stock, or to act as purchasing agent for those who wish to buy at the public markets.

Continued importance of the small packers.—Even with their great size and dominant influence, the large livestock and meat-packing centers by no means had the whole field to themselves. For example, in the decade 1860-69, before

DEF EXHIBIT No
I.C.C. DKT No 29809

P. 1895
From Card 36

P. 1895
From Card 36



P. 1895
From Card 36

P. 1895
From Card 36

records show packing operations in Sioux City, an annual average of 213,000 hogs was slaughtered (commercially) in Iowa; and in the first decade (1890-99), after the decade in which the Sioux City public market began operation (1884), of the 1,548,000 hogs slaughtered in Iowa 79 percent were slaughtered outside of Sioux City. The further fact that 65 percent of Iowa's slaughter in 1920-29, and nearly 75 percent in 1930-33, were slaughtered outside of Sioux City is at least indicative of the fact that the "smaller" centers and the "local" packers have throughout played a large part in the hog-slaughtering industry in that State.

A similar situation, but perhaps of lesser extent, has prevailed in other parts of the Corn Belt, indicating that in both the handling and the processing of hogs the large stockyards and the packing plants at public-market centers have had, throughout their history, a substantial amount of competition from the smaller marketing agencies and packing plants located near, or within, the principal areas of hog production.

Early beginning, but recent problem-status of direct marketing.—The "local" or interior packers not only handled in the aggregate a considerable part of the commercial slaughter of hogs over many years but for the most part they have obtained their supply of hogs by direct purchase since the very beginning of commercial slaughter. Yet direct marketing of hogs did not become a matter of market controversy and public concern until after the large packers, whose principal plants are located at or near the public stockyards, began about a decade ago to get a sub- [fol. 2142] stantial part of their supply of hogs for those plants by direct purchase in the hog-producing areas, principally in the western part of the Corn Belt. The direct purchases of hogs by packers increased from 12,802,000 head in 1923 to 20,708,000 in 1933, or from 24 percent to nearly 44 percent of federally inspected slaughter in those years. There was a substantial increase in direct purchasing of cattle and calves, and of sheep and lambs, but not nearly so great as occurred in the direct buying of hogs.

Reasons for Increased Direct Marketing in Recent Years

The principal reasons for the rapid increase in direct marketing of hogs in recent years may be found in the com-

petitive situation as between local or interior packers on the one hand and public-market packers on the other, associated with the expansion of corn and hog production in the western Corn Belt. The chief reasons for this competitive situation are found in the transportation developments, both rail and motor truck, as they affect convenience and costs of moving livestock direct and through public markets and of transporting live animals as compared with livestock products; in comparative labor costs among packers in different areas; in differences between direct and public-market channels with respect to costs of marketing including shrinkage, commission charges, yardage fees, and other marketing costs; and in producer preferences, which play a part in the farmer's choice of market outlet.

The general trend of corn acreage in the United States from 1909 to 1933 showed no significant change, averaging about 101,500,000 acres. Material variation from this average occurred in certain years. The most significant change in corn production in this period was the rapid expansion in the five States comprising the northwestern Corn Belt, where acreage increased from about 21,600,000 acres in 1908 to 34,000,000 in 1932, an increase of 60 percent. An important decrease took place in Missouri and Kansas and in the eastern Corn Belt. Some decrease also occurred in certain areas outside of the Corn Belt. As shifts in corn production for the most part result in similar shifts in hog production, the rapid expansion in both, in the northwestern Corn Belt, is of direct significance in relation to interior slaughter in that area and is indirectly important with respect to the growth of direct marketing.

Transportation and Direct Marketing

Direct marketing has been facilitated by certain conditions in the transportation situation, especially with respect to truck transportation, railroad concentration privileges, and comparative freight charges on hogs and hog products.

Truck transportation.—The development of motor-truck transportation has contributed to the growth of direct marketing by making interior packing plants and concentration yards conveniently available to a much larger number

of producers than would be the case if hogs were transported by rail. Truck transportation appears to be best adapted to comparatively short hauls, and this is relatively more advantageous to concentration yards and local packing plants, which are usually nearer the source of supply than to the public markets and public-market packers. The [fol. 2143] information at hand indicates that in recent years more than 50 percent of the hogs received at interior packing plants and concentration yards were moved by truck. Since trucks are more economical and convenient for short distances than for longer hauls, their increased use has encouraged the development of concentration points and stimulated movement of hogs direct from farms to concentration yards and interior packing plants, most of which are located closer to producers than are the public markets.

Railroad concentration privileges.—Transit privileges, especially concentration privileges, have enabled public-market packers to buy hogs at local points for shipment direct to their plants at public-market points more advantageously than if these transit privileges were not available. Under existing market practices, this tends to aid public-market packers in their competition with interior packers through direct purchases of hogs. These privileges are likewise available to persons operating through the public markets, but thus far apparently they have not been in a position to make much use of these concentration privileges.

In the area west of the Mississippi River, the freight-rate structure includes concentration privileges which permit changes in the make-up and ownership of the shipment of hogs at points between origin and destination, and at the same time allows the through rate from original loading point. The number of concentration yards in the western Corn Belt has increased from 19 in 1920 to 195 in 1933. Concentration yards provide facilities near the source of supply where hogs of different kinds can be bought, assembled, and sorted, and then reshipped with more economical loading on the basis of the through rate from original shipping point to destination.

The freight-rate advantage derived from concentration privileges may be illustrated by considering a single-deck shipment of hogs from Granville, Iowa, destined to Chi-

cago and stopped at Cedar Rapids for concentration. The hogs move on the local rate to Cedar Rapids, where they may be sold and the make-up of the shipment changed before shipment to Chicago. The charge for the shipment from Cedar Rapids to Chicago, however, is the difference between the local rate from Granville to Cedar Rapids and the effective through rate from Granville to Chicago. Hence the hogs are moved in this manner from Granville to Chicago at the through car-lot rate between these points. If it were not for concentration arrangements, it would be necessary for the shipper to pay the effective local rates from Granville to Cedar Rapids and from Cedar Rapids to Chicago, if the shipment were stopped en route, rather than the through rate from Granville to Chicago. This through rate is about 21 cents per hundred pounds less than the two local rates combined.

Comparative freight charges on hogs and hog products.—The relationship of freight rates among regions and between hogs and hog products has become an important factor in the growth of direct marketing in that the relationship has been and is relatively favorable for packers whose plants are in the western Corn Belt. Interior packers in this area usually purchase most of their hogs direct. In the entire period since 1910, freight charges on shipments from the western Corn Belt eastward have been greater for a given weight of live hogs than for the products derived therefrom. Also the margin between the [fol. 2144] freight charge on hogs and that on hog products widened somewhat after the pre-war period. For example, in the years from 1925 to 1929, the freight charge on 100 pounds of live hog from Des Moines to New York was about 25 cents greater than the freight charge on the hog products obtained from 100 pounds of hog, whereas in the years from 1910 to 1914 it was about 19 cents higher.

Partly because freight rates in this country generally do not increase proportionately with distance, and partly because of relatively low rates on hog products from the northwestern Corn Belt, particularly interior Iowa points, to the Mississippi River, the freight charge per ton-mile on eastern movements of hog products from the western Corn Belt is lower than the freight charge per ton-mile on similar movements from the region east of the Mississippi

River. As a result of these lower freight charges per ton-mile and the proximity of the packers in the western Corn Belt to the surplus hog supply, these packers have certain competitive advantages in supplying eastern markets with hog products, as compared with packers who are located in the east or intermediate between the western Corn Belt and the east and who buy hogs from the western surplus areas. Such advantages contributed to the increase in hog slaughter in certain areas west of the Mississippi River.

Specific differences in freight rates are numerous and complex. In Official Territory, that is from Chicago and Mississippi River points east and from the Ohio and Potomac Rivers north, rates on fresh pork per 100 pounds are higher than rates on the same weight of hogs, while rates on cured pork and lard per 100 pounds are about the same as on 100 pounds of hogs.

In Western Trunk Line Territory, from interior Iowa points to Chicago, the freight rate per 100 pounds on fresh pork is the same as for 100 pounds of cured pork, and considerably lower than the rate on live hogs. The result is that hog products obtained from 100 pounds of hogs can be moved from Des Moines to Chicago for about one-half as much as the rate per 100 pounds on hogs. In the same territory the freight charge on hog products from Omaha to Chicago is 62 percent of the rate per 100 pounds on hogs. In the official territory, however, from Chicago to New York for example, the charge for hog products obtained from 100 pounds of hogs equals 82 percent of the rate per 100 pounds of hogs. Through rates from interior Iowa points to points east of Chicago also reflect the relatively low rates on products from these points to Chicago and the Mississippi River.

On the other hand, on all movement of hogs and hog products from the Corn Belt westward, the rate on live hogs per 100 pounds is less than half the rate on fresh and cured pork and on lard per 100 pounds. The freight charge from Omaha to San Francisco on the hog products obtained from 100 pounds of hogs is 58 percent greater than the rate on live hogs per 100 pounds. This encourages the shipment of live hogs instead of hog products to the Pacific coast.

Freight charges, however, are only one of the cost factors involved in the processing and distribution of hogs and hog products. Several factors in addition to transportation charges, such as the growth of hog production in the western Corn Belt, which itself may have been influenced in part by the freight-rate structure, have been favorable for the expansion of the packing industry in that area.

[fol. 2145] Wage Costs and Direct Marketing

A comparison of wages in the packing industry since 1914 shows that wage costs have been materially lower in the States where the interior packing industry is relatively more concentrated, as compared with those in the States where plants located at public markets are of predominating importance in the total slaughter. Moreover, the difference in wage costs increased in the period of rapid expansion in the interior packing industry and in direct marketing. These comparisons of wage costs are particularly striking as between Iowa, where most packing plants are located at interior points, and Illinois, where most of the packing operations are conducted at public-market points. It appears, therefore, that differences in wage costs, like differences noted in transportation charges, have directly favored the growth of interior packing and thus indirectly encouraged direct marketing.

Cost to Packers of Hogs Bought Direct and at Public Markets

As packers at all times no doubt endeavor to sell their hog products for as much as possible and to buy their required supply of live hogs as cheaply as possible, it follows that comparative costs to them of hogs bought direct and at public markets have an important bearing on the growth of direct marketing. Comparative returns to producers for hogs sold through these channels also have a bearing on its growth.

Cost of hogs bought direct consists of the price paid at the point of purchase and the cost of getting the hogs from that point to the slaughtering plant. Cost of hogs bought at public markets consists of the price paid at the market plus the costs of buying and of transferring them to the plant. Returns to the producer consist of the price he gets

MATTHEW BENDER & COMPANY MB 53

MICRO CARD

TRADE MARK ®

1612

at the point of sale, less transportation and marketing charges, if any, to that point.

Findings from cost records on 673,300 hogs.—Detailed cost records were obtained covering 673,300 hogs bought by packers who get their supply both direct and at public markets. The average cost to packers of hogs of the more desirable butcher weights was greater when bought direct than when purchased at public markets. Although lightweight, unfinished hogs and heavy packing sows cost on an average somewhat less when bought direct than when bought at public markets, the average cost of all hogs bought direct was higher.

Why Public-Market Packers Increased Direct Buying

The somewhat higher cost of hogs bought direct by public-market packers than of hogs bought by them at public markets suggests that factors other than the relative cost of hogs were taken into consideration in their buying operations. These factors are indicated partly by statistical evidence and partly by general reasoning based upon trends in the livestock industry during the period of rapid increase in direct marketing.

Slaughter of hogs under Federal inspection reached an all-time peak of about 53,000,000 head in 1923 and 1924. Largely because of the low price which resulted from this huge volume, hog production and slaughter declined sharply in the following 2 years. This decrease, however, was not distributed proportionately among all packers but occurred very largely at the plants located at public-market points, [fol. 2146] with very little decline in slaughter operations of the interior packers.

This created, for the public-market packers located at some market points, a serious business problem, arising not only from a large loss in actual volume of operations but also because of a loss in their relative position in the packing industry.

The public-market packers had apparently three possibilities of increasing their actual and maintaining their relative volume of operation. One way was to build up the price of hogs at some public markets, particularly at Chicago, in an effort to attract a relatively larger volume

to these points. This, as a practical business matter, had important limitations. To have done so would have meant bidding up the price of hogs arriving at these markets from areas other than those where interior packer competition was important. This, however, would not have improved the competitive position of the public-market packers unless they could have operated on margins that were smaller than those of the interior packers or sell their product at higher prices than those obtained by the latter group. Had the packers attempted to attract a larger volume of hogs to some public-market points, Chicago for example, it is not at all certain that they would have been able to accomplish this purpose since the competitive advantages under which interior packers operate probably would still have enabled them to maintain or even to increase their operations.

The second possibility open to the public-market packer was that of acquiring or building interior plants in the northwestern Corn Belt and expanding operations at plants already owned in that area, and thus meeting the interior packer on his own ground. Although this was done to a considerable extent, it could not entirely solve the problem since there were still the plants at public-market points to be operated. So long as these plants were operated at all, they had to be operated at a fairly economical capacity, and they were too valuable to be abandoned and replaced with corresponding capacity at interior points. Hence, the third possibility was to buy hogs direct in the territory of the interior packers for shipment to the public-market plants. This course was followed extensively, as is shown by the figures on market movements and slaughter.

Slaughter by public-market packers whose plants were at market points in the eastern Corn Belt declined 5,800,000 head from 1924 to 1926, or 33 percent. Public-market packers in the southwestern Corn Belt lost nearly 2,500,000 head, or 41 percent; those in the northwestern Corn Belt, 1,700,000, or 21 percent, making a total loss to public-market packers in the Corn Belt as a whole of nearly 10,000,000 head, or 31 percent.

Meanwhile, that is from 1924 to 1926, the slaughter of interior packers in the eastern Corn Belt declined 200,000

head, or 12 percent, and that of the interior packers in the southwestern Corn Belt declined nearly 500,000 head, or 21 percent. But during this period of reduction in hog slaughter, both by public-market packers and by some interior packers, the interior packers in the northwestern Corn Belt actually increased their operations, although the increase was not large. The significant fact is that interior packers in that area more than held their own despite the large decrease in total slaughter.

[fol. 2147] To meet their loss in volume, both relative and actual, in the face of increasing operations of interior packers in the northwestern Corn Belt, the public-market packers resorted to direct buying as a means of competing with the interior-market packers in their own territory. This is shown by the different trends in volume of hogs received direct at Chicago and volume consigned for sale at the Chicago public market. The total of all hogs received at Chicago, both for sale and direct, decreased from 9,400,000 in 1928 to 7,400,000 in 1932. The number of hogs consigned for sale at the Chicago public market declined from 7,600,000 in 1928 to 4,300,000 in 1932, a decline of 43 percent, while direct receipts increased from 1,800,000 to 3,100,000 an increase of 72 percent. In 1933, there was an increase of about 18 percent in total receipts at Chicago but the number of hogs consigned for sale (which included nearly 1,000,000 sows and pigs sold to the Government in connection with the Federal emergency hog reduction program) increased only 8 percent and was only about 60 percent as large as the number consigned for sale in 1928.

From 1926 to 1933, the slaughter at interior plants in Iowa continued to increase each year regardless of cyclical changes in hog production. The increase was from 2,800,000 head in 1926 to 4,700,000 in 1933. This is representative of the trend in interior slaughter in the northwestern Corn Belt as a whole and is of special significance when considered in relation to the increase in the direct receipts by packers at Chicago.

That the increase in direct buying during the last 5 or 6 years was stimulated by a competitive situation that caused a sharp decline in receipts of hogs consigned to some public markets for sale is further suggested by the fact that

this decline preceded the marked increase in volume of direct purchases by public-market packers.

Cost of Marketing Hogs Direct and at Public Markets

The relative price paid for hogs at different markets, as already suggested, is not in itself a conclusive indication of relative net returns to producers from hogs sold direct and at public markets. The costs incurred in marketing through either method must be deducted from the cost of hogs to packers. Hence special attention was given in this study to cost of marketing hogs direct and at public markets.

The establishment of a large number or concentration yards and of additional interior packing plants undoubtedly has enlarged the total investment in marketing facilities and has tended to increase the number of persons engaged in the movement or hogs from farms to consumers. Although this development involved some duplication of existing facilities, the physical capacity of which was already adequate, it would not necessarily add to the total costs of marketing unless the total charges of the earlier established facilities were not reduced and the charges of those later established added to this total. This, however, is not the case. The growth of the new facilities has reduced both the volume of business and the gross revenue of many of the older establishments, since these have not increased their unit charges to compensate for reduced volume. Hence the question of whether total marketing costs have been increased or decreased depends largely upon the relative costs of the old method as compared with those of the new.

[fol. 2148] Costs at concentration yards.—If the farmer sells at a privately owned concentration yard, from which place the hogs are in turn sold "direct" to a packer, the concentration yard performs the same function as a local dealer who assembles hogs. Private dealers or truckers may, on the other hand, buy from farmers and in turn sell at concentration yards, from which place the hogs are moved direct to a packer. The concentration yard, in this case, represents an additional link in the marketing chain, if the hogs otherwise would have been sold by the local

p. 1996
From Card 36

dealer direct to the packer. The operating margin taken by the concentration yard on such transactions represents an added cost in marketing, except as the concentration yard may perform some specific functions such as assembling in volume which permits more advantageous sorting and selling, more economical loading, etc. On the other hand, if the dealer who assembled the hogs locally had sold them at a public market, the concentration yard to an important extent would have taken the place of such market. If the concentration yard is owned by a packer, hogs are bought by him there instead of at a public market. The cost of selling at public markets is substantially higher than the margin taken by operators of concentration yards, and these costs must be deducted from the proceeds of the hogs before remittance is made to the seller.

Costs at public markets.—The costs of feeding, the selling commission, yardage, and other incidentals at important markets in the Corn Belt for the period 1931-33 were found to average about 20 cents per hundredweight, varying among individual markets from 19 cents to 23 cents. In the same period the average cost of operating concentration yards was about 8 cents per hundredweight, varying from 2.6 cents to 27.7 cents for individual concentration yards. The cost of handling hogs locally by cooperative livestock shipping associations and local dealers in the Corn Belt averaged about the same as for the concentration yards.

The route from producer to packer is on an average shorter and the cost of handling is usually less when hogs are sold direct than when sold through public markets. Although hogs sold direct for slaughter at a public-market plant are shipped substantially the same distance as if they were consigned for sale at the public market, their movement is more direct in the sense that they usually pass through fewer hands. Hogs sold direct to interior packers are as a rule shipped over much shorter distance than are hogs sold at public markets. When hogs are sold and delivered by producers themselves at the packing plant, no costs are deducted for marketing. If the farmer sells the hogs to a local dealer or trucker the handling charges must be deducted from the price paid by the packer. These

charges are substantially the same whether the hogs are sold direct or at a public market.

Shrinkage.—Shrinkage may be due to excretions or to loss in tissue weight. Tissue shrinkage represents a marketing cost, but excretory shrinkage does not. Tissue shrinkage in transit represents a marketing cost which tends to vary directly, but not in proportion, to the time hogs are in transit and until slaughtered. It appears that tissue shrinkage begins early in the period in transit and continues until hogs are slaughtered. The rate at which tissue shrinks tends to be greater during the earlier transit period. The rate of tissue shrinkage is higher for hogs of light weight than for hogs of heavy weight. To keep [fol. 2149] tissue shrinkage at a minimum, hogs should be moved from the farm to the slaughtering plant in the shortest possible time.

Comparative returns to producers.—As hogs bought direct cost packers somewhat more than hogs bought at public markets and as it is found that the cost of marketing hogs direct is less than through public stockyards, it follows that on the whole producers realize more on hogs marketed direct.

Somewhat higher returns to producers for hogs sold direct are also suggested by the results of certain studies of the records of livestock shipping associations made by State marketing specialists and others. These data are not conclusive, because they do not cover broadly the field of direct selling.

Producers' Preferences

A questionnaire pertaining to direct marketing was mailed to 68,900 producers of hogs in 15 States, and replies were received from nearly 12,500.

The preferences expressed by producers for different types of market outlets are of interest in connection with the increased sale of hogs direct, especially in the past decade. Of 10,500 expressions of producer preference, 36 percent favored public stockyards, 23 percent preferred selling to local buyers, 11 percent to packing plants, 21 percent through cooperative shipping associations, and

about 3 percent to concentration yards and buying stations, and the same percentage preferred selling at auctions. Only 3 percent of those answering this question reported that they had no preference. It should not be assumed, however, that these percentages do, or ought to, measure the exact preferences of producers as between marketing direct or at public markets, since 44 percent of the reporting producers expressed preference for marketing agencies that consign a part of their hogs to public markets and sell a part direct.

The reason most frequently given for preferring a specified market outlet was, naturally enough, that "returns are better." This answer might have been due to the belief that prices received were higher or selling expenses lower, or both, on sales through the favored market channel. This reason—"better returns"—was given by nearly two-thirds of the farmers who favored direct sale to packing plants and by one-fourth of those who favored public stockyards. Of those who gave the latter preference, 36 percent cited "more competition" as their reason, and this reason was also given by 20 percent of those who favored auctions.

Local dealers, packing plants, and concentration yards, in the order named, were judged by the reporting producers as "the most convenient." The greater convenience, they said, lay in the fact that hogs could be moved by truck to these markets, that the seller knew the price in advance, and that the shrinkage was less. Other reasons, given by many for selling through channels other than public stockyards, were "small lots sold to better advantage", "better service", and possibility of "control of sales and price." Of those who favored public markets, 4 percent gave as reason their own opposition to direct marketing.

[fol. 2150] Direct Marketing in Relation to Prices of Hogs, Competition, and Market Differentials

The summary points thus far presented suggest three principal conclusions: (1) That certain fundamental factors related to location of the principal areas of hog production and to the development of truck transportation, freight rates, transit privileges, etc., have helped to strengthen

the competitive position of "interior" packers as against public-market packers, (2) that the latter have been induced to enter the fields of direct buying and of slaughter in the interior, not only under competition from interior packers for hogs, but also because costs of moving hogs from local points to packing plants at public-market centers on the whole is less through direct channels than through public stockyards and commission agencies because the cost of shipping the products is less than that of moving live animals and because of lower labor costs in the interior packing industry, and (3) that at a given general level of hog prices, the producers appear to get at least as much, and perhaps somewhat more, for hogs sold direct than for those sold at public markets.

These conclusions, however, do not apply directly to the issue of whether direct buying weakens the price-recording function of public markets; nor have they answered the question as to whether direct marketing causes a lower level of prices than would otherwise have prevailed at public markets where a part of the packer's supply is bought and, in turn, gives an opportunity for similar price decline at interior points where he gets the remainder of his hogs. In short, the above conclusions do not answer the question: Has the increase in direct marketing caused prices to be lower than they otherwise would have been?

These basic issues call for a consideration of such questions as these: What, after all, determines the level of hog prices? Is competition among slaughterers and marketing agencies effective enough to cause them to pay a price to the producer that reflects substantially the level of prices they receive for hog products? Have margins between prices of live hogs and prices of hog products at wholesale and retail in recent years widened at such times and in a manner suggesting that the widening may have been due to the rapid growth of direct marketing?

Factors Determining Hog Prices

The chief factors causing hog prices to change in this country during the last 20 years have been: (1) Changes in the buying power of domestic consumers, (2) variations in hog production, (3) changes in the charges for process-

ing and distribution, and (4) changes in foreign demand for American hog products. Statistical evidence indicates that changes in hog prices in recent years have been due to causes other than changes in marketing methods including the rapid growth of direct marketing.

Buying power of domestic consumers.—The demand for hog products is highly competitive, as the consumers are numerous, their actual requirements variable for pork and other meats, and the possibilities many for substituting one kind of meat for another in the diet. Hog production, likewise, is highly competitive, for hog producers are numerous [fol. 2151] and the volume of production is variable in response to several factors, especially the quantity and price of feed and the market price of hogs. Whatever the quantity of hogs produced for market, it must be disposed of at a price within a comparatively short period. The retail and wholesale markets, where hog products are sold for domestic consumption and export, are the meeting place of the forces of supply and demand in establishing the level of prices.

Changes in the aggregate retail value of hog products consumed in this country are closely related to the changes in the level of incomes of consumers. In periods of relatively stable consumer income, this retail value has tended to be about the same whether the quantity of hog products consumed was large or small. In other words, at a given level of demand, a decrease or an increase in the quantity of hog products sold has resulted in about a corresponding rise or fall in composite retail prices.

Export demand for hog products.—The value of hog products exported is affected chiefly by consumer purchasing power in importing countries, the quantity of domestic exports of hog products, and the volume of foreign-produced supplies in foreign markets. The quantity of domestic exports depends chiefly upon the volume of hog production in this country and abroad, and upon the various governmental restrictions on imports of hog products. Such restrictions have been of increasing importance during the last 3 years.

Influence of charges for processing and distribution.—The total amount paid for hogs over a period as long as a

marketing season depends largely on what is left of the retail value of hog products consumed after deductions for aggregate charges for processing and distribution. The level of retail prices of hog products for any period represents the total retail value of hog products consumed, divided by the quantity consumed of such products. Since changes in incomes of consumers largely determine the changes in the aggregate retail value of hog products, retail prices of these products are affected chiefly by the level of incomes of consumers and the quantity of hog products consumed.

During the last 20 years a material increase in processing and distributing charges has occurred and the spread between prices of hogs and retail prices of principal hog products has widened materially. Most of the increase in this spread occurred from 1917 to 1921, but the spread continued wide from 1922 to 1931. In 1932 and 1933 the spread declined considerably, but in both of these years retail prices of hog products were still much higher relative to their pre-war level than were hog prices and the spread between hog prices and hog-product values was much greater than prior to the World War.

Influence of wages, freight rates, rents, etc., on margins.—The changes in the spread between hog prices and retail prices of hog products have been closely associated with the changes in wages, freight rates, rents, and other items which are involved in processing and distributive charges. Sharp increases in these items occurred from 1917 to 1920, and further but less rapid increases took place from 1921 to 1930, after which a considerable decline occurred. In addition to the increases in the above items, the number of processing and distributive services for hogs and hog products also has increased, thus adding to the total charges for processing and distribution. These increased costs, however, may have been offset in part by certain improvements and economies in processing and distribution.

[fol. 2152] Direct marketing and operating margins.—In this study, consideration of margins was confined to the question of whether the rapid increase in direct marketing during recent years has caused significant changes in the margins, especially in the margins required by slaughterers.

The level of consumer demand, as already indicated, determines the aggregate retail value of hog products whether the amount sold is relatively large or small. The price of hogs is in the main determined by the volume of market hogs in relation to the amount that is left of the aggregate retail value after deducting margins taken by slaughterers and distributors. It follows, therefore, that the increase in direct marketing of hogs could not have significantly affected hog prices to producers unless it caused distributors and packers to take a greater or a lesser margin than they would have taken otherwise.

Although the margins between hog prices and prices of hog products are wider than before the World War, they are not wider than a decade ago, before the great increase in direct marketing began. From the standpoint of time of occurrence, the widening of spread between hog prices and retail prices of hog products and the growth of direct marketing have not been closely associated. Most of the widening of the spread occurred prior to 1921, whereas most of the rapid growth in direct marketing has occurred since 1925. It is also noteworthy that the spread was reduced somewhat from 1931 to 1933 as some of the costs involved in processing and distribution of hogs and hog products, such as wages and rents, were reduced. On the other hand, the proportion of hogs marketed direct showed a further increase during this period. In short, the general trend of margins between hog prices and prices of hog products in the last few years has been downward, whereas the trend of direct marketing has been decidedly upward.

It is not to be inferred from this inverse relationship of recent trends in direct marketing and packer margins that this method of marketing has caused this decline in margins. There is no reason to suppose that such economies as have been indicated in handling hogs through the direct, compared with the public-market, channels are sufficient to affect noticeably the margins between retail and wholesale prices of all hog products and the prices of live hogs. The decline in margins from 1931 to 1933 may be accounted for, as indicated above, by reductions in wages and certain other operating charges occurring in the depression. It has not been possible in this study to measure precisely

the influence of each of the various factors that may have influenced margins. But statistical evidence bearing directly on margins in the processing and handling of hog products leads to the general conclusion that direct marketing has not caused a widening of margins.

Trends of margins in other products.—Certain indirect evidence tending toward the same conclusion is derived from a study of margins between farm prices and retail prices of other food products in which direct marketing either plays a small part or is absent altogether.

The widening of the spread between prices of raw products and prices of finished products in the post-war period as compared with pre-war period has not been confined to hogs and hog products, but has been an important characteristic of price movements of nearly all farm products utilized for food and of retail food prices. In the case of cattle prices and retail prices of beef, the spread has followed the same general trend as the spread between hog [fol. 2153] prices and prices of hog products. A somewhat similar situation also has prevailed in the case of wheat prices and retail prices of bread. Available evidence indicates that the predominating factors responsible for the changes in the spread between hog prices and retail prices of hog products were not related to the changes in method of marketing hogs, including the growth of direct marketing.

Competition for Hogs

The nature of competition for hogs and the question whether the degree of competition at one period is greater or less than at another involve rather complex questions. The principal statistical evidence as to whether competition has decreased with the growth of direct marketing is obtained by comparing the margins between prices paid by packers for hogs and the composite wholesale prices of hog products to determine whether these margins have widened in recent years when direct marketing has increased. Since the principal factors determining changes in the wholesale prices of hog products are changes in supplies of hogs and in the level of consumer incomes, neither of which are related to the methods by which hogs are marketed, the measurable effect (if any) of changes in

marketing methods upon competition for hogs should show in the margins between hog prices and composite wholesale prices. As before discussed, these margins do not indicate any lessening in this competition.

Another approach to the subject is to consider the nature of competition for hogs, especially the factors tending to increase or decrease this competition, and whether these factors are likely to be affected by changes in the methods by which hogs are marketed. Such a consideration cannot be in terms of statistical analysis for the subject does not lend itself to statistical treatment, but must be in descriptive terms and based upon reasoning from known facts or valid assumptions to what seem to be logical conclusions.

In the case of hogs, which are produced and ready for market within a limited period, and which must be largely sold within that period, competition is the relative willingness or desire of different packers to take a part of this supply as offered, but in such proportions that all of them together clean up the total supply offered. The prices paid are the composite judgment of what these hogs are worth at present or at anticipated future prices obtainable for hog products. Each packer knows about what hogs are worth to him in relation to prices he is getting for hog products and to his costs of operation and distribution, and he tries to buy hogs below this indicated value in order to obtain a profit or to buy at price at least not above this value in order to avoid losses. The difference between products prices and operating margins sets the upper limit of the prices that will be paid for hogs over any considable period although for short periods hog prices may be higher than the indicated current "cut-out" value of products.

The supply of hogs is offered at many places and in many different ways, and the number of packers seeking hogs at these different places varies greatly. But the mobility of the supply of hogs and hog products as reflected in variations in hog receipts and price differentials among markets is such that the total number of hogs at all places represents a composite supply, and all slaughterers seeking to buy hogs at any one or a number of places are in effect buying in competition with many other slaughterers.

[fol. 2154] The price level resulting from this competition is evidenced by the published quotations on hogs at many points, mostly public markets. These points are not price-determining points but only price-registering points, and there is no one basic price-determining point.

Although hog prices are largely determined by the prices obtainable for hog products, and these products prices are not affected by the methods by which hogs are marketed, it might be that changes in these methods might affect the proportion of the value of hog products going to hog producers if these changes should increase the costs to producers of moving hogs from farms to packers, or should reduce packer competition for hogs so that packers are able to widen the margin between hog prices and hog-products prices to cover increased processing and distribution costs or to increase profits.

This study, however, shows that direct marketing has tended to reduce rather than to increase the actual costs of moving hogs from farms to packers and hence is to be considered generally advantageous unless it has tended to reduce packer competition for hogs and to increase packer margins. A detailed study of packer competition at public markets and at interior buying points leads to the conclusion that the factors determining and limiting the competition are substantially the same at both and are little changed regardless of the place where hogs are bought.

But there is a marked difference in the character of competition at public markets and at interior buying points. At public markets the competition is for a supply of hogs that is physically present, largely out of the control of the producers, and under the necessity of early sale. At interior buying points it is a competition to draw hogs, that are still under the control of the producer, to different points. Competition at public markets is more apparent than at interior points since relatively large numbers of buyers and sellers in personal contact are readily observable at the former, while at the latter the chief evidences of competition are the posted prices and the telephone or personal requests being received for bids on hogs. But to the producer at home, with hogs for sale, the latter competition is more useful since he is in a stronger position

opposite the buyer with his hogs still at home than he would be if they were at a public market and had to be sold.

Certain lines of evidence are significant, as for instance the number and variety of market outlets for hogs, the extent to which the volume of hogs of the different grade classifications consigned to public markets is sufficient to afford a reasonable opportunity for those markets to establish price quotations reflecting the supply of and demand for hogs of the various grades, and the extent to which prices are kept substantially in line among the various markets and indicate the relation between receipts and prices at different markets.

Market outlets available to producers.—Replies received from 12,500 producers of hogs show that on an average the individual producers had available to them 4 market outlets. The average number of market outlets in the 12 States designated as the Corn Belt exceeded slightly the average for the 15 States, while in the 3 States of Oklahoma, Kentucky, and Tennessee, the average was about 3. An analysis of the replies suggests that these averages may be an understatement, as in many instances it was apparent that the number of outlets where the producer [fol. 2155] usually sold hogs, as well as the number of markets available, were not all reported. For example many of the producers did not name public markets as available outlets, although it is definitely known that these producers were within areas where such markets are available.

The extent to which the different market outlets are actually utilized was shown by 9,500 producers, who reported that they marketed 629,200 hogs in 1933. These hogs were disposed of through the different market outlets as follows: Public stockyards, nearly 45 percent; local buyers, 22 percent; local packers, 14 percent; cooperative shipping associations, nearly 11 percent; concentration yards and buying stations, 6 percent; and auctions, 2.6 percent. Substantially the same distribution appeared for 1932, in which year the same producers marketed 604,000 hogs through these channels. It appears, therefore, that not only do the producers have several market outlets available, but these outlets are widely used, some of course more

Recent information from another source, showing the number of outlets used by producers, has become available through records filled out by signers of corn-hog contracts. These records, tabulated for representative townships in most of the Corn Belt States, show that the number of outlets available to the hog producers are relatively large and well distributed. In very few of these Corn Belt townships did any single agency handle over 50 percent of the hogs sold. In the 37 townships where more than 50 percent was handled by any one agency, these agencies included local buyers in 15 townships, packing plants in 18, concentration yards in 2, and auctions and public markets in 1 township each. These tabulations and the reports furnished by producers answering the questionnaire are in substantial agreement as to the number of market outlets available.

Producers' source of market information.—The producers' means and frequency of obtaining livestock market information are significant in considering competition. Of the 11,350 farmers who reported on this question, 84 percent obtained market information through daily papers, 56 percent by radio, and 15 percent by telephone. A substantial number also received market information through weekly papers, daily and weekly mail reports, and through other sources.

In the dissemination of this information the Market News Service of the Bureau of Agricultural Economics plays an important part, but the effectiveness of these and other channels of information would be much greater, the study indicates, if a reasonable uniformity of grade classification were used in the various hog markets. This would give the producer a better basis for judging what he might expect for his lot of hogs, especially the producer who is in a position to know approximately how his hogs would grade according to the generally recognized standards.

Quality of hogs at various types of markets.—If various types of markets, particularly the public markets, are to reflect adequately the level of prices at a given time through price quotations at these markets, it is significant to note whether the volumes of hogs in each of the various grades of hogs received at public markets were substantially dif-

ferent relative to the volumes and grades of those received at other markets. A group of qualified hog graders visited various markets in the course of this study and graded nearly 200,000 hogs. Of these, nearly 108,000 were graded [fol. 2156] at 29 public markets, slightly under 69,000 at 45 packing plants, more than 16,000 at 42 concentration yards, and nearly 6,000 at 16 auctions—in all 132 market outlets distributed over the 15 leading hog-producing States. The classification made was limited to butcher hogs, packing sows, and miscellaneous, of which the distribution was, respectively, 92.8, 3.3, and 3.9 percent. Of the nearly 92,000 hogs included in this differentiation at public stockyards, 92 percent were butcher hogs, or practically the same as the average for all types of markets.

In grading the hogs received at the various markets, 15.4 percent graded Choice at public markets as compared with 15.6 percent at the interior points where this grading was done. The public-market hogs graded 50.7 percent Good as against an average of 51.1 percent Good of all the other markets. At the public markets 30.4 percent graded Medium and 3.5 percent Cull, as against an average of 30.9 and 2.4 percent, respectively, for the interior points.

Because of the outstanding importance of the Chicago market, a special check was made of the grades of hogs received as direct purchases and for sale at the public stockyards at that market where 56,051 hogs were graded, of which 36,150 were public-market hogs and 20,901 direct purchases.

The percentage distribution of the hogs consigned for sale was—

	Percent
Choice	19.3
Good	41.7
Medium	33.8
Cull	5.2

whereas of the hogs bought direct the percentages were—

	Percent
Choice	15.5
Good	40.9
Medium	40.9
Cull	3.7

The distribution of the receipt of hogs at various markets by grades varied somewhat among regions. The above summary, at least so far as the sample included in this study is concerned, shows that public markets received about the same proportion of hogs of the different grade classifications as were received at the other types of markets. Of the hogs graded at Chicago, 61 percent of the public-market hogs graded Good and Choice as against 56 percent of the hogs bought direct by packers.

It is possible that the grade distribution of the hogs graded in the particular period when this survey was made may have been influenced somewhat by differences in market movements affected by the then-prevailing feed situations. Nevertheless, no evidence was found indicating that hogs of better grades are being concentrated in the channels of direct marketing, and that public markets receive a preponderance of low-grade hogs. Moreover, it appears that hogs of the better grades are received in sufficient numbers at the different public markets to establish price quotations registering the level of prices on these grades.

Differentials in price among markets.—Prices paid for hogs at individual interior markets in Iowa and southern Minnesota are not based on a fixed differential measured from Chicago, or from some other public market. Data covering the 3-year period 1931-33 showed that the price [fol. 2157] changes from day to day more frequently at public markets than at interior markets. When prices at these markets change on the same day, such change may not be of the same amount, and not always in the same direction.

The differential in price between pairs of markets, whether public or interior, are more likely to change from one day to the next than to remain the same. However, competition operating among the different markets prevents the price at an individual market from being out of line over any considerable period.

Prices at the different interior packing plants in Iowa and southern Minnesota move together from one day to the next more closely than do prices at each of the plants with prices at Chicago or Sioux City. The average day-to-day change in differentials for these interior packing-plants is

greater when measured from Chicago or Sioux City than when measured from plants in their own group.

Although there is close relation between prices quoted at some markets and prices at other markets, no one market actually determines the price for hogs sold at other markets in this area. The equilibrium of the composite supply and composite demand at all markets marks the level of hog prices. There is no fixed relationship between prices at any market, and prices at other public markets or at interior points. Data show that a rise or a decline in hog prices is as likely to appear first at the interior markets as at the public markets.

The changing relationship between supply and demand forces at a given market, whether public or private, may cause the price at such market to be temporarily out of line with other markets, and this happens at Chicago as well as elsewhere. This sets in motion market forces which tend to restore the equilibrium by shifting the supply of, or the demand for, hogs from one market to another. In correcting one abnormal price relationship, other differences are likely to occur and similar forces to correct these are in turn set in motion. Although price relationships have a tendency to gravitate toward a certain point, they are continually affected by the changing forces of supply and demand and consequently these relationships are in a constant state of flux.

Relationship between receipts and prices at different markets.—The receipts of hogs at a given market are normally different for different days of the week. Receipts of hogs direct to packers at Chicago were more uniform in volume from day to day than were hogs consigned for sale at that market. The volume of hogs consigned for sale as well as those received direct by packers were largest on Monday, but direct receipts averaged smallest on Tuesday, whereas the receipts of hogs consigned for sale were smallest on Saturday. Receipts of hogs at interior markets in Iowa and southern Minnesota were largest on Saturday. The part of the Saturday's receipts at concentration yards that were forwarded to Chicago reached that market on Monday, which accounts for the high direct receipts at Chicago on that day.

Prices paid at Chicago on Monday when receipts were normally large were fully as high as the average for the week. The price at Chicago on Saturday when market receipts were very small tended to be as low as on any day in the week; but this price was not reflected to interior buying points on that day. The heavy receipts at interior [fol. 2158] markets on Saturday were purchased at prices which were as high as, or higher, than the average for the week.

Volume of hog receipts on each day in the week tends to have a normal relation to volume of receipts on any other day, but the normal for any day may be materially different from the normal for other days. Differences in volume of receipts at public markets on any day in the week, as compared with receipts on any other day, do not cause price differences as between the days for which the comparison is made. A material increase or decrease in receipts on any day from the day's normal, tends to cause an inverse change in prices for that day.

As the differentials among markets are not wide as a rule over any considerable period, except for differences that may be explained by transportation charges and other fundamental factors, it is concluded that competition among markets, public and direct, is sufficiently effective to prevent prices over any considerable period in any market or area from being materially out of line with the general level of hog prices as determined by the broad forces of demand and supply.

In connection with the effect of the increase in direct marketing on the relation of packer demand to supply at the public markets, it should be noted that while direct purchase of a given volume of hogs by packers reduces by that amount their demand for hogs at public markets, it is equally true that over a period of time the supply of hogs coming to public markets is correspondingly reduced.

Conclusions

This study shows that the growth of direct marketing of hogs and of other livestock is due to causes which are closely associated with the economic development of the country and particularly of its livestock industry. It is shown that

the sharp decline in the level of hog prices since 1926 has been due to the drastic reduction in consumers' income incident to the depression and to the decline in foreign demand for American hog products.

It does not appear that direct marketing has restricted competition among slaughterers and distributors and enabled them to exact a wider margin. In fact, the principal widening in margins occurred prior to the years of rapid increase in direct marketing and was not confined to hogs or to meat animals generally, but appeared also with respect to other products outside of the influence of direct marketing of livestock. The conclusion that direct marketing has not caused a widening of the margins between the price of a given weight of live hogs and the wholesale or the retail price of the products derived therefrom is also supported by the fact that these margins declined materially during recent years of rapid increase in direct marketing. This decline, however, was due largely to reductions in labor charges and in some other costs during the depression.

Data on price differentials among markets show that no one market, nor any particular type of markets, sets the level of hog prices for all markets. The distribution of the volume of hogs consigned to public markets among the different grade classifications was shown to be approximately the same as of the hogs marketed direct; that is, the public markets on the whole were not receiving more than their proportionate share of low-grade hogs. This, together with the fact that no one market or group of markets sets the price for all markets, leads to the con- [fol. 2159] clusion that the growth of direct marketing has not impaired the price-registering function of the public markets nor caused the prices at the interior markets to be lower than if direct marketing had not increased.

Moreover, this study shows that the growth of direct marketing has not caused the returns to producers of hogs to be less than they would have been otherwise.

Although this study shows that the growth of direct marketing has not been to the disadvantage of the producer, it also shows that there is need for correction of some practices and the development of additional services to improve the marketing of hogs.

Recommendations

(1) The method of pricing hogs in vogue at certain direct-buying points in some areas by means of a "board" price which is posted and made generally known, together with a variable "add" to this price, which is not publicly announced, leads to confusion and uncertainty regarding the price situation and may readily be developed into a deceptive or discriminatory practice. This method should be modified or replaced by one that makes generally known to all sellers the range of prices that are being offered and being paid for different grades of hogs.

(2) The practice of "filling" hogs by feeding before selling should be discontinued at all markets, except such feeding as may be advisable for humanitarian reasons. The practice is wasteful of feed, increases marketing costs, reduces the value of the animals for slaughter, and tends to lower rather than to increase total net returns to producers.

(3) The practice of docking "piggy" sows and stags to partially offset their undesirable characteristics as slaughter animals is not an equitable method of accomplishing this end, and the practice should be eliminated in all markets. Such animals should be sold and bought on their merits at actual weights, as is now done in the case of cattle and sheep.

(4) Scale facilities and weighing by the buyers of hogs at interior marketing points should be subject to such supervision as will give general confidence that sellers' interests are fully protected.

The above-recommended actions and the correction of any other undesirable practices might be effectuated in part by mutual agreements or common consent among buyers and sellers and/or by such further enlargement of the powers and facilities of the Packers and Stockyards Administration as may be needed to give this agency the necessary authority to accomplish these ends.

(5) It is further recommended that uniform grade standards for trading in hogs be adopted for use at all types of markets. This would facilitate the sale of hogs on the basis of quality and would eliminate the confusion arising from

the use of many systems of grading and of grade terms that differ from market to market. Since the adoption of standard grades for hogs and their application (sorting and selling by grades) through voluntary agreement is unlikely, and the grading of hogs by official graders under mandatory requirements would entail considerable addition to marketing costs, an intermediate plan is suggested. Selling and buying on grades would not be compulsory, but if trading is done on the basis of grades, Federal standards [fol. 2160] alone should be used under Federal supervision, and all price quotations on grades should be in terms of these Federal standards. This would require additional legislative authority.

(6) Extension of the Federal Market News Service is suggested. The service now maintained in the Iowa and southern Minnesota direct-marketing area should be strengthened, and a similar service is particularly needed in other important direct-marketing areas, especially in the eastern Corn Belt, where information regarding supply, demand, and prices paid is at present quite inadequate to allow producers to choose the best outlets available. The general adoption of uniform grades would provide a better basis for quoting and reporting prices of hogs.

[fol. 2161]

Chapter 8

Competition for Hogs

In view of the marked changes that have occurred during the last decade in the methods by which, and in the channels through which, hogs are marketed the question arises as to whether there have been any resulting significant changes in the degree of competition for hogs.

The nature of competition for hogs and the question whether the degree of competition at one period is greater or less than at another are rather complex. The principal statistical evidence as to whether competition has decreased with the growth of direct marketing is obtained by comparing the margins between prices paid by packers for hogs and the composite wholesale prices of hog products, to determine whether these margins have widened during recent years when direct marketing has increased. Since

the principal factors determining changes in the wholesale prices of hog products are changes in supplies of hogs and in the level of consumer incomes, neither of which are related to the methods by which hogs are marketed, the measurable effect, if any, of changes in marketing methods on competition for hogs should show in the margins between hog prices and composite wholesale prices. These margins do not indicate any lessening in this competition.

Another approach to the subject is to consider the nature of competition for hogs, especially the factors tending to increase or decrease this competition, and whether these factors are likely to be affected by changes in the methods by which hogs are marketed. Such a consideration cannot be set forth in terms of statistical analysis, for the subject does not lend itself to statistical treatment, but must be in descriptive terms and based upon reasoning from known facts or valid assumptions to what seem to be logical conclusions. This chapter is devoted to an analysis of the competition for hogs from this point of view.

How the Price Level of Hogs is Determined

Different Series of Hog Prices

There is a difference between the general level of hog prices paid by packers and the prices that producers receive for their hogs. The price received by the individual producer is the difference between the price paid by the packer who buys his hogs and the charge for getting those hogs to the packer. There is a considerable range in the prices paid by packers for hogs, these differences being principally determined by the factor of transportation. In general, the further removed the packer is from the centers of deficit production (or of surplus consumption) the lower the price paid. There is also a considerable variation in the costs of getting hogs to the packer, which costs must be deducted from the packers' price of hogs to give the net price to the producer. These costs are those for transportation and marketing services. The further the hogs are moved the higher the transportation deduc- [fol. 2162] tions, but in general this is about offset by the higher packer price. Differences in cost of marketing

charges, such as yardage, commissions, and insurance, tend to increase or decrease the net returns to producers.

There are two general levels of hog prices in common use. The one is the average cost of hogs, at the plant, for all packers; the other is the average price received by producers for hogs sold. Each of these prices is reported monthly by the United States Department of Agriculture. The former is a more exact price since it is definitely weighted by actual purchases of all kinds of hogs, being based on returns from packers who slaughter a large proportion of the commercial supply of hogs.

There is also a general level of hog prices based on the average daily, weekly, and monthly costs of hogs to packers and shippers at specified markets. Since Chicago is the largest hog market and since the headquarters of the large national packers are located there, Chicago prices are most commonly used. These individual market records are the only ones available giving the short-time fluctuation in hog prices. While the actual monthly averages of these various series of prices are different, for purposes of showing relative changes from month to month or year to year, it makes little difference which is used.

Nature of Packer Competition

The cost of hogs to packers represents the composite judgment of all packers as to the value of hogs as raw material for the production of hog products based on the current prices of these products and the anticipated value at some future period. This "cost" price evolves from the competition of all packers for a current supply of hogs offered for sale. Most packers have their individual judgments as to what hogs are worth; these judgments are based on the current cut-out value of hogs (obtained by multiplying the current wholesale prices of the principal hog products by the proportion which each product constitutes of the total carcass) and on opinions as to the future value of hog products that are to be processed for future sale. These opinions as to future values in turn are based on information as to future hog supplies, supplies of hog products in storage, prospective supplies and prices of competing foods and future consumer demand.

For the purpose of this study the questions of how this competition of all packers for a current supply of hogs finally is reflected in a day-to-day and week-to-week price of hogs to producers and whether changes in the methods of marketing hogs may affect this competition and resulting price are of primary importance. Hence a rather detailed consideration of the way in which this competition operates is desirable.

Two Basic Assumptions

As a beginning of this consideration two broad assumptions are made. The first is that packers, as a whole, at all times try to sell hog products for the highest prices obtainable that will enable them to move the current supply for sale. The second is that packers at all times try to buy hogs at the lowest prices at which their currently needed supply can be obtained. Profits in the hog-packing industry come from the margin between the amount received from hog products sold and the cost of hogs. Profits [fol. 2163] are realized only when this margin is larger than all costs of processing and distributing hog products.

From the first assumption it follows that, by and large, the total amount obtained for a given amount of hog products over a shorter or longer period is about all that could be obtained if that supply is to move into consumption. Hence this amount sets the upper limit of the value of the hogs furnishing the supply of products. This upper limit could be little changed regardless of how the supply of hogs was obtained. The part of this value of hog products that is paid out for hogs processed depends on the margin taken from the total value for processing and distributing costs and profits. The size of the margin depends largely on the level of such costs and on the competition among packers for the supply of hogs available.

Factors Influencing Packers' Buying Policies

Although the second assumption was that all packers try to buy hogs as cheaply as they can, this inclination is restrained by the necessity of getting hogs for slaughter; and the fact that all packers face this necessity results in a competition for the available supply that finally deter-

mines the level of prices paid. In determining their buying operations individual packers have a variety of conflicting interests that must be considered. There is a plant that must be kept operating at an efficient capacity to keep down processing charges per unit, an established trade that must be kept supplied with various products, branded products the standards of which must be maintained, contracts that must be carried out, an overhead and selling organization that cannot be readily adjusted to changing volume. All of these make it desirable, if not absolutely necessary, that a regular supply of hogs be at hand for processing. On the other hand, products must be sold in a highly competitive market, operating and other costs must be covered, profits must be made or at least losses must be avoided. Hence the constant urge to keep down the cost of hogs. But if, as a result of the urge, the margin between hog prices and products prices becomes wider than normal with possibility of increased profits, each packer usually seeks to increase his part of this profit by buying more hogs. As a result of the pull of these various influences, the number of hogs bought and the price to be paid is finally established. These decisions of many packers, reacting to these various influences, finally establish the short-time level of hog prices, and these decisions constitute what is commonly called competition for hogs.

Extent of Competition

This competition is not confined to any particular point or group of points but, generally speaking, is working wherever hogs are processed for wholesale distribution. It is most obvious in areas where hog production is large and packing plants are numerous. It is least obvious where hog production is small and where the movement into commercial channels is limited. The price level resulting from the competition is evidenced by the published quotations on hogs at many points, mostly stockyard markets. But the competition that results in these quoted prices is not confined to any one market or group of markets, but it is at work constantly wherever hogs are bought for commercial processing.

[fol. 2164] Thus, although there are price quotations at

many widely scattered points, such as Buffalo and Chicago and Denver and Los Angeles, the general level of prices at these points is not determined by the competition of buyers for the supplies at these points, nor by the haggling between buyers and sellers. These markets are simply the registering points for the results of this competition that is Nation-wide, and the relative effects of buying and selling at these points on the price level of hogs are only about in the proportion that the numbers bought are to the total bought.

Public Markets as Price Registering Points

It is true that certain of these markets have been considered by some as "basic markets", the most important of these being Chicago. But Chicago is not a basic market in the sense that hog values for the country are determined there. It is such a market, partly because its position in the transportation system and in the current of livestock traffic is such that prices at other points in the surplus-hog area can be most readily related to it, partly because it is the location of the principal organized market where hog products are traded in for both spot and future delivery, and partly because the general buying instructions for all the plants of the large national packers emanate from there. It is therefore the most important center for market information registering changes in the level of hog prices. This level is determined by broad forces of supply and demand discussed elsewhere in this report. The fact that Chicago is the most important registering point of hog prices does not make it the determinant of the level of hog prices.

Admittedly the observable indications of competition are most in evidence where large groups of buyers and sellers meet and haggle over the price to be paid, and undoubtedly there are occasions when this haggling affects temporarily the trend of prices, but these markets are individually price-registering and not price-determining points. If there were no such organized trading points where representatives of buyers and sellers meet and sell large numbers of hogs on inspection, and if all hogs moved direct to packers, there would undoubtedly be basic price-registering points, and

the level of hog prices to packers would be substantially the same as they are under the present system. There might be less hour-to-hour and day-to-day and even week-to-week fluctuations than now prevail at present markets, but this would not change the level of hog prices. For the primary factors in determining the price level of hogs are the present and prospective wholesale values of hog products and the competition among buyers for the available supply of hogs to be converted into these products. These are factors over which neither individual producers nor sales representatives of producers have any control.

Price Determination of Other Products

There are other important agricultural products, with widely distributed production, which move from surplus-production areas to large consuming centers, much as do hogs, but for which there are no established markets similar to the large stockyards markets. Among these are butterfat and poultry.

Butterfat.—Because of its character butterfat must be processed near the point of production although in the "concentrator" areas it is moved fairly long distances. [fol. 2165] Hence commercial-butter supplies are manufactured in many relatively small units, and butter from these creameries is widely distributed. Butterfat is sold by producers either directly to local creameries or to produce houses which are agents for large centralized creameries or are independent buyers with several competing outlets. The price paid for butterfat is determined by the price of butter at large consuming centers. There are no large butter markets, however, to which relatively large proportions of creamery-butter supplies are consigned for sale on buyer's inspection, although there are important produce markets in all large cities through which supplies of butter are distributed, and there are organized exchanges where butter is sold for spot and future delivery. As with hog products, prices of butter are determined largely by present and probable future supplies and by the level of consumer incomes. Methods by which butterfat is marketed have no effect on these price-determining factors. Daily butter prices are prices that will remove the supply offered

from the market either for immediate use or for storage. There are a number of important price-registering markets which tend to be price-basing markets for the industry, but the level of butter prices is not determined at these markets; it is determined by the Nation-wide demand in relation to the supply.

Poultry.—Poultry as a material for human food is similar to hogs, and production is even more widespread than is that of hogs. But marketing methods are quite different. Excepting at New York City and Chicago, there are no large central poultry markets to which live poultry is consigned by producers for sale, nor except at Chicago are there organized poultry exchanges. Poultry is largely sold by producers to local produce buyers, or delivered direct to produce houses, or sold to itinerant buyers. Local and itinerant buyers are either agents for nearby produce houses, or they ship to produce merchants in more distant consumer markets. These merchants either buy live poultry from country buyers on bids or handle it on consignment. Live poultry shipped to consuming points is largely consumed at the points where received. Local produce houses are much like interior hog-packing plants. Most of the commercial supplies of dressed poultry are produced at these plants, and such dressed poultry is widely distributed by the same methods and to a large extent by the same organizations that distribute pork products.

The general level of poultry prices is determined largely by supplies, the prices of competing products, and the level of consumer incomes. Short-period prices are those at which supplies offered can be moved into consumption or to storage. To some extent, however, live-poultry prices are more localized than are prices of dressed poultry. Prices paid for poultry by local produce houses and at country-buying points reflect prices as quoted at produce markets in large consuming centers. Poultry prices at produce houses and at country points are subject to fewer day-to-day fluctuations than are hog prices, although there is sharp competition for supplies in the areas of large production.

Value of Public Livestock Markets

These descriptions of the marketing methods for other products similar to hogs are given to indicate that the existence of large consignment markets is not necessary for establishing the price level of such products and to [fol. 2166] show that methods of marketing have little influence on the general market level of prices for such products.

It does not follow from this, however, that these organized livestock markets where hog prices are registered do not have an important place in the livestock-marketing system. Such markets, where actual prices being paid can be readily ascertained and given quick and widespread publicity, are of undoubted value to livestock producers. They tend to hold all markets in close line with the general price level and to keep producers and local marketing agencies informed as to whether prices offered by local buyers, by interior packers, or at different public markets are comparable. Large numbers of different weights and qualities of hogs are assembled at these markets where slaughterers in deficit-producing areas can obtain the kind of hogs they want. Such markets are especially useful in the cattle industry since the classes and grades of cattle are so numerous and varied and the wants of different kinds of buyers are so different that cattle must be sold largely on inspection.

Effect of Changes in Marketing Methods on Hog Prices

If it be accepted that the general level of hog-products prices is not affected by the methods by which hogs are marketed, is it not possible that changes in these methods may affect the proportion of this price that goes to hog producers? In other words, is the margin between hog-products prices and the prices received by farmers for live hogs likely to be increased by changes in methods of marketing hogs? The answer to this question involves a determination (1) of whether these changes have resulted in an increase in the actual costs to the farmer of moving hogs from farms to packers and (2) whether they have reduced packer competition for hogs so that packers are able

to widen the margin between hog prices and products prices to cover either increased distribution costs or profits.

Three Important Changes in Methods

During recent years the three notable changes in these methods have been the shift from rail transportation to truck transportation, the rapid growth of local auction markets to which hogs are brought for sale to buyers of all kinds, and the decrease in the proportion of hogs slaughtered that are consigned to stockyards markets for sale and a corresponding increase in the proportion bought by interior packers and by large local concentration markets for shipment direct to packers located at stockyards markets or elsewhere.

As regards all three of these changes it may be observed that when new methods of merchandising or marketing have tended to replace old, and this tendency grows over a period of years, it is fair to assume that the new methods have certain distinct advantages over the old that cause increasingly larger numbers of persons to adopt these new methods. In the case of marketing methods these advantages may be in saving of time, in reducing risks, in convenience, in reduced costs, or in increased returns.

Motor-truck transportation.—The shift from rail to motor-truck transportation has apparently been only indirectly a factor in causing the increase in direct marketing since the proportion of livestock moved by trucks has increased as rapidly at stockyards markets as at interior [fol. 2167] packing plants or concentration yards. Although there is difference of opinion as to whether it has reduced actual out-of-pocket costs in most cases, there seems little doubt but that it has materially saved time and reduced risks and is often much more convenient.

The increase in commercial trucking of hogs apparently tended to increase the number of local selling outlets, since many of these truckers have become buyers on their own account, as well as transportation agencies. This has brought the hog market direct to the farmer's door and relieved him of all the work involved in getting hogs to local railroad points. To the extent that the trucker pays the same price at the farm that the local dealer does at

the railroad, it has reduced labor cost but not out-of-pocket cost if the farmer can deliver the hogs to the local dealer without cash expense.

The increase in trucking also has increased the number of larg-scale outlets in many cases. Since motor trucks are not restricted as to routes, as are railroads, many communities that were formerly limited to the market outlets readily reached by the available railroad facilities now have additional outlets because these communities can be reached directly by trucks or because loading points on railroads going direct to these points can be reached at little or no added cost of local haul.

Since there is no apparent direct effect of increase in trucking upon the degree of packer competition for hogs and since it has not added to marketing costs, and since it has had other advantages, this changed market method has not tended to reduce the proportion of the wholesale value of hog products paid to producers for hogs.

Local auction markets.—Local auction sales where large numbers of hogs as well as other livestock are assembled and sold have increased rapidly in many Corn Belt States during the last few years and especially during 1934. To a considerable extent these periodic sales have tended to replace farm auction sales. In general the livestock sold is made up of young or unfinished animals or breeding stock, and few fat cattle or hogs are included. During the last 2 years many stock pigs have been distributed in this way.

Such method of sale in general does not appear to offer additional advantages for the marketing of slaughter hogs in areas of large production and may have some disadvantages. In sections where hog production is on a considerable scale and there are a number of local buyers or nearby outlets for hogs it hardly seems probable that the prices paid at the auction will be any higher than those offered elsewhere, and costs of getting hogs to the buyer and market risks will be increased. In sections, however, where hogs are produced on a limited scale and local buyers are few or lacking the assembling of hogs in large enough numbers to attract outside buyers can prove and has proved to be distinctly beneficial. Since these sales can have no

effect on general packer competition for hogs their utility must be judged largely by local conditions.

Growth of direct marketing.—The third change in marketing methods is the decreased proportion of slaughter hogs consigned for sale at stockyards markets and the corresponding increase in direct marketings. Under another section are discussed the relative costs of marketing hogs sold at public stockyards and sold direct to packers or packer-buying points. This discussion indicates that direct selling has tended to decrease rather than increase mar- [fol. 2168] keting costs; thus of itself it would tend to increase the proportion of the packer's price received by farmers.

Hence it appears that the shift to direct marketing has been advantageous to producers, unless this shift has resulted in a decrease in packer competition for hogs and an increase in the margin between the price level of hog products and the level of hog prices to packers that more than offsets this decrease in marketing costs. Whether there has been such a decrease in competition is the crux of the question as to whether direct marketing has been beneficial or detrimental to hog producers. It is desirable, therefore, to examine the whole question of packer competition for hogs both at public markets and at interior points to determine whether it is probable that a shift of buying from the former to the latter would tend to reduce this competition and make it possible for packers to widen the margin between the prices of hog products and of hogs.

The conclusion was reached earlier in this section that the general price level of hogs is not determined at any one market or group of markets but that it arises from a Nation-wide competition of packers, wherever located, and that the results of this competition are registered in changing daily, weekly, and monthly prices at different markets. But it does not follow that the degree of competition could not be altered by marked shifts in the channels through which hogs are moved from producers to packers.

Character of Competition at Public Markets

There is a material difference among public markets in the character of the competition for the hogs received. At

some markets there are 3 general types of buying for slaughter, at others only 2, and at some only 1. At markets where there are 3 types of buying there are buyers for some or all of the four national packers, some of whom have plants located at most important stockyards markets, buyers for local packers who have plants only at this market, and shipper-buyers who buy hogs on order from packers located elsewhere. The Chicago market is typical of this kind of market. At markets where there are 2 types of buying there are buyers either for national packers or for independent packers, one or the other of which types—but not both—have plants located at these points, and shipper buyers. The South St. Paul market is of this type. The 1-buyer type markets are those where one packer (either national or local) takes the bulk of the supply and at which few, if any, hogs are bought by shipper buyers. These markets are relatively small and are located usually in deficit-production areas and mostly in States on either the Atlantic or the Pacific coast.

Obviously competition seems greatest at markets where there are numerous buyers. A commission salesman who has a number of buyers with whom he can dicker before selling would appear to have a better chance of getting a higher price than when he has only a limited number and in some markets only one. At markets where there are many buyers it doubtless often seems that a good salesman may get the better of a buyer and sell hogs above the market, but the reverse also occurs, and the result of such sales on the average market price is negligible. But since the value of hogs for slaughter is determined by the value of hog products and since all packers are selling products [fol. 2169] in much the same market it is not to be expected that for any length of time hogs will be bought at prices out of line with product values. Hence a large number of buyers at a given market of itself offers little possibility of keeping hog prices at that market high relative to other markets. If this were not so there would be a tendency for hogs to move to the markets where buyers were most numerous and away from other markets. As a matter of fact the fluctuations in the differentials between markets is kept small.

It might be argued (and has been) that the markets at which there are numerous buyers of all kinds set the price pace for all other markets—that they establish the level of prices, and other markets simply follow. The Chicago market, especially, has been often cited as the price-determining point. Undoubtedly the day-to-day changes in hog prices at Chicago are an important element in influencing buyer and seller attitude at other livestock markets and at other points where hogs are bought for slaughter. The reasons have been pointed out elsewhere.

To the extent that some of the four national packers are important or dominating buyers at different stockyards markets it is to be expected that those markets will be affected by the buying policies of these packers as reflected in market reports from Chicago. For this reason a somewhat detailed consideration of the competitive buying situation at Chicago may be useful.

Competition for hogs at Chicago public market.—Three of the four large national packers have plants at the Union Stock Yards in Chicago and buy a considerable part of their hog supplies on that market. They also bring to these plants relatively large numbers of hogs bought at country points, and the proportion of such hogs to the total handled at Chicago has been increasing during recent years. There are a number of fairly large local packers having plants at the stockyards who usually buy all of their hogs on the market. A fairly large proportion of the Chicago market receipts are bought by order buyers for shipment to packers at other points, nearly all of these hogs moving east of Chicago, and these order buyers operate regularly on the market. In addition, relatively large numbers of speculative buyers are regular operators on the market. These speculators largely buy loads of mixed hogs for sorting and odd lots of hogs to be assembled into larger lots. When they think the market is likely to advance during the day or if they are offered hogs at a price that seems attractive, they also buy hogs to be resold without sorting.

Usually buyers for local packers, order buyers, and speculative buyers are the first on the market, and their bids tend to establish the early trend of prices as compared with those prevailing at the close of the previous day. The first two types of buyers usually want hogs of fairly defi-

nite weights and grades and are not interested in mixed lots, and their bids are mostly for the better grades of butcher hogs of most weights. The early operations of speculative buyers are governed to a considerable extent by their forecast of how the day's market may develop, based on receipts, attitudes of small local packers and order buyers, large packer attitude the previous day, conditions in the provision markets, etc.

The orders received by order buyers are usually to buy specific kinds of hogs at a price not to exceed a set price limit. In establishing their price limits the eastern packers who place these orders are governed by conditions in the [fol. 2170] wholesale pork market, especially by the demand for fresh pork, the relative prices of hogs at different markets the previous day, changes in quotations in the futures provision market, and other facts tending to indicate what hogs are worth and where they are the cheapest.

Instructions to small local packer buyers represent the management's judgments as to what hogs are worth, based on about the same kind of information as that influencing eastern packers but usually with more intimate knowledge of conditions in the speculative provision market and in the country-wide situation. As these buyers go through the hog alleys and make offers on the kind of hogs suitable to them, commission salesmen get their cues as to how the market is likely to go, and they either sell or hold for higher prices. Thus the early trend of the market is established.

Later the national packer buyers come into the market with instructions as to how hogs should be bought. These instructions are based on information coming from branch houses at all wholesale meat markets in all the leading consumer centers as to the previous day's business and opening conditions of the current day, on conditions in the futures provision market, on the day's supplies of hogs at leading markets and the cumulative supply for the week, on the "cut-out" of hogs slaughtered in recent days, on purchases and prices at country buying points the previous day, and on the attitude of each organization toward the future trend of hog-products prices. If these instruc-

tions are in substantial agreement with the early trend of prices that trend will dominate the day's market; if they are contrary to this opening trend then the later trend is likely to be different from the opening if the day's receipts are to be cleaned up.

Obviously all buyers who are on the market try to buy hogs as cheaply as they can regardless of what their instructions are. But it soon becomes apparent what the general attitude of the buying side is, and the market usually quickly adjusts itself to this attitude. The urge to buy as cheaply as possible, however, is less prevalent with order buyers than with packer buyers. Order buyers are paid a commission for buying, and the ordering packer is not in close touch with the market. If orders can be filled within the price limit set, the buyer has no immediate incentive to buy below this price. But since his business depends on future orders coming to his market and to him, the better he can serve his client the better he insures future business.

Position of salesmen in the market.—Confronting these different kinds of buyers in the market are a large number of hog salesmen representing the commission firms to whom the supply of hogs for sale has been consigned. There is a wide variation among these salesmen in the number of hogs they have for sale, and there is no agreed policy among them as to what the trend of prices of hogs should be. They are paid a commission for their services which is unrelated to the price at which hogs are sold. Hence they have no actual interest, as salesmen, in the price level of hogs. Their chief concern is to sell the hogs consigned to them in line with the market so that their customers will be satisfied. Undoubtedly their attitude is to get the best price they can, but they are faced with conflicting situations. When the first buyers make their appearance they must have decided what their offering price shall be and then must reach a conclusion from the first [fol. 2171] bids as to how the day's market will develop, and whether to sell at once or await later developments. Not all salesmen reach the same conclusions and first sales may be below what most salesmen have had in mind as obtainable. The rest then have to decide whether these first sales were too low and hold for higher prices or revise

their own ideas of prices obtainable. Out of the various decisions of individual salesmen develops the trend of the market.

It is to be noted, however, that the position of the selling side is relatively weak compared with the buying side. It is not probable that packers will pay for hogs more than they expect to get for the products after deducting processing and other costs. It is true that at certain times packers' judgments as to the future value of hog products to be cured and stored will be such that they will pay somewhat more than the cut-out value based on current prices of products, but over the greater part of the crop season these current prices are much the more important factor in determining what hogs are worth. On the other hand, having been produced and delivered at the market, hogs must be sold, and there are no corresponding factors setting a lower limit below which hogs will not be sold. Hence, commission salesman, having no ownership interest in the product, usually will not risk having to carry hogs over from day to day in an effort to raise the level of hog prices.

The most that salesmen can do is to sense the change in demand for hogs from the attitude of buyers in the market and adjust asking prices to this changing demand. Actually the price level of hogs is determined by the competition of packers for the available supply offered, and the desire of producers or efforts of salesmen have practically no effect on the price level. Salesmen can bring about short-time fluctuation around the price level however, by taking advantage of changing volumes of receipts and by bringing into play an expanding demand for hogs somewhat sooner than it might otherwise become effective. The position of salesmen is fairly similar to that of an auctioneer at a public sale. The auctioneer, if a sale must be made, cannot control the prices of the things he sells. The estimated value to buyers is what sets the price. But he can at times take advantage of the competitive attitude of different buyers to get a higher price than would have been paid if he had not been able to stimulate this latent competition.

Competition for Hogs Bought Direct

Competition among packers for hogs bought direct from producers or producing areas is not visibly manifest as is the competition among packer buyers at public markets where a number of buyers for different packers are all operating in the same way in the same place at the same time. The fact that this competition is not thus manifest does not justify a conclusion that it does not exist or is less effective in its results on the prices received by producers for hogs than is packers' competition at the public markets.

One marked difference between packer competition at public markets and at interior points is that at public markets this competition is for a supply of hogs that is physically present and largely out of the control of the producer, while at interior points it is competition in drawing hogs from producers to different plants. The first [fol. 2172] is a competition to buy hogs that must be sold; the second is a competition to draw hogs that may or may not be sold, depending on the prices offered.

Types of large-scale country buying.—In general there are three types of large-scale country buying. The first is that on the part of interior packers, who buy hogs delivered at their plants from producers, or from local buyers or shipping associations who assemble hogs, or from truckers who buy hogs from producers; or they may also have concentration or buying points located elsewhere where hogs are bought from the same sources and at which delivery is made. The second type of buyers are those for packers located at public markets (or at points so far removed from the area of production that the hogs must be moved by rail) who have established buying yards at which hogs are received. Purchases are made from the same groups of sellers as are those of interior packers. The third type of buyers are the operators of independent concentration yards or assembly plants who buy hogs for their own account and resell them where they can get the highest prices, either consigning them to public markets or selling to packers variously located, at the highest price obtainable. A variant of the third type is found in cooperatively operated concentration points that receive hogs from shipping

associations, sort and sell at the most advantageous point, and charge a fee for the service.

With each of these three types the hogs are bought at a fixed delivered price and are delivered to this point. Another type of buying is buying on track, where car lots of hogs are bought at the point of shipment and moved on order to packing plants without passing through concentration yards. Such buying is done by packer buyers at concentration yards and by independent buyers.

Evidences of competition at country buying points.—The competition among these large-scale country buyers is evidenced by the prices offered by them for hogs. These offers are bids for hogs to be delivered, or board prices (with adjustments) for hogs delivered without a bid price being first received. These prices reflect not only the competition among these buyers operating in a given area but also the competition between buyers in this area and public markets available to the area. In order to attract the number of hogs he requires, each buyer must offer a price that is at least as advantageous as prices offered by other direct buyers in the area, and the level of prices in the area of all buyers must be high enough to keep the hogs from going to public markets.

In the case of independent interior packers the prices they can pay for hogs are based upon the prices they are obtaining currently for hog products in relation to their respective operating costs, influenced somewhat by their forecasts of future prices for products to be cured or stored. The prices they do pay are such as they expect will bring them the desired number of hogs, but these prices will not exceed for any considerable period the prices they can pay. Buying policies of interior packing plants owned by large national packers, since general buying policy is controlled more or less by the central buying department, doubtless reflect the country-wide product-price situation more nearly than do those of independent packers whose distribution is more localized. But since the market for products tends to be countrywide, owing to the facility with which such products can be moved long distances, all interior packers, [fol. 2173] except those whose business is entirely local or intra-State, are selling in much the same general market as are national packers.

Prices paid at packer-controlled concentration yards are such as must be paid within their respective areas to bring to them the volume of hogs desired. Buying at such points maintained by large national packers may be influenced by other conditions than the actual worth of the hogs as measured by the value of products. These points might be maintained in order to establish a relatively high level of hog prices in certain areas to counteract competitive advantages of other kinds that interior packers in this area may have. To maintain such a legel of prices the hogs bought might be processed at smaller profit margins or without profit, but with compensating advantages from operations elsewhere.

If interior packers, because of the freight-rate relationship between live hogs and hog products, or because of smaller operating costs resulting from lower levels of wages and salaries, were able to process hogs and distribute hog products to eastern consumer markets at a lower cost than could packers located at some public markets, these advantages could be reflected either in a relative large operating profit or in an advantageous selling position for distributing an increased output.

Packers with plants less advantageously located might meet this situation in several ways. They might abandon these plants and establish or acquire plants in the advantageous area; they might attempt to draw hogs to the public market or markets, the volume of which had been most seriously affected by the increase in slaughter at interior packing plants, by bidding up prices at these particular markets; or they might buy hogs direct at relatively high prices in those areas and thus improve their competitive situation in distributing markets as well as increase their volume of slaughter. The competitive situation as above outlined apparently did prevail in the post-war period, and the national packers have attempted to meet it by the first and third methods indicated.

The third type of large-scale country buying, that by operators of independent concentration yards or buying points, is to a considerable extent speculative buying. These operators buy hogs of mixed grades, both car lots and truck lots, sort them into uniform grades, and sell these graded lots on offers direct to packers variously located, but mostly

east of Chicago. What they cannot sell direct they consign to the public markets that they consider the best outlets for different weights and grades of hogs. To some extent, however, they buy on orders by first asking for bids on certain grades of hogs and then buying hogs to fill these orders, if they can do so and make a profit. Often in doing this they buy mixed hogs and sort them to get the number of the grades desired and then consign the remainder to public markets, in which case the final outcome of the operation depends on the returns from the hogs thus consigned. When such yards are operated cooperatively or as a part of a cooperative selling organization and a fee is charged, the operators are not country buyers but only an expanded type of shipping association.

The prices that such operators pay are not influenced directly by the value of hog products. The operators buy hogs as cheaply as they can in competition with other large-scale country buyers in order to resell, either after sort [fol. 2174] ing or without sorting. Their operations are comparable, in part, with those of speculative buyers at public markets and in part with those of local country buyers who buy hogs within a limited area for resale or consignment.

In areas where two or more of these three types of large-scale country buying prevail the competition among them is plainly evident in the efforts they make to obtain hogs. This evidence is not that of buyers in person actually bidding against each other for different lots of hogs, but is in the form of quoted and posted prices which they will pay for hogs delivered to them. Sellers of hogs, whether shipping associations, local country buyers, or producers, can negotiate directly with all of them, and compare the highest price offered with the quoted prices at available public markets and then make what appears to be the most advantageous disposition.

In areas in which only one such country buyer operates, sellers of hogs have only the choice of accepting this one bid or shipping to a public market. Over the greater part of the heavy hog-producing areas of the Corn Belt two or more such buyer outlets are available. In the less intensive production areas only one such buyer may be found, and often

such areas are far removed from public markets. Few producers ever have enough hogs to sell at one time to make a carload, or even a truckload, and the total yearly volume of shipments is not sufficient to justify the regular operations of a local dealer or shipping association. Producers, of necessity, must accept such bids as may be made, but this situation is not less advantageous because of the presence of this buyer than it would be if he were not operating.

The foregoing description of the character of competition at these various types of large-scale markets leads to the conclusion that the basic factors determining and limiting the competition are the same at all of them; hence is little affected by changes in the proportion of the hog supply that moves through each. On the side of the packer buyers the upper limits of the prices they will pay over any considerable period are set by the composite value of the products derived from hog slaughter minus the charges for processing and distributing these products. Since there is this upper limit to the prices that will be paid and there are no corresponding cost factors setting a limit below which hogs will not be sold, the position of the seller is relatively weak as compared with that of the buyer, and it is the weakest when large supplies of hogs are for sale that are largely out of the control of the sellers.

Competition at Country Points

Thus far the discussion of competition has been largely devoted to competition among different types of markets and buyers at or for these markets, but there is another type of competition which is more in evidence to most producers of hogs. This is the competition at local buying points which reflects this larger competition to farms with hogs to sell.

Alternative selling methods.—Hog producers with hogs to sell in general have two alternatives: either they can sell at a price known before the hogs are delivered or they can consign their hogs and take whatever price may be received at the point where the hogs are sold minus costs of shipping and marketing. Sales to local buyers, to interior packers, and to concentration points are of the first

type; shipment to public markets and through shipping [fol. 2175] associations are of the second type. So far as the individual producer is concerned, his preference as between public markets and direct selling is reflected in his choice between consignment to a public market for his own account or sale by himself to an interior packer or to a concentration point operated by a packer. Since local country buyers, including truckers, shipping associations, and independent concentration points, all can and many of them do utilize both kinds of outlets, the producer selling to these cannot know what will be the ultimate market destination of his hogs.

The rapid growth of motor-truck transportation has increased materially the range of choice among markets of individual producers. When most of the supply of hogs moved by rail generally, producers with less than a carload of hogs were limited to a choice of two outlets—they could sell to a local country buyer or they could ship through a shipping association. At the present time they can send truck or less-than-truck loads of hogs for sale on their own accounts to a public market, to interior packers, or to concentration points. More than ever before, producers are in a position to decide what type of selling they prefer.

Factors influencing farmers' choice of outlets.—Decisions among these different available outlets are influenced by a variety of considerations. The most important is whether hogs will net more a day or two later at a public market than the offered prices for them by any one of the several outlets from which offers are requested. The price at the public market may be either up or down by the time the hogs can be delivered there for sale, and the producer must take the risk of the decline. If different producers had hogs for sale at frequent intervals during the year, it is probable that the number of times the market would go down in the interim between the time when arrang-ments for shipment were made and the time when the hogs were sold would be offset by the number of times the market advanced. But with producers who sell hogs only a few times in the year, there is no certainty of such offsets. Hence the seasonal trend of prices may affect decisions. During the periods of seasonal declines, sales at a known price would be preferable, but during the periods of sea-

sonal advances a better change of profiting by the market change would be offered by consignment.

But even though the farmer were willing to take the chance of the market fluctuation, he may still prefer to sell at the offered price because it may be high relative to what the public-market price is at the time; also because he cannot tell in advance of the sale the exact price his hogs would bring on the market. Likewise farmers who sell hogs only at infrequent intervals do not have the data needed to determine what the net price from consignment may be, since from the market price must be deducted the costs of transportation and marketing and the loss from shrinkage; while from the offered price only transportation and shrinkage would have to be considered, or shrinkage alone if the sale were at a nearby point where he could make delivery himself, or neither of these if sale were made to a trucker at the farm. Hence, undoubtedly, farmers who sell infrequently usually prefer to sell at a known price.

Distance from a public market is also a consideration. Farmers who are located within a short trucking distance of such a market, where the transportation cost is rela- [fol. 2176] tively small, will tend to consign to the market more generally than will farmers located a considerable distance away. The nearby farmers are more familiar with the public market and have more direct contacts with it and can get their hogs to it quicker. Also direction from a public market is doubtless of material influence. The general movement of hogs over most of the Corn Belt is from west to east, and price differentials between markets are from east to west. Hence, a farmer whose closest public market is 75 miles or more to the west would be moving his hogs against the current of hog traffic if he shipped to the market, while if the market were to the east he would be moving with the traffic. Hogs are trucked much farther if the movement is east than if the movement is west.

Some farmers, doubtless, are influenced in their choice of an outlet by their attitude toward direct marketing. If they believe that direct marketing is detrimental to the whole marketing system, they may consistently consign to a public market or through a shipping association that

consistently consigns, or they may sell to a public-market trucker, and make little use of large-scale direct outlets.

The convenient availability of different outlets is doubtless one of the most important factors in most farmers' decisions. This brings up the question as to whether the recent changes in marketing methods have tended to increase or decrease the number of outlets generally available. As previously indicated, there can be no doubt but that the shift from rail to motor-truck transportation has tended to increase the number of outlets conveniently available in the principal hog-producing areas. To the extent that the growth of direct marketing has resulted from or has been accompanied by an increase in the number of interior packers and concentration points, with no resulting decrease in public markets, undoubtedly the number of large-scale outlets has been increased. Since none of the large or intermediate-sized public markets in the Corn Belt and few if any elsewhere have ceased operations within the last decade, there has been an increase in these large-scale outlets.

Changes in Number of Local Outlets

There is little available information to indicate whether there has been a change in the total number of local outlets (country buyers and shipping associations). There has been a rather sharp decrease in the number of shipping associations during the last 5 years and this decrease has been most marked in the areas where large-scale country buying has shown the greatest increase. During the period 1916-25 when cooperative shipping associations were increasing rapidly in number there was undoubtedly a material decrease in the number of local hog buyers. Whether that number has tended to increase with the decline in the number of shipping associations cannot be determined from any available information.

The decrease in the number of shipping associations has resulted, to a large extent, from the increase in truck transportation. In areas within a short trucking distance of a public market the necessity for consolidating small lots of hogs into car lots has been eliminated, and this function of the shipping association has disappeared. To the

extent that farmers used shipping associations to reduce local buyers' margins, this is now done by direct delivery at the public market. The growth of direct marketing may [fol. 2177] also have been a factor in the decline in the number and in the average volume of business of shipping associations. Prior to about 1926 most shipping associations consigned their hogs to public markets, and were slow to avail themselves of the direct-market outlets. Hence as the volume of hogs going to these direct markets increased the volume available to the shipping associations declined.

As motor-truck transportation expanded, commercial truckers more and more became hog buyers both on their own account and as agents or preferred buyers for interior packers and concentration yards. The increase in the number of such buyers has probably more than offset the certain decrease in the number of shipping associations and any probable decrease in local country-point buyers.

In the principal hog-producing areas there has never been any lack of local outlets for hogs. One of the leading causes of the growth of shipping associations was the belief that there were too many country buyers, who were being supported by their profits from handling livestock, principally hogs. As shipping associations increased, the total number of these intermediary marketing agencies doubtless declined; and as shipping associations, in turn, have declined, their operations have been taken over partly by truck buyers, but largely by farmers who have dispensed with any intermediary because of available motor-truck transportation.

Number of all market outlets.—Although there are no available data indicating exactly whether the number of all market outlets has changed during the past decade during which direct buying has expanded greatly, there is information as to the number of such outlets available at the present time.

Hog producers who signed contracts under the hog-production control program of the Agricultural Adjustment Administration were required to furnish evidence as to the disposals of the 1932 and 1933 pigs raised by them, in establishing their base-production figures. These "sup-

porting-evidence" records include the names of the buyers in addition to the dates and the number sold. To get information as to how these pigs were disposed of, typical counties in the nine most important Corn Belt hog-producing States and in Kentucky were selected. A number of factors were considered in selecting these counties, such as types of farming, volume of hog production, location of public markets, location of other large-scale markets such as interior packing plants and concentration yards, and location within areas concerning which the question of the competitive situation had been raised.

One or two counties were selected in each State except in Iowa, where four counties were selected. A sample of the contract farmers well distributed over the county was taken in all counties. In some States all the data for one township in each county were recorded and sample data for other townships, and the record shown in table 26, covers over 5,000 producers in 197 townships in 18 counties, and the sales record covers over 500,000 hogs. The agencies to which or through which sales were made were listed, and these were separated into different types such as public market, packing plant, concentration yards, public auction, local buyer, shipping association, and miscellaneous.

[fol. 2178]

Table 26.—Producers and agencies buying hogs in selected townships in representative counties in principal Corn Belt States and in Kentucky

State	Counties	Townships	Producers	Hogs	Agencies buying [1]
	Number	Number	Number	Number	Number
Ohio	2	2	212	36,144	431
Indiana	2	26	537	89,969	1,102
Illinois	2	21	401	47,448	998
Minnesota	2	15	324	33,059	676
Iowa	4	57	1,838	196,645	3,195
Missouri	1	8	618	17,994	1,319
South Dakota	1	16	242	24,066	463
Nebraska	2	26	423	50,758	882
Kansas	1	25	300	19,910	807
Kentucky	1	1	111	12,273	344
Total	18	197	5,005	528,275	.....

[1] Includes all the buyers of any kind who bought hogs from producers. Each figure is the sum of township totals without the elimination of duplications.

As finally tabulated the number of hogs disposed of through these various agencies by townships were obtained, and for each township the percentage handled by each of the five leading agencies, classified as to type in order of importance, was computed (table 66). It was found that a relatively large number of hogs in all areas were sold by producing farmers to other than the principal agencies listed. This included a large number sold from one farmer to another and considerable numbers sold to town butchers and other town residents either for slaughter or taken on account by merchants and professional men. Since these supporting evidence records did not include disposition of hogs other than those raised by the producer himself (or at least they were not supposed to), they do not show the final disposition of the hogs sold from one farmer to another, but it is fairly assumable that these hogs were disposed of through about the same agencies as were the hogs the farmer raised. Doubtless many of the hogs taken on account were afterwards sold to local buyers, except when delivery was of dressed hogs.

These records show that a number of agencies were utilized for the disposal of hogs in all townships in all counties and that in very few of them (37 out of 197) did any one agency handle over 50 percent of the hogs. In the 37 townships where over 50 percent was handled by one agency these agencies were local buyers in 15 townships, packing plants in 18 townships, concentration yards in 2 townships, auctions in 1 township, and public markets in 1 township.

In general these records agree with the reports of individual farmers made direct to the United States Department of Agriculture, showing the number of market outlets used by them in marketing their hogs. The producer was asked to state the number of public stockyards, packing plants, concentration yards and buying stations, local livestock buyers, auction markets, and cooperative shipping associations through which he could conveniently sell hogs, the object being to get some idea of the number of outlets available to the producer and some indication as to the local competition for his hogs. The answers to this

the Corn Belt the number of market outlets per reporting producer averaged 4.0 and in the three States outside the Corn Belt the number averaged 3.3. The highest average number of outlets for individual States were in Indiana, [fol. 2179] Ohio, and Iowa, and the lowest average number in Oklahoma, Tennessee, and Kentucky. From 1 to 5 market outlets were reported by slightly more than 75 percent of the farmers in each of the three Corn Belt areas and by 85 percent outside the Corn Belt. About 1 percent of the farmers reported 16 or more available outlets.

Table 27.—Number and percentage of farmers reporting various numbers of available outlets, by States and areas, 1934

State and area	1–5 outlets		6–10 outlets		11–15 outlets		16–20 outlets		21 outlets and over		Average number outlets
	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	
Eastern Corn Belt:											
Wisconsin	396	84.3	61	13.0	11	2.3	2	0.4	.....	....	3.6
Michigan	231	79.7	52	17.9	6	2.1	1	.3	.....	....	3.8
Illinois	918	79.6	194	16.8	33	2.9	6	.5	2	0.2	3.8
Indiana	598	71.1	184	21.9	48	5.7	9	1.1	2	.2	4.6
Ohio	585	72.4	165	20.4	41	5.1	12	1.5	5	.6	4.6
Total	2,728	76.6	656	18.4	139	3.9	30	.8	9	.3	4.1
Northwestern Corn Belt:											
North Dakota	172	86.4	25	12.6	2	1.0	.....	....	.....	....	3.4
South Dakota	210	75.0	59	21.1	9	3.2	2	.7	.....	....	4.2
Minnesota	393	83.8	68	14.5	6	1.3	1	.2	1	.2	3.5
Iowa	724	69.5	255	24.5	52	5.0	8	.8	2	.2	4.6
Nebraska	426	80.4	95	17.9	8	1.5	.....	....	1	.2	3.7
Total	1,925	76.4	502	19.9	77	3.1	11	.4	4	.2	4.1
Southwestern Corn Belt:											
Kansas	465	77.9	107	17.9	19	3.2	5	.8	1	.2	4.0
Missouri	561	76.0	130	17.6	34	4.6	10	1.4	3	.4	4.3
Total	1,026	76.9	237	17.7	53	4.0	15	1.1	4	.3	4.1
Outside Corn Belt:											
Oklahoma	211	86.1	29	11.9	3	1.2	1	.4	1	.4	3.2
Kentucky	196	86.3	24	10.6	4	1.8	2	.9	1	.4	3.3
Tennessee	192	83.5	32	13.9	5	2.2	1	.4	.....	....	3.2
Total	599	85.3	85	12.1	12	1.7	4	.6	2	.3	3.3
Total, 15 States	6,278	77.3	1,480	18.2	281	3.6	60	.8	19	.2	4.0

1959

This question on number of outlets for hogs was often incompletely answered. Frequently the different types of outlets named in the questionnaires were checked instead of the actual number of available outlets of each type being given; in these cases each type of outlook checked was counted as one outlet. Public stockyards, or other markets which were known to be available in the locality of the reporting producer, were often not even checked. In many instances it was apparent that the number of outlets reported represented the outlets through which the producer customarily sold hogs instead of the number of outlets available. However only the outlets actually reported were tabulated even in cases where it was apparent that all available outlets had not been reported on the questionnaire. Consequently the number of available outlets as presented in table 27 represents an understatement.

[fol. 2180] EXHIBIT No. 56

Provisions Contained in Official List of Open and Prepay Stations Tariff No. 62 Published by Agent A. P. Leland, I. C. C. A-27

Chicago; South Shore and South Bend Railroad

Note 92—Live Stock will not be handled.

New York, Chicago and St. Louis Railroad Company

Note 1009—No facilities for handling Live Stock. Shipments of Live Stock are handled through public stock yards. (NYC&StL)

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Note 1837—Account no facilities livestock will not be handled to, from, or via the following stations:

Index 704 to 713, inclusive, Joliet to Momence, Ill.

Index 9310 to 9890, inclusive, Blue Island, Ill., to Westport, Ind. (CMStP&P)

[fol. 2181] Copy

EXHIBIT No. 57

WINSTON STRAWN & SHAW

First National Bank Building
Chicago 3

September 4, 1947.

Mr. Sidney C. Murray,
General Counsel,
New York Central Lines,
1236 La Salle Street Station,
Chicago 5, Illinois.

Dear Sir:

In response to a telephone inquiry made by us last week, Mr. W. C. Douglas, Assistant Vice President of the River Road and the New York Central, stated that neither of those companies planned to offer any evidence or to take any other steps to defend the complaint in Swift & Company vs. The Atchison, Topeka & Santa Fe Railway Company, et al., I. C. C. Docket 29809. In this complaint Swift is asking the Interstate Commerce Commission to compel the line-haul carriers and the River Road to deliver livestock at its plant at rates which do not exceed those charged for delivery of livestock to the unloading pens of The Union Stock Yard and Transit Company of Chicago.

If the request of Swift is granted, and the other packers demand and are accorded similar treatment (which may be anticipated), the effect will be substantially to destroy the business of the Yard Company.

In Article VI of the lease from the Yard Company to Chicago Junction Railway Company dated December 1, 1913, the Junction agreed "to conduct, manage, and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards." In the lease of May 19, 1922, by the Junction to the River Road (see Art. III,

Sec. 2, and Art. IX), the River Road and the New York Central undertook to perform the above-quoted covenant of the Junction in the earlier lease.

Most of the evidence necessary to defend the Swift complaint and the power to raise the necessary issues for the determination of all the questions involved are in the possession of the River Road. We believe that if this evidence is adduced, and if the proper issues are raised by [fol. 2182] that road, the case can be successfully defended.

It is our considered opinion that the River Road and the Central are obligated under the terms of the foregoing provision of the lease of 1913 to defend this case and to take every other step appropriate to prevent irreparable injury to the Yard Company, and that any failure to do so will be a breach of this covenant of the lease.

Yours truly, (Signed) Winston, Strawn & Shaw.

GAG-BLH-fmo

[fol. 2183]

EXHIBIT 58

Item		Designation	Type	No. of Units	Built	Wt. on Drivers	Tractive Effort	Capacity A Water in Gals.	Capacity B Coal in Tons	Retired A Sold	Retired B Scrapped	On the Property January 1st	In Service 1948 January
Item	1	G 47	2-8-0	2	1913	217,500	50,200	8000	14	2-1925		1923 77 Engines	
	2	B 58	0-6-0	2	1902	100,000	22,000	4000	8	2-1924		1924 83 "	
	3	B 59	0-6-0	2	1905	142,500	31,570	5000	8	2-1927		1925 86 "	
	4	B 60	0-6-0	5	1906	144,500	31,570	5000	8	5-1928		1926 84 "	
	5	B 60-A	0-6-0	2	1908	144,500	31,570	5000	8	2-1927		1927 84 "	
	6	B 60-B	0-6-0	10	1910	144,500	31,570	5000	8	6-1929	4-1935	1928 80 "	
	7	B-60-C	0-6-0	10	1910	144,500	31,570	5000	8		5-1935	1929 75 "	
	8	B-60-D	0-6-0	6	1912	144,500	31,570	5000	8		6-1936	1930 64 "	
	9	B-61	0-6-0	6	1913	148,000	32,470	5000	8		5-1939	1931 64 "	1
	10	B-61-A	0-6-0	5	1914	148,000	32,470	5000	8		4-1939	1932 64 "	1
	11	B-61-B	0-6-0	3	1916	149,500	32,470	7000	10		1-1939	1933 64 "	2
	12	B-61-C	0-6-0	10	1916	149,500	32,470	7000	10		4-1938	1934 64 "	6
	13	B-62	0-6-0	14	1918	163,500	38,470	8000	13			1935 64 "	14
												1936 55 "	
												1937 56 "	
Item	14	U 3 D	0-8-0	6	1923	219,000	51,530	8200	11			1938 56 "	6
		U 3 E	0-8-0	5	1924	223,500	52,590	11200	15			1930 52 "	5
		DES 4	8	7	1936	205,000	50,500		Oil 600			1940 47 "	7
		DES 6	8	5	1939	220,000	50,000						5

1963

[fol. 2184] EXPLANATION

Items 1 to 15 inclusive show the locomotives on the property in May, 1922, whereas Item 14 shows locomotives purchased thereafter.

Item 1—These engines were the heavy road power type equipped with pilot trucks, and originally acquired for hauling trains of railroad fuel from Grant Coal Mining Co. Terre Haute, Ind., to the Union Stock Yards for distribution to the various railroads. After World War No. 1 this traffic moved via other routes, and as these engines were not suitable for general yard operation, they were sold in 1925.

Item 2—These engines were of extremely light weight with limited tractive effort and small water capacity but suitable to the general run of work, and were, therefore, sold in 1924.

Items 3 to 8 inclusive—These locomotives were of what is known as "saturated steam" type, and because of their limited tractive effort were disposed of following the purchase of U-3 type locomotives in 1923-1924.

Items 9 to 12 inclusive—refer to engines known as "super heated steam" type, some of which were modernized in 1924 to 1927. They were suitable for light work, and a number of them were disposed of with the arrival of Diesel electric engines in 1936.

Item 13—covers 14 B-62 type engines obtained while the property was under U. S. Railroad Administration during World War 1. They are of a heavier type and greater tractive effort than the B-61 engine.

Item 14—represents 11 U-3 type 8 wheel switch engines purchased by the C. R. & I. following its acquisition by the New York Central as well as 12 Diesel electrics.

One of the greatest factors to determine the number of locomotives required to adequately man the property lies in the operating practices as between 1922 and 1948. On January 3, 1922, there were 71 crews working and it required 56 locomotives for them, because at that time all crews were considered independent assignments, and started and ended their tour of duty at the engine ter-

minal. In mid 1925 agreements were entered into with the Train Service Organizations whereby the carrier was permitted to assign crews to go on and off duty in the operating district in which they worked, so that one steam locomotive was in continuous service from 20 to 22 hours, and engine herder crews supplied a fresh locomotive before the expiration of a 24 hour period and returned the old engine back to the engine terminal for supplies. With the purchase of Diesel engines, three shift crews were kept in continuous service in many other districts where water tanks were not located as a Diesel can be kept in continued service for 96 hours before requiring supplies, so that on January 2, 1948, 72 crews were worked and only 36 locomotives were required because 48 of these crews were in continuous service in the various operating districts and required only 16 locomotives, whereas in 1925 there were only 21 crews in continuous service.

[fol. 2185] EXHIBIT 59

Mar 19, '48 800065.

UNITED STATES DEPARTMENT OF AGRICULTURE

Office of the Solicitor
Washington 25, D. C.

March 19, 1948.

Mr. W. P. Bartel, Secretary
Interstate Commerce Commission
Washington 25, D. C.

Dear Mr. Bartel:

Subject: Docket No. 29809—*Swift & Co.* v. *AT&SF Ry. et al.*

At the hearing in the above-captioned docket the Examiner authorized counsel for the Secretary of Agriculture to supply for the record, within twenty days following the close of the case, copies of certain tariffs on file in the Department of Agriculture incident to its administration

of the Packers and Stockyards Act. We enclose the Commission's copy, and are mailing a copy also to Examiner Diamondson and to the parties of record.

If this item is assigned an exhibit number, we would appreciate your so informing us.

Sincerely yours, /s/ Charles W. Bucy, Associate Solicitor.

Enclosure

EXHIBIT NO. 59

1967

SUPPLEMENT No. 1 TO THE

U. S. Y. & T. Company No. 11

The Union Stock Yard and Transit Company

OF CHICAGO

SCHEDULE OF CHARGES

The prices of feed and straw bedding as provided in Sections 2 and 3 of THE U. S. Y. & T. CO. Tariff No. 11 will be:

Corn	$1.15 per bushel measure
Tame Hay	1.35 per cwt.
Prairie Hay	1.25 per cwt.
Oats	.65 per bushel measure
Alfalfa	1.65 per cwt.
Straw bedding in pens	1.00 per cwt.

ISSUED JUNE 11, 1938 **EFFECTIVE JUNE 13, 1938**

Issued by
O. T. HENKLE, Vice President and General Manager
The Union Stock Yard and Transit Company of Chicago,
Chicago, Illinois

2186

Vice President & General Manager

1968 HISTORICAL

U. S. Y. & T. Co. No. 11

(Cancels and supersedes all previous Schedules, Amendments and Supplements)

JUN 3 '38

The Union Stock Yard and Transit Company

OF CHICAGO

SCHEDULE OF CHARGES

ISSUED JUNE 9, 1938 **EFFECTIVE JUNE 13, 1938**

Issued by
O. T. HENKLE, Vice President and General Manager
The Union Stock Yard and Transit Company of Chicago,
Chicago, Illinois

Vice President & General Manager

1969

SECTION 1

YARDAGE CHARGES:

The following yardage charges will be made on all live stock received at these yards:

Cattle	45c per head
Calves (400 lbs. or under)	*35c per head

*(With a maximum of $24.50 for single-deck car, or $49.00 for a double-deck car; other species in car to pay regular yardage charges in addition.)

Hogs	15c per head
Sheep and/or Goats	10c per head
Horses and Mules	50c per head

A service and weighing charge, equal to one-half of the above yardage, will be assessed on all live stock weighed over our scales the second and successive times.

(R-W) The following charges will be made, in addition to the regular yardage charge, on live stock delivered at these yards in other than railroad cars.

(R) Horses and/or Mules	15c per head
(R) Cattle	10c per head
(R) Calves (400 lbs. or under)	5c per head
(R) Hogs	5c per head
(R) Sheep and/or Goats	5c per head

SECTION 2

FEED AND FEEDING CHARGES:

The charge for feed at this market will be the cost delivered at this stock yards plus the following amounts:

(R) Corn	55c per bushel measure
(R) Tame Hay	60c per cwt.
(R) Prairie Hay	60c per cwt.
(R) Oats	35c per bushel measure
(R) Alfalfa	60c per cwt.

All feed charges shall be divisible by 5 and such charges will be amended when the margin between the cost and sale price of feed varies 5c from the margins specified above.

Horses and Mules:—Horses and Mules arriving after 6:00 p. m., 50 cents for that day, and $1.00 per day for each day thereafter.
—Horses and Mules arriving before 6:00 p. m., $1.25 for the first day, and $1.00 per day for each day thereafter.
—Horses and Mules stopping enroute for feed, water and rest in barns, $1.00 per head, per day or fraction thereof.
—Mules stopping en route for feed, water and rest in pens, 65c per head per day or fraction thereof.

SECTION 3

BEDDING:

The charge for straw bedding in pens at this market will be the cost delivered at this stock yards plus the following amounts:

(R) Straw bedding in pens 60c per cwt.

All charges for straw bedding in pens shall be divisible by 5 and such charges will be amended when the margin between the cost and sale price of straw varies 5c from the margin specified above.

Sand bedding, not exceeding 4 inch in depth	$2.00 per deck
(R) Straw bedding in cars	1.25 per cwt.

SECTION 4

DIPPING AND SPRAYING:

All dipping and spraying is subject to the supervision and regulation of the Bureau of Animal Industry, U. S. Department of Agriculture.

The Stock Yards Company is not responsible for loss of or damage to live stock occasioned by or resulting from dipping or spraying.

"R"—Reduction "W"—Wording Changed

The necessary dipping and spraying material and use of the facilities at the dip and spray and the labor are included in the charges for dipping and spraying, which are as follows:

Dipping Sheep and/or Goats	10c per head, minimum, $5.00*
Spraying Hogs	10c per head.

*The minimum charge for dipping will not apply when one or more owners dip 50 head or more from one charging

Spraying Motor Trucks	$1.00 each
Spraying Wagons	75c each.

SECTION 5

IMMUNIZING HOGS:

The Stock Yards Company furnishes facilities, the veterinary service, and the necessary labor required in immunizing hogs, all of which is subject to the supervision and regulation of the Bureau of Animal Industry, U. S. Department of Agriculture.

Only serum and virus manufactured under Government supervision is used. The Stock Yards Company is not responsible for loss of or damage to hogs occasioned by or resulting from vaccination, and does not guarantee immunity to the hogs vaccinated.

Charges are as follows:

Serum	1½c per cubic centimeter for the serum used
Virus	1½c per cubic centimeter for the virus used

The above charges include the use of the facilities, veterinary service, and the necessary labor of taking temperatures and vaccinating the hogs.

SECTION 6

CATTLE TESTING:

Cattle are tested for tuberculosis and other diseases by the U. S. Bureau of Animal Industry or by veterinarians under the direction of the State Veterinarian of the State of Illinois.

This Company is not responsible for loss of or damage to stock moving to and from the testing facilities, or in process of testing, or as a result of the test, or for the efficacy of the test.

For the use of equipment, when services and tags are provided by the regulatory body making the test, no charge.

When tags are furnished, and affixed, by employees of this Company, the charge is 10 cents per head.

If special equipment in barns is desired, the use of such facilities and all services in connection therewith will be charged for under special agreement.

SECTION 7

CLEANING AND DISINFECTING:

When it is necessary to clean and disinfect any portion of these yards by reason of movement in, or through, the yards of live stock exposed to or infected with a contagious disease, the owner of such exposed or infected live stock will be required to pay for such disinfecting as follows:

Chutes	$2.50 each
Pens (single)	2.50 each
Pens (double)	4.00 each
Alleys	.40 per hundred square feet

For disinfecting cleaned cars, trucks, trailers or other vehicles, actual cost of labor and material used plus twenty (20) per cent for supervision.

For use of facilities and water for washing trucks, the following charges will apply: —

Trucks under 2-ton capacity	25c
Trucks 2-ton capacity or over	50c

SECTION 8

BRANDING:

Various state laws require that all animals shipped into the state for feeding purposes must be branded.

This company is not responsible for loss of or damage to stock moving to or from the branding station, or in process of branding, or as a result of branding.

For the use of facilities and labor a charge of 25c per head per iron will be made.

1971

SECTION 9

SPECIAL SALES:

This Company maintains special stables and pavilions for sales of pure bred live stock. The use of such facilities and all services in connection therewith will be charged for under special agreement made in advance of their use.

SECTION 10

SPECIAL SERVICES:

Special services not ordinarily or usually required in the handling of live stock will be charged for under special agreement made in advance.

SECTION 11

Any firm, corporation, or individual by themselves or their employees, detected using unfair, dishonest or fraudulent practices will be denied the privileges of these Stock Yards, treated as a trespasser and dealt with accordingly.

SECTION 12

LOADING ACCESSORIAL SERVICES

The service of loading carloads of live stock when performed by this Company does not include the cost of partitioning cars, or the tying of bulls. Where these accessorial services are required, arrangements must be made by the owner or his agent sufficiently in advance of the loading time so that arrangements may be made therefor at charges to be agreed upon.

SECTION 13

REMOVING PARTITIONS OR TEMPORARY DECKS

When it is necessary to remove partitions or temporary decks in unloading cars containing live stock, the following charges will be assessed:

REMOVING PARTITIONS, 50 cents each, subject to a minimum of $1.00 per car.
REMOVING TEMPORARY DECKS, $2.50 per car.

SECTION 14

CERTIFICATES OF LOADING OR UNLOADING

Upon request of the owner, his agent, or the carrier handling the shipment this Company will furnish loading or unloading certificates. A charge of twenty-five (25) cents per each certificate will be made. When it is necessary to have a notarial seal affixed, the notarial fee will be collected in addition to the 25 cent charge.

SECTION 15

SPRINKLING OR DRENCHING STOCK CARS

A charge of twenty-five (25) cents per deck will be made for sprinkling or drenching stock cars, the charge to apply each time the service is performed before, during or after loading. This company will not be liable for injury to or death of animals drenched or sprinkled.

SECTION 16

SPRINKLING HOGS IN THE SHIPPING DIVISION

A charge of twenty-five (25) cents per pen will be made for sprinkling animals held in the shipping division awaiting loading. This company will not be liable for injury to or death of hogs as the result of sprinkling.

"R"—Reduction. "W"—Wording Changed.

1972

SUPPLEMENT NO. 8 TO
U. S. Y. & T. Co. No. 10.

The Union Stock Yard and Transit Company

OF CHICAGO

SCHEDULE OF CHARGES

Amends Supplement No. 6 to U. S. Y. & T. Co. No. 10, Section 2, as follows:

Corn.....(R).....$1.50 per bushel measure

ISSUED OCTOBER 18, 1937 EFFECTIVE OCTOBER 28, 1937

Issued by
O. T. HENKLE
Vice Pres. and Gen. Mgr.

Vice President & General Manager

2191

1973

SUPPLEMENT NO. 7 TO
U. S. Y. & T. Co. No. 10.

L... INDUSTRY
Ans'd
Rec'd SEP 27 1937
Ans'd 193
Sig ..... By ....

The Union Stock Yard and Transit Company

OF CHICAGO

SCHEDULE OF CHARGES

Amends U. S. Y. & T. Co. No. 10, Section 2, and Amendment No. 1 to U. S. Y. & T. Co. No. 10, as follows:

Timo Hay	(R)	$1.85 per cwt.
Prairie Hay	(R)	1.80 per cwt.
Alfalfa	(R)	1.80 per cwt.

ISSUED SEPTEMBER 25, 1937 **EFFECTIVE OCTOBER 5, 1937**

Issued by
O. T. HENKLE
Vice Pres. and Gen. Mgr.

O. T. Henkle
Vice President & General Manager

1974 HISTORICAL

SUPPLEMENT NO. 6 TO
U. S. Y. & T. Co. No. 10.

The Union Stock Yard and Transit Company

OF CHICAGO

SCHEDULE OF CHARGES

Amends U. S. Y. & T. Co. No. 10, Section 2, and
Amendment No. 5 to U. S. Y. & T. Co. No. 10, Section 2, as follows:

Corn	(R)	$1.70 per bushel measure
Oats	(R)	.90 per bushel measure

ISSUED AUGUST 26, 1937 **EFFECTIVE SEPTEMBER 4, 1937**

O. T. Henkle
Vice Pres. & Gen. Mgr.

Issued by
O. T. HENKLE
Vice Pres. and Gen. Mgr.

1975

AMENDMENT No. 3 TO
U. S. Y. & T. Co. No. 10.

The Union Stock Yard & Transit Company

OF CHICAGO

SCHEDULE OF CHARGES

Amends U. S. Y. & T. Co. No. 10, Section 1, as follows:

YARDAGE CHARGES:

The following yardage charges will be made on all live stock received at these Yards:

Cattle	(A)	45c per head
Calves (400 lbs. or under)	(A-W)	*35c per head

*(With a maximum of $24.50 for single-deck car, or $49.00 for a double deck car; other species in car to pay regular yardage charges in addition.)

Hogs	(A)	15c per head
Sheep and/or Goats	(A)	10c per head
Horses and Mules	(A)	50c per head

(A) A service and weighing charge, equal to one-half of the above yardage, will be assessed on all live stock weighed over our scales the second and successive times.

(R) Amends Section 4, by omission of Minimum Charges on Spraying Hogs.

ISSUED MARCH 12, 1937 **EFFECTIVE MARCH 22, 1937**

O. T. Henkle
Vice Pres. & General Manager

Issued by
O. T. HENKLE
Vice Pres. and Gen. Mgr.

RECEIVED
☆ MAR 12 1937 ☆
PACKERS & STOCKYARDS

(A) Advance.
(R) Reduction.
(W) Wording changed.

2194

1976 JAN 8 1937

U. S. Y. & T. Co. No. 10.

(Cancels and supersedes all previous Schedules and Amendments)

No.
JAN 4 - 1937

The Union Stock Yard & Transit Company

OF CHICAGO

SCHEDULE OF CHARGES

ISSUED AUGUST 24, 1936

The effective date of this tariff was postponed to November 2, 1936 by order of the Secretary of Agriculture in Docket 472 and was later voluntarily postponed by the Union Stock Yard and Transit Company of Chicago to January 1, 1937.

Issued by
O. T. HENKLE, Vice President and General Manager
Union Stock Yard & Transit Co. of Chicago
CHICAGO, ILLINOIS.

1977

SECTION 1

YARDAGE CHARGES:

The following yardage charges will be made on all live stock received at these yards:

(A) Cattle	40c per head
(A-W-R) Calves (400 lbs. or under)	30c per head
(A) Hogs	14c per head
(A-W) Sheep and/or Goats	9c per head
(A) Horses and Mules	40c per head

Yardage charges named above do not include yarding from scales, after sale, on outbound shipments by rail.

A service and weighing charge will be made and collected on all live stock weighed over our scales the second and successive times as follows:

(A) Cattle	20c per head
(A) Calves (400 lbs. or under)	15c per head
(A) Hogs	7c per head
(A-W) Sheep and/or Goats	4½c per head

(A-W) The following charges will be made, in addition to the regular yardage charge, on live stock delivered at or shipped from these yards in other than railroad cars: (On outbound shipments the charge will not be assessed in shipments destined to points within the corporate limits of the City of Chicago.)

(A-N) Horses and/or Mules	25c per head
Cattle	15c per head
Calves (400 lbs. or under)	7c per head
Hogs	7c per head
(W) Sheep and/or Goats	7c per head

SECTION 2

FEED AND FEEDING CHARGES:

Feed used in these yards will be charged for at the following prices:

Corn	$1.75 per bushel measure
Tame Hay	1.80 per cwt.
Prairie Hay	1.80 per cwt.
Oat	1.10 per bushel measure
Alfalfa	1.80 per cwt.

Horses and Mules:—Horses and Mules arriving after 6:00 p. m., 50 cents for that day, and $1.00 per day for each day thereafter.

—Horses and Mules arriving before 6:00 p. m., $1.25 for the first day, and $1.00 per day for each day thereafter.

—Horses and Mules stopping enroute for feed, water and rest in barns, $1.00 per head, per day or fraction thereof.

—Mules stopping en route for feed, water and rest in pens, 65c per head per day or fraction thereof.

SECTION 3

BEDDING:

Straw	$1.20 per cwt. (in pens)
Straw	1.35 per cwt. (in cars)
(A-W) Sand Bedding, not exceeding ¼ inch in depth	2.00 per deck

SECTION 4

DIPPING AND SPRAYING:

All dipping and spraying is subject to the supervision and regulation of the Bureau of Animal Industry, U. S. Department of Agriculture.

The Stock Yards Company is not responsible for loss of or damage to live stock occasioned by or resulting from dipping or spraying.

The necessary dipping and spraying material and use of the facilities at the dip and spray and the labor are included in the charges for dipping and spraying, which are as follows:

(A-W) Dipping Sheep and/or Goats	10c per head, minimum, $5.00 *
(A) Spraying Hogs	10c per head, minimum $5.00 *

*The Minimum charge for dipping or spraying will not apply when one or more owners dip or spray 50 head or more from one chargeing (N).

Spraying Wagons	75c each
Spraying Motor Trucks	$1.00 each

1978 HISTORICAL

SECTION 5

IMMUNIZING HOGS:

The Stock Yards Company furnishes facilities, the veterinary service, and the necessary labor required in immunizing hogs, all of which is subject to the supervision and regulation of the Bureau of Animal Industry, U. S. Department of Agriculture.

(W) Only serum and virus manufactured under Government supervision is used. The Stock Yards Company is not responsible for loss of or damage to hogs occasioned by or resulting from vaccination, and does not guarantee immunity to the hogs vaccinated.

Charges are as follows:

Serum	1½c per cubic centimeter for the serum used
Virus	1½c per cubic centimeter for the virus used

The above charges include the use of the facilities, veterinary service, and the necessary labor of taking temperatures and vaccinating the hogs.

SECTION 6

CATTLE TESTING:

Cattle are tested for tuberculosis and other diseases by the U. S. Bureau of Animal Industry or by veterinarians under the direction of the State Veterinarian of the State of Illinois.

(W) This company is not responsible for loss of or damage to stock moving to and from the testing facilities, or in process of testing, or as a result of the test, or for the efficacy of the test.

For the use of equipment, when services and tags are provided by the regulatory body making the test, no charge.

When tags are furnished, and affixed, by employees of this Company, the charge is 10 cents per head.

If special equipment in barns is desired, the use of such facilities and all services in connection therewith will be charged for under special agreement.

SECTION 7

CLEANING AND DISINFECTING:

(W) When it is necessary to clean and disinfect any portion of these yards by reason of movement in, or through, the yards of live stock exposed to or infected with a contagious disease, the owner of such exposed or infected live stock will be required to pay for such disinfecting as follows:

Chutes	$2.50 each
Pens (single)	2.50 each
Pens (double)	4.00 each
Alleys	.40 per hundred square feet

(N) For disinfecting cleaned cars, trucks, trailers or other vehicles, actual cost of labor and material used plus twenty (20) per cent for supervision.

For use of facilities and water for washing trucks, the following charges will apply: —

Trucks under 2-ton capacity	25c
Trucks 2-ton capacity or over	50c

SECTION 8

BRANDING:

Various state laws require that all animals shipped into the state for feeding purposes must be branded.

This company is not responsible for loss of or damage to stock moving to or from the branding station, or in process of branding, or as a result of branding.

(A-W) For the use of facilities and labor a charge of 25c per head per iron will be made.

SECTION 9

SPECIAL SALES:

This company maintains special stables and pavilions for sales of pure bred live stock.

(W) The use of such facilities and all services in connection therewith will be charged for under special agreement made in advance of their use.

SECTION 10

SPECIAL SERVICES:

(W) Special services not ordinarily or usually required in the handling of live stock will be charged for under special agreement made in advance.

SECTION 11

Any firm, corporation, or individual by themselves or their employees, detected using unfair, dishonest or fraudulent practices will be denied the privileges of these Stock Yards, treated as a trespasser and dealt with accordingly.

1979

SECTION 12

OUTBOUND SHIPMENTS

A charge of $3.00 per car, exclusive of the loading charge, will be made on all outbound movements for services rendered beyond the scale facilities. The charge will be made against the carrier receiving the outbound haul on such shipments.

INBOUND SHIPMENTS

A charge of $3.00 per car, exclusive of the unloading charge will be assessed against and collected from each railroad delivering a car of live stock at the unloading platforms of this Company, as compensation to this Company for the service of counting the animals, notifying consignee of arrival, furnishing a list of dead and crippled animals to the railroads, furnishing weights on directs, collecting and remitting freight charges on such live stock and furnishing with respect thereto, as the railroad's agent, such services and facilities as the railroad is required to furnish in making delivery of such live stock to consignee thereof.

SECTION 13

LOADING ACCESSORIAL SERVICES (N)

The service of loading carloads of live stock when performed by this Company does not include the cost of partitioning cars, or the tying of bulls. Where these accessorial services are required, arrangements must be made by the owner or his agent sufficiently in advance of the loading time so that arrangements may be made therefor at charges to be agreed upon.

SECTION 14

REMOVING PARTITIONS OR TEMPORARY DECKS (A-N)

When it is necessary to remove partitions or temporary decks in unloading cars containing live stock, the following charges will be assessed:

REMOVING PARTITIONS, 50 cents each, subject to a minimum of $1.00 per car.
REMOVING TEMPORARY DECKS, $2.50 per car.

SECTION 15

CERTIFICATES OF LOADING OR UNLOADING (A-N)

Upon request of the owner, his agent, or the carrier handling the shipment this company will furnish loading or unloading certificates. A charge of twenty-five (25) cents per each certificate will be made. When it is necessary to have a notarial seal affixed, the notarial fee will be collected in addition to the 25 cent charge.

SECTION 16

SPRINKLING OR DRENCHING STOCK CARS (A-N)

A charge of twenty-five (25) cents per deck will be made for sprinkling or drenching stock cars, the charge to apply each time the service is performed before, during or after loading. This company will not be liable for injury to or death of animals drenched or sprinkled.

SECTION 17

SPRINKLING HOGS IN THE SHIPPING DIVISION (A-N)

A charge of twenty-five (25) cents per pen will be made for sprinkling animals held in the shipping division awaiting loading. This company will not be liable for injury to or death of hogs as the result of sprinkling.

Office-Supreme Court, U. S.
FILED
AUG 27 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

FREDERICK BERNAYS WIENER,
WM. N. STRACK,
JOHN P. STALEY,
ROSS DEAN RYNDER,
Counsel for Appellant.

INDEX

Subject Index

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statutes involved	2
Statement	4
The questions are substantial	4
Statement as to jurisdiction	11
Exhibit "A"—Findings of fact and conclusions of law of the United States District Court for the Northern District of Illinois, and decree	17
Exhibit "B"—Map showing relative location of Chicago Junction Railway's Ashland Avenue Yards, Swift & Co.'s sidetrack and unloading chutes of Union Stock Yards	31

Table of Cases Cited

Atchison, T. & S. F. R. Co. v. *U. S.*, 295 U. S. 193	16
Chicago Junction Case, 71 I.C.C. 631	6
Cleveland, etc., Ry. v. *U. S.*, 275 U. S. 404	14
Henderson v. *U. S.*, 339 U. S. 816	2
Louisville & N. R. Co. v. *Mottley*, 219 U. S. 467	13
Mitchell v. *U. S.*, 313 U. S. 80	13
Pennsylvania R. Co. v. *Puritan Coal Mining Co.*, 237 U. S. 121	15
Philadelphia, B. & W. Co. v. *Schubert*, 224 U. S. 603	13
Swift & Co. v. *U. S.*, 276 U. S. 311	15
Swift & Co. v. *U. S.*, 316 U. S. 216	2, 15
Union Stock Yard & T. Co. v. *U. S.*, 308 U. S. 213	16
United States v. *Baltimore & O. R. Co.*, 333 U. S. 169	2, 9, 11, 13, 14
United States v. *Champlin Refining Co.*, 341 U. S. 290	2
United States v. *Rock Island Co.*, 340 U. S. 419	2
United States v. *Swift & Co.*, 286 U. S. 106	15
United States v. *U. S. Smelting, R. & M. Co.*, 339 U. S. 186	2

Statutes Cited

	Page
Interstate Commerce Act:	
Section 1(3)(a)	3, 13
Section 1(4)	4, 10, 14
Section 1(5)	4
Section 1(5a)	10, 14
Section 1(9)	4, 9
Section 1(10)	4, 14
Section 1(11)	4, 14
Section 2	4
Section 3(1)	4, 10
Section 15(5)	4
United States Code, Title 28:	
Section 1253	2
Section 1336	1
Section 1398	1
Section 2101(b)	2
Sections 2321-2325	1

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action File No. 50-C-1017

SWIFT & COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.,

Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Swift & Company, plaintiff-appellant, submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause.

Opinion Below

The District Court wrote no opinion. A copy of its findings of fact, conclusions of law, and final order dismissing the complaint are attached hereto as Exhibit A.

Jurisdiction

(a) This is an action, brought pursuant to 28 U. S. C. (1948 revision) 1336, 1398, 2284, and 2321-2325, to enjoin,

set aside, and annul a report and order of the Interstate Commerce Commission.

(b) The final order of the three-judge district court dismissing the complaint was entered on June 21, 1951. A petition for appeal was presented herewith and allowed on July 26, 1951.

(c) The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C. (1948 revision) 1253 and 2101(b).

(d) The following decisions, among many others, sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Swift & Co.* v. *United States*, 316 U. S. 216; *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; *United States* v. *U. S. Smelting, R. & M. Co.*, 329 U. S. 186; *Henderson* v. *United States*, 339 U. S. 816; *United States* v. *Rock Island Co.*, 340 U. S. 419; *United States* v. *Champlin Refining Co.*, 341 U. S. 290.

Questions Presented

All the points raised in the Assignment of Errors are presented by this appeal, but the major issues may be formulated as follows:

1. Whether the Interstate Commerce Commission may lawfully deny service at the line-haul rate to a single shipper at its own sidetrack in respect of a single commodity, on the ground of asserted interference with and disruption of terminal transportation operations, and still permit the identical service at a high additional charge.

2. Whether the Interstate Commerce Commission may lawfully sanction a high additional charge for switching service in respect of a single commodity to a particular sidetrack, which service it asserts would lead to interference with and disruption of terminal transportation operations, where it refrains from prohibiting such switching service

altogether, where it cancels as "not just and reasonable" a proposal by a carrier to exempt that particular commodity from transportation altogether, and where it permits the identical service by the same carrier without such additional switching charge in respect of the same commodity consigned to a stockyards on the same line of railroad, a few city blocks distant from the same sidetrack.

3. Whether the Interstate Commerce Commission had legal power to enforce a covenant between a railroad and a stockyards, the effect of which, in terms and as herein applied, was to require the railroad to deny normal transportation service to a shipper at its sidetrack of one commodity only except at a high additional charge, in consequence of which the shipper would become obliged either to accept and pay for nontransportation service from the stockyards which it neither desired nor requested but without which it could not obtain the shipments which it owned, or else become obliged to incur additional substantial expense to obtain the shipments by truck.

4. Whether the Interstate Commerce Commission properly treated the Chicago Junction Railway as an independent carrier when that carrier had been leased by The New York Central Railroad Company, in the face of Section 1(3)(a) of the Interstate Commerce Act which defines a "railroad" as "all the road in use by any common carrier operating a railroad, whether operated under a contract, agreement, or lease."

5. Whether inadequate motive power on the part of a leased carrier can justify discrimination against a single shipper in respect of a single commodity on the grounds of asserted congestion in terminal operations, where that carrier's motive power had been decreased by 45 per cent. in the preceding twenty-five years.

6. Whether congestion at a terminal justifies factual

discrimination against a single shipper in respect of a single commodity at a particular sidetrack, which discrimination would otherwise be prohibited by the plain language of Sections 1(4), 1(5), 1(9), 2, 3(1), and 15(5) of the Interstate Commerce Act.

7. Whether an extra switching charge for delivering a particular commodity at a particular shipper's sidetrack can be justified on the ground of the increased congestion of terminal facilities which such deliveries would involve, where such extra switching charge is not demanded for other commodities to the same sidetrack or to any commodities at other sidetracks in the same terminal area, nor for the same commodity delivered to a stockyards a few city blocks beyond the same sidetrack.

8. Whether an extra switching charge for delivering a particular commodity at a particular shipper's sidetrack can be justified on the ground that, if such deliveries are permitted without such extra switching charge, other shippers of the same commodity might thereafter make demand for similar service to their sidetracks.

Statutes Involved

This appeal involves the interpretation of numerous sections of the Interstate Commerce Act, as amended (49 U. S. C. 1 *et seq.*), particularly Sections 1(4), 1(5), 1(9), 1(10), 1(11), 2, 3(1), and 15(5).

Statement

This controversy arises out of the attempt of Swift & Company, plaintiff-appellant, to receive its own livestock at its own sidetrack in Chicago at the normal line-haul rates prescribed by the Interstate Commerce Commission for that commodity.

As a result of the order of the Interstate Commerce

Commission here in question, which the District Court refused to set aside, Swift at Chicago now can receive its own livestock, averaging 6489 carloads of livestock per year—"direct" shipments purchased by Swift for which no stockyards services are necessary, since Swift is prepared to receive them at its own plant—in one of three ways:

(1) It can—and does—receive these shipments at its own unloading pens at 2320 South Halsted Street, on a sidetrack connected with the Chicago, Burlington & Quincy Ry. Co., at flat Chicago line-haul rates, without the addition of switching or terminal charges, regardless of the identity of the line-haul carrier bringing the shipment to Chicago. But receipt at this location requires further transportation of the livestock, by motor vehicles, to Swift's meat packing plant, and such additional transportation costs Swift about $50,000 a year (as of the time of the hearing).

(2) Swift could consign its direct shipments to itself at the Union Stock Yards in Chicago, but consignment to that point involves the payment of yardage charges for non-transportation services, simply to march the stock through the Stock Yards into its own plant, i. e., for permission to recover its own animals from the stockyard pens. These charges range from $16.25 per car on cattle to $18.75 per car on a single-deck carload of sheep, and aggregate, for the shipments here involved, about $129,000 a year.

(3) Swift could consign its direct shipments to itself at its own sidetrack in the packinghouse area in Chicago. This method involves the payment of an extra switching charge of $28.80 per car as of the time of the hearing, since increased to $36.00 per car, in excess of what Swift now pays for precisely the same delivery of all other classes of freight to the same or adjacent sidetracks. At the present

rate, this comes to $233,604 a year for Swift's average annual shipments of livestock.

The present proceeding was begun by Swift before the Commission to secure an order which would require delivery by the twenty-odd railroad defendants—line-haul carriers serving Chicago—of Swift's direct shipments of livestock to Swift's sidetrack, which was connected with the rails of the Chicago Junction Railway, at the same line-haul rates and charges under which the railroad defendants deliver livestock to the unloading pens of the Union Stock Yards upon the rails of the Chicago Junction Railway, a few city blocks beyond Swift's sidetrack, and at the same line-haul rates and charges applicable to the delivery of all line-haul freight other than livestock to the same Swift sidetrack.

The proof before the Commission established the following undisputed facts:

The defendant Union Stock Yard & Transit Co. of Chicago (hereinafter called the Union Stock Yards), or a company holding its stock, is the owner in fee of the property of the Chicago Junction Railway. The latter carrier is, pursuant to the Commission's approval thereof in 1922, leased to and operated by the defendant New York Central. See *Chicago Junction Case*, 71 I. C. C. 631. The New York Central in its lease undertook to perform a covenant contained in the earlier lease from the Union Stock Yards to the Chicago Junction Railway, by which the latter agreed "to conduct, manage and operate the line of railroad by this instrument demised, and insofar as possible, the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the yards." This covenant is still recognized as being in force, and was the basis for the Union Stock Yards' demand that the New York Central defend the proceeding before the

Commission, which the Central would not otherwise have done (Ex. 57; see 274 I. C. C. at 577).

At present, the line-haul rates to Chicago are treated by the carriers as including delivery of all line-haul carload traffic (except livestock) upon the many industrial sidetracks connected with the Junction rails and served only by Junction motive power. This is effected by an arrangement by which the Junction receives a division of the line-haul rate. The balance of that rate is retained by the line-haul carrier which transports the car from its point of origin to Chicago and thence to its connection with the Junction track. Interstate shipments of livestock consigned to the stockyards are delivered by the line-haul carriers to the unloading chutes of the Union Stock Yards, also reached only by the Junction rails, without the addition of any switching charge in addition to the line-haul rates. In this proceeding, Swift sought an order which would similarly make the line-haul livestock rates to Chicago apply to shipments of its own "direct" livestock delivered to its own sidetrack which is similarly connected only to the Junction rails.

The relative location of the Junction yards, the Union Stock Yards, and Swift's private sidetrack is shown on a map, derived from exhibits before the Commission, which is marked Exhibit B, and is attached hereto and made a part of this Statement.

In making deliveries of interstate livestock to the pens of the Union Stock Yards, the loaded cars consigned to those yards follow precisely the same rail movement, from the several line-haul carriers' break-up yards in the Chicago area to the eastern limits of the Junction's Ashland Avenue yards, for precisely the same distance, as would be followed by Swift's shipments to its private sidetrack. Beyond this point, as the map, Exhibit B, shows, the dis-

tance to Swift's sidetrack on the Junction is somewhat less than to the Stock Yards' unloading pens, so that the total distance over which the livestock would be transported to Swift's sidetrack would normally be slightly less than to the Stock Yards' pens. But for this slightly shorter journey, Swift must under the Commission's ruling pay an extra switching fee of $36 per car over and above the amount paid by a consignee at the Stock Yards.

The line-haul carriers and the Junction move loaded freight cars from the outer break-up yards to the industries on the Junction tracks in three ways:

(i) Switching movement of livestock cars only, destined to the Stock Yards;

(ii) Switching movement of dead freight only, consigned to industry tracks on the Junction;

(iii) Combined "trains"—and a "train" means any movement of an engine with one or more cars attached—consisting of livestock for the Union Stock Yards and dead freight for industry sidetracks on the Junction. In this instance, the dead freight is set out at the Junction's Ashland Avenue yards by the line-haul switching engine, which then proceeds with the livestock cars to the Stock Yards, while the dead freight is switched by Junction motive power to the proper industry sidetracks on its line. This latter movement, by the switching engines of both the Junction and the line-haul carriers, is precisely the same movement as would be given a carload of livestock consigned to Swift's sidetrack.

If the prayer of Swift's complaint before the Commission had been granted, switching engines would proceed to the eastern end of the Junction's Ashland Avenue yards, as at present, with cuts of cars containing (a) dead freight for Junction sidetracks, (b) livestock for the Swift sidetrack, and (c) livestock for the Union Stock Yards. At the eastern end of the Ashland Avenue yards, the dead freight

and the livestock for the Swift sidetrack would be pushed onto one of the Junction receiving tracks and left there for subsequent delivery by Junction motive power, while the line-haul switching engine would proceed immediately to the Stock Yards with the livestock consigned there. As to cuts of cars containing only livestock for the Stock Yards, there would be no change in the present practice; viz., direct delivery by line-haul switching engines. Swift livestock would, of course, have to await delivery to its sidetrack, which would be later in time than livestock delivery to the Stock Yards; but Swift does not object to such later delivery.

The Commission dismissed the complaint in a report appearing at 274 I. C. C. 557. It treated the Junction as an independent railroad, pointed out that that carrier's motive power—which had decreased during the period of its lease by the New York Central by 45 per cent. (Ex. 58)—was presently being operated to capacity—and, on the assumption that other packers would likewise desire the same relief sought by Swift, concluded that (274 I. C. C. at 568) "any attempt by the Junction to make deliveries of livestock generally to packers or to transport an amount of livestock substantially greater than complainant's present needs, would result in serious disruption of operations and services and serious delays in the delivery of livestock." On that footing it dismissed the complaint—which had been based on Swift's present needs.

Commissioner Alldredge dissented (274 I. C. C. at 576-583) on several grounds: He was of opinion that the enforcement of the covenant between the Stock Yards and the Junction, which had been assumed by the New York Central, was condemned by *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; that it was the obligation of the Junction's lessor to operate Swift's sidetrack without discrimination by reason of the command of Section 1(9);

"that the singling out of livestock as the exclusive type of freight which will not be accorded the switching service without extra charge is not only unjust and unreasonable, under sections 1(4) and 1(5)(a) of the act, but unduly and unreasonably prejudicial under section 3(1)"; and that if, by reason of the service sought, an increased congestion of yard operations and facilities would result, then, in accordance with familiar principles, the additional cost should be distributed over all traffic flowing through the yards and not be charged in its entirety to a single commodity consigned to a single shipper.

At the same time, the Commission required cancellation of schedules filed by the Junction—which had been protested by Swift and others, and suspended pending decision—whereby the Junction proposed to exempt livestock from the traffic which it would transport, and proposed further to cancel the application on livestock of all switching charges thereon, except to the Union Stock Yards. This proposal the Commission found to be "not just and reasonable" (274 I. C. C. 576).

The latter aspect of the case—Investigation and Suspension Docket No. 5543—has not been questioned. But Swift brought the present action to enjoin, set aside, and annul the report and order of the Commission in the main proceeding, Docket No. 29809.

The line-haul carriers, defendants in the Commission proceeding, as well as certain of the intervenors before the Commission, intervened in the action.

The three-judge district court made findings of fact—which, after enumerating the parties and their contentions and interests, simply set forth the findings of the Commission—and also made conclusions of law, which are generalized and do not enunciate any principles peculiar to the Interstate Commerce Act.

The court thereupon dismissed the complaint—but it wrote no opinion setting forth the reasons why it did so.

The Questions Are Substantial

The effect of the ruling below is that for the delivery of its own livestock to its own sidetrack on its own property, Swift must pay $36 per car in excess of what is paid for precisely the same delivery of all other classes of freight to the same or adjacent sidetracks, and similarly in excess of what is paid for all other livestock delivered to the unloading pens of the Union Stock Yards, distant a few city blocks, after following exactly the same movements through the Chicago outer terminals as would be used in delivery of cars of livestock to Swift's sidetrack. Such a ruling, obviously, sanctions precisely the kind of discriminatory practices which congressional legislation over a period of more than sixty years has sought to extirpate root and branch. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, 175, and cases there cited.

Appellant contends, and proposes to argue, that the result below rests, not on administrative judgment or on technical expertise, but on a disregard of statutory provisions and legal rules which, but for the proceedings below, would have been considered as established without question.

1. The Commission said (274 I. C. C. at 568) that "the conclusion is warranted that a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the large movement of livestock to the stockyards area and the return movement of the empty cars, were performed by the Junction." Terminal operations might be regarded as a subject peculiarly within the competence of the Commission, so that a court would perhaps hesitate before enjoining a Commission order which prohibited livestock movements

into a particular area generally, even though the traffic which is thought to disrupt terminal operations in this instance comes to only 20 carloads a day. But the Commission did not order any such prohibition; indeed, it specifically categorized as "not just and reasonable" the Junction's proposal to exempt livestock (other than that consigned to the Union Stock Yards) from the traffic which that carrier would transport. Moreover, the Commission justified a switching charge of $36 a car for this "disruptive" traffic, with the result that Swift is in a position, in case it desires to spend $233,604 a year, for the purpose, "seriously [to] interfere with, delay and disrupt terminal transportation operations and the movement of livestock generally"—and under the rulings below, such a course would be perfectly lawful. Such a conclusion, plainly, makes neither good sense nor good law. If what Swift sought was against the public interest, it should not be permitted at any price.

2. The truth of the matter is, of course, that the pecuniary interest of the Union Stock Yards in the Junction, protected by a covenant which the rulings below have enforced, has here been permitted to deprive Swift of a service to which it would otherwise be entitled. The present record demonstrates that the Junction has been managed and operated—with the sanction of the Commission and of the district court—so as to assure a direct and uninterrupted movement of livestock to and from the Union Stock Yards under trackage contracts, while at the same time it has exacted a high additional switching charge for the transportation of livestock to any consignee not using the services of the Stock Yards. Such a course of conduct comports squarely with the covenant in question to "conduct, manage, and operate the line of railroad [the Junction], and insofar as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the busi-

ness and affairs of the yard." But such a course of conduct is clearly inconsistent with the responsibility of a common carrier to serve all patrons indiscriminately within the limits of its capacity. And the enforcement of this covenant by the Commission and the district court runs afoul of the hitherto well-settled rule that prejudicial discriminations may not be frustrated by private contracts, regardless of the date of their execution. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; *Philadelphia, B. & W. Co.* v. *Schubert*, 224 U. S. 603; *Louisville & N. R. Co.* v. *Mottley*, 219 U. S. 467.

3. Throughout its report, which now stands approved by the district court, the Commission treats the Junction as an independent carrier, and predicates the underlying assumption of congestion and disruption of terminal facilities, thought to follow from the granting of Swift's prayer for relief, on the inadequacy of Junction's present motive power. This approach to the case at bar involves two demonstrable errors of law.

First, by treating the Junction as an independent carrier, the Commission flies in the face of Section 1(3)(a) of the Act, which defines "railroad" as "all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease." Consequently, as a matter of law, the Junction must be treated as a part of the New York Central. It may not be inappropriate to recall that the Supreme Court recently had occasion to enforce this identical statutory definition against the same parent carrier. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169.

Second, and in any event, a carrier may not excuse discriminatory service on the ground of inadequate facilities. Any lingering doubts as to the soundness of that proposition were, assuredly, dispelled by *Mitchell* v. *United States*, 313 U. S. 80. To the extent that the motive power of the

Junction—consisting of 47 engines at the time of hearing as against 86 engines in 1925 (Ex. 58)—is inadequate to deal with the traffic now flowing through its yards, Sections 1(10) and 1(11) of the Act, without more, require the carrier to remedy the deficiency.

4. It is clear that, since Swift's track is already connected and in operation in the handling of cars containing freight other than livestock, the conditions prescribed in Section 1(9) of the Act have been met, so that it is the plain duty of the Junction to operate that track for all kinds of traffic, livestock included. See *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; *Cleveland, etc., Ry.* v. *United States*, 275 U. S. 404. And, assuming that the Commission is correct in its conclusion that Swift's proposed livestock shipments of 20 cars a day would in fact "seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally," then, obviously, the cost of whatever additional burden such shipments involve should be equitably distributed over all traffic flowing through the terminal and not be charged in its entirety to a single commodity shipped to a single consignee. To single out livestock consigned to Swift's sidetrack as the exclusive type of freight which will not be accorded the switching service without a high extra charge is unjust and unreasonable in violation of Sections 1(4) and 1(5)(a) of the Act, as well as unjustly discriminatory and unduly prejudicial in violation of Sections 2 and 3(1).

5. The Commission concluded (274 I. C. C. at 572) that, "if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like service to an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making

deliveries of other freight to the industries on the Junction's lines."

But a carrier has no right to deny service now on the ground that in the future its capacities may be overtaxed. Denial of service by the carrier can be justified "if his coach be full"—and only then. Even in that event, under the Act as well as at common law, the carrier must treat all shippers fairly, and may not discriminate against a particular patron. *Pennsylvania R. Co.* v. *Puritan Coal Mining Co.*, 237 U. S. 121.

6. The present case involves an obvious discrimination against shipments of livestock consigned to Swift's sidetrack in favor of shipments of livestock consigned to the Union Stock Yards. It is no answer to say that the packers, including this appellant, were once instrumental in furthering the business of the Yards. They were thereafter required by the command of the antitrust laws to divest themselves of their interest in all stockyards. See *Swift & Co.* v. *United States*, 276 U. S. 311, 328; *United States* v. *Swift & Co.*, 286 U. S. 106, 111. It would be strange indeed if the removal of a restraint on interstate commerce were now to be made the means of justifying a discrimination in interstate commerce.

7. Reversal of the ruling below is not foreclosed by any decision of the Supreme Court. In *Swift & Co.* v. *United States*, 316 U. S. 216, where the yardage fees charged on shipments consigned to Swift at the Union Stock Yards were held to be outside the jurisdiction of the Commission, the present issue was expressly reserved; the Court said (316 U. S. at 227),

> "It does not appear, however, that the existence or adequacy of alternative facilities for delivery at other points is particualrly important in the case, because the shipments involved are consigned to the packers

at the Union Stock Yards by their own choice. It does not appear that they are demanding an increase of other facilities, and the case has not been considered in that light."

Nor is *Atchison, T. & S. F. R. Co.* v. *United States*, 295 U. S. 193, determinative of the present controversy. In that case, as the Court later explained (*Union Stock Yard & T. Co.* v. *United States*, 308 U. S. 213, 219), "the Commission's order directing the discontinuance of appellant's yardage charge to consignees was set aside on the sole ground that the Commission's findings failed to show that the service for which the charge was made was any part of the loading or unloading services, or otherwise a service which the rail carrier was bound to furnish."

8. The ruling below is at variance with a long course of decisions which in the past have construed the Interstate Commerce Act in the light of its purpose of wiping out discriminations of all kinds. The questions presented are substantial, are obviously of public importance, and cannot be disposed of on an examination of the appeal papers. Probable jurisdiction should therefore be noted, and the cause set down for argument.

Respectfully submitted.

FREDERICK BERNAYS WIENER,
1009-1015 Tower Building,
Washington 5, D. C.,
WM. N. STRACK,
JOHN P. STALEY,
ROSS DEAN RYNDER,
4115 South Packers Avenue,
Chicago 9, Illinois,
Attorneys for Swift & Company, Plaintiff-Appellant.

Dated: July 26, 1951.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action File No. 50-C-1017

SWIFT & COMPANY, *Plaintiff*,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court finds:

1. Swift and Company, the plaintiff herein, operates a large meat packing plant in Chicago, Illinois, located adjacent to the Union Stock Yards, and is served by the rails of the Chicago Junction Railway. The defendants are common carriers by railroad engaged in the transportation of livestock to Chicago. The Union Stock Yard and Transit Company of Chicago, The Chicago Livestock Exchange, the Chicago Traders Livestock Exchange, the National Livestock Producers Association, the Chicago Producers Commission Association, and the United States Department of Agriculture were permitted to intervene as intervening defendants.

2. The complaint as amended was filed with the Interstate Commerce Commission on July 29, 1947, and was docketed by said commission as No. 29809, Swift & Company v. Atchison, Topeka and Santa Fe Railway Company, et al.

3. The complaint alleged that the rates, charges and practices in connection with the delivery of direct shipments of livestock, in carloads, transported from points in States other than Illinois, for delivery to plaintiff's plant in Chicago, Illinois, were and are unreasonable, unduly prejudicial to livestock as a commodity, and unduly prejudicial to plaintiff, and preferential to its competitors at points in Illinois, Iowa, Nebraska, Missouri, Kansas, Minnesota, Wisconsin and Indiana.

4. In the complaint the commission was asked to prescribe reasonable rates, charges, rules, regulations, or practices including joint through rates between the line-haul defendants and the Chicago Junction Railway and the Chicago River & Indiana Railroad Company, under which the carrier-defendants would be required to afford delivery of plaintiff's direct carload shipments of livestock upon the industrial sidetrack serving plaintiff's plant in the stock yards area in Chicago, and under which said rates and charges would not exceed the line-haul rates on livestock to Chicago.

5. Answers to the complaint were filed by the carrier defendants; numerous parties representing the Union Stock Yards and producers, buyers and sellers of livestock intervened in opposition to the complaint; the United States Department of Agriculture also intervened as an interested party under its administration of the Packers and Stock Yards Act, 1921, 42 Stat. L. 159. Full hearings were held before an Examiner of the commission, briefs were filed, and the Examiner's proposed report was issued. Exceptions and replies to exceptions were filed, and the proceeding was orally argued before the entire commission. On July 6, 1949, the commission issued its report, 274 I. C. C. 557, a copy of which was annexed to and made a part of the complaint herein as Exhibit B.

6. All of the shipments involved in this case are "direct" carload shipments of livestock consigned to plaintiff for processing at its Chicago plant. "Direct" shipments of livestock are those purchased by a meat packer in producing areas and shipped to his plant for processing and distribution. The term "direct" is used in railroad and stock yard terminology to distinguish this class of livestock from livestock consigned by producers or others to commission men at a public livestock market for sale upon such market.

7. This method of sale by producers direct to meat packers has increased in recent years until, at the time of the hearing before the commission, approximately 64 percent of the hogs, 25 percent of the cattle, 40 percent of the calves, and 39 percent of the sheep and lambs marketed to meat packing plants having federal inspection are shown by

reports of the Department of Agriculture to have been sold direct by producers to such meat packing plants.

8. The shipments of directs here involved to plaintiff's Chicago meat packing plant averaged 6,489 carloads of livestock per annum during the five years immediately preceding the hearing before the commission. These directs are now shipped to certain unloading pens owned by plaintiff, at 2320 South Halsted Street, Chicago, on a sidetrack connected with the rails of the Chicago, Burlington & Quincy Railroad Company. Deliveries of livestock to this sidetrack are made at the flat Chicago rates. From said location, such livestock are moved by plaintiff by motor vehicle through city streets a distance of two and one-half or three miles. Plaintiff had to expend about $50,000 per annum, as of the time of the hearing, for maintenance and operation of motor vehicles used exclusively to transport such livestock from the unloading pens at 2320 South Halsted Street to its plant in the stock yard area.

9. Among other things, the commission found:

> "We find (1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for the transportation of livestock for delivery on the private sidetracks to be constructed by complainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference and (2) that establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest."

10. The commission further found:

> "The issue presented is whether or not complainant is entitled to have direct shipments of livestock delivered by the Junction without a charge in addition to the line-haul rates on a private siding at a plant which it proposed to construct in the stock yard area in Chicago."

11. The commission further found:

"In the determination of the issues raised in this proceeding, it is necessary to consider the track layout of the Junction, and the present operations thereover in the handling of so-called dead freight, which term includes perishable and all other freight other than livestock; the method by which livestock has for many years been handled by the line-haul carriers to the Union Stock Yards; the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock, as sought by complainant; and also, in order to avoid undue preference and prejudice, if it were required to make similar deliveries to complainant's competitors.

"All facts relating to the existing custom and practice of making deliveries of livestock and also facts and circumstances leading up to that custom and practice, as well as the effect of the proposed practice on the interests of the carriers, the public, and other shippers, are relevant."

12. The commission further found that the switching charge of the Junction for switching livestock from junctions with connecting lines to plaintiff's plant and other points on the Junction rails, at the time of the hearing, was 4.8 cents per 100 pounds or $28.80 based on the minimum of 60,000 pounds. That carrier, however, has never, except in an emergency handled ordinary livestock in switching service. That traffic is at present, and for many years past, has been handled at Chicago entirely by the line-haul carriers.

13. In its report the commission stated that the Chicago switching district is approximately 40 miles in length and from 7 to 15 miles wide, being served by 35 railroads. The report also states that the two lines referred to as the Junction are exclusively switching lines and together operate 224.35 miles of track within the Chicago switching district, connecting with 27 railroads, that the majority of the 499 industries with private sidings located in the stock yard

district are served solely by the Junction. The two switching lines referred to as the Junction also maintain 11 team tracks and 3 freight stations and together serve 653 industries with 823 sidetracks.

14. The commission further found that the Ashland Avenue Yards of the Junction handled an average of 726,144 loaded and empty cars per annum during the years 1945, 1946, and 1947, that those yards are located in a densely developed industrial part of the city of Chicago, and that there is no land available for the expansion of those yards or the building of additional facilities nearby for the interchange and classification of traffic.

15. The commission further found that approximately 63 percent of the trains of the trunk line carriers going to the Union Stock Yards carry livestock exclusively, that these trains move over eastbound track 1103 directly to the unloading chutes of the Union Stock Yards, that the unloading consumes only a few minutes per car, and that the empties are then moved directly back to the line-haul carriers' home yards over westbound tracks 1102 or 1104. Carriers, such as the Rock Island, which approach the Union Stock Yards from the east, haul their livestock directly to those yards without passing through the Ashland Avenue Yards.

16. The commission further found that since the line-haul carriers must use the same eastbound track into the Union Stock Yards, any delay to a train on that track results in "piling up" trains of other lines seeking ingress to the Union Stock Yards. Frequently as many as four trains must wait to enter this track as a result of its being blocked at the east end. Delays are necessarily experienced also because of "set-outs" made by consolidated trains, consisting of livestock and dead freight and these delays would be multiplied under the delivery practice proposed by plaintiff. In a consolidated train the dead freight is on the head and behind the engine. The cars of livestock are cut off and left standing at the eastern end of the eastbound running track while the line-haul carriers' engine sets dead freight on one of the nine receiving tracks in the south yard. This operation blocks the running track until the engine returns

and hauls livestock into the Union Stock Yards.

17. The commission further found:

> "Under the Federal law, livestock may be confined in cars for not more than 28 hours without unloading for watering and feeding unless the shipper requests in writing that the time be extended to 36 hours. In practically all cases, stock arriving at Chicago has only a limited time within which it must be unloaded from the cars in order to avoid violation of the 28-hour law. The outer yards of the line-haul carriers, from which runs are made to the Union Stock Yards, contain very limited feeding, watering and rest facilities. Many stock runs are made with but one or two cars per train. Under the present practice of handling directly to the unloading chutes in the Union Stock Yards, it is unnecessary to unload the stock for water, feed, and rest at some intermediate location on the Junction. In fact, facilities for that purpose do not exist on that line."

18. The commission further found that the measure of transportation services rendered shipments of live animals is substantially greater than that accorded dead freight. Livestock cannot be switched in the same manner as other freight. In the ordinary and usual course of classifying dead freight, by the Junction, the engine pushes a string of cars along a track leading to the classification tracks. Uncoupled cars are "kicked" or given impetus to roll freely through a switching lead onto the proper classification track. Manifestly, if livestock were so handled it would result in injury to the animals by being thrown against the ends or sides of cars or knocked down. Cars of livestock must necessarily come to rest without rough shocks or jolts.

19. The commission further found:

> "Under the present practice, followed since the inauguration of services to the Union Stock Yards in the interest of expeditious centralized delivery, the yards of the Junction are not burdened with livestock cars either loaded or empty. It clearly appears that any attempt by the Junction to make deliveries of livestock

generally to packers or to transport an amount of livestock substantially greater than complainant's present needs, would result in serious disruption of operations and services and serious delays in the delivery of livestock. * * * There can be longer trains and greater movement of livestock by the line-haul carriers to the stockyards, but the conclusion is warranted that a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the large movement of livestock to the stockyards area and the return movement of the empty cars, were performed by the Junction."

20. The commission further found that the present method of delivering livestock in Chicago is reasonable and lawful and the only practical method of delivering livestock in the stock yards area.

21. The commission further found that numerous difficulties would confront carrier-defendants if required to make delivery of livestock at plaintiff's plant, the basic difficulty being that such method of delivery is not adapted to carrier-defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for the performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stock yards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stock yards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject carrier-defendant's operations to interference and delays. This method of terminal operation, including the planning and

building of rail and stock terminal facilities, have resulted, in large part, from the action of the Chicago packers, including plaintiff.

22. The commission further found that although "cars of livestock consigned to plaintiff could be handled in consolidated trains by grouping such cars at the head of the train with the cars of dead freight intended for setout in the south yard, nevertheless, because of difficulties peculiar to livestock traffic, such handling would, it appears, affect adversely the line-haul carriers' operations in carrying livestock to the stockyards."

23. The commission, in its report, stated that the need for such difference in service as regards plaintiff's livestock and the effect thereof would extend to the service in the south yard and beyond, that taking into account periods of peak movements and maximum use, the south yards are used to capacity with no space for construction of additional tracks and that any additional burden would adversely affect all other interests served by the Junction.

24. The commission also found that using the Junction's classification tracks for livestock would result in cars of livestock being blocked in between cars of dead freight and that such cars of livestock would have to be "dug out" for a special run to plaintiff's plant. The commission's report further states:

> "Indeed, it appears that in some instances, immediately upon arrival of a consolidated train including cars of livestock for complainant, the Junction might have to make a special run to deliver the cars at the latter's plant. As above mentioned in practically all cases, livestock arriving at Chicago has only a limited time left before it must be unloaded to avoid violation of the law governing watering and feeding; the Junction has no facilities for watering or feeding anywhere on its lines and such facilities of the kind as are maintained by the line-haul carriers are very limited. While these conditions—all necessitating promptly handling of the traffic—are suited to the practice, long followed, of making deliveries of all shipments of livestock at the stockyards, they are not, it is evident, at all suited

to the plant delivery service sought by complainant in the performance whereof the cars of livestock would have to be switched and otherwise intermingled with cars of dead freight which latter, it appears, may, in the case of perishable freight, require nearly a full day for movement through the yards to points of delivery, and in the case of other dead freight, nearly 32 hours."

25. The commission further found that even if the factor of limited time within which to unload in order to observe the law were rendered unimportant or eliminated, the cars of livestock for delivery at plaintiff's proposed plant would, if handled in regular course and not by special runs, have to be switched, classified, set out, and otherwise handled together with cars of dead freight. Because cars of livestock and any cars of dead freight handled along with them cannot be switched in the usual expeditious manner, there would result numerous interferences and delays. Trains of livestock moving over track 1103 to the stock yards would be delayed; there would be interferences and delays in the south yard and from that yard to and through the base yards. There would be the additional delay involved in controlling the cars in their movement over the descending grade to the proposed plant. The commission's report states:

"Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants' operations. Moreover, although it is shown that complainant's direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipments exceeded 18 cars. Also it appears that the number of complainant's direct shipments of livestock in proportion to the number bought at the stockyards has been steadily increasing and the testimony of complainant's witnesses affords ground for the belief that that condition will continue."

26. The commission also found that in the event plaintiff's demands were granted, other packers would be entitled to the same delivery service at the same rates if they provided the necessary facilities, and that such other packers would be under great competitive compulsion to provide such facilities. The commission's report states:

> "Nevertheless, it is our best judgment, and we, therefore, so find and conclude, that, if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like delivery service in an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction's lines."

27. The commission further found that interference with the movement of livestock to the stock yards is a serious concern not only of the carrier-defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is adequate for their needs. The commission's report states:

> "We may, however, disapprove the inauguration of a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally. The proposed complete exemption of livestock from transportation by the Junction under any circumstances is not justified. There is no warrant, however, for a conclusion that the establishment of joint rates as desired by complainant is necessary or desirable in the public interest."

28. The commission also found:

"The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those connected with the delivery here sought. There, the unloading chutes are on the rails of a line-haul carrier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington. The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought."

29. The commission also found that the line-haul rates on livestock to Chicago apply only to deliveries served by the line-haul carriers and not to deliveries of livestock by the Junction. The commission's report states:

"The line-haul rates on livestock to Chicago are Commission-prescribed rates. In Chicago Livestock Exch. v. Atchison, T. & S. F. Ry. Co., 219 I.C.C. 531, 545, 546, we said that the 'line-haul carriers operate over the tracks of the Chicago Junction to the Union Stock Yards and make delivery there thereby making these yards their own terminals.' We pointed out that in prescribing the rates on livestock to Chicago, among other markets, there was specifically taken into consideration as an element 'the rendition of terminal service in connection with the transportation of livestock,' and there was included what was considered 'sufficient to cover such terminal services under a normal operation as well as to cover the unloading and loading of livestock at public stockyards,' but we did not there consider what the services would be in con-

nection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services."

30. With reference to its prior reports in Baltimore Butchers Abattoir & Live Stock Co. v. Philadelphia B. & W. R. Co., 20 I.C.C. 124, Swift & Co. v. Baltimore & Ohio R. Co., 266 I.C.C. 55, and Neuhoff Packing Co. v. L. & N.R. Co., 268 I.C.C. 271, the commission found that "Deliveries to private industrial tracks at those points (Baltimore, Maryland, Cleveland, Ohio, and Nashville, Tennessee) did not require substantial modification of terminal operations and interferences with established operations in a manner required at Chicago for such deliveries, and did not involve, as at Chicago, serious disruption of operations. There is no showing of a similarity in any respect of the services required and circumstances affecting services."

31. The commission further found, with respect to the points alleged to be preferred in plaintiff's complaint before the commission:

> "There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred."

32. The commission further found, with respect to a contractual relationship asserted to exist between the Union Stock Yards and the Chicago Junction, that the lease of the Chicago Junction to the Chicago River & Indiana, a subsidiary of the New York Central, in 1922, completely divested the Union Stock Yards of operation and control of the terminal railroad. The commission's report states:

> "The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the Chicago Junction case, supra. Those conditions were particularly intended to insure that the Chicago Junction and the Chicago River & Indiana

out special advantage favoring the New York Centra but the conditions were and are broad enough to in hibit operation of the Chicago Junction to the specia advantage and interest of the Union Stock Yards."

33. The commission further found that "the evidenc affords no basis for a conclusion that the terminal charg of the Junction in addition to the line-haul rates is unrea sonable for deliveries of livestock to the proposed plant, con sidering services and modifications of services that woul be required for the desired deliveries and the effect o terminal operations generally of performing such deliver service to the proposed plant."

34. The commission further found:

"The published switching charge is appropriate fo any switching that may occur of cars of livestock t complainant's proposed plant. It does not appear tha the maintenance of a switching charge for livestoc will have any detrimental effect upon terminal opera tions."

35. On the same date as that on which its report wa issued, the commission issued an order dismissing the com plaint. And, as

Conclusions of Law

1. The commission's order was made after full hearin upon adequate findings supported by substantial evidenc and in accordance with the applicable law.

2. The commission had evidence before it sufficient t sustain its findings.

3. The findings made by the commission are adequate t support its order dismissing the complaint.

4. The order of the commission was within its statutor authority, was not arbitrary or capricious or based upo mistake of law or misapplication of proper statutory stan dards.

5. Plaintiff is not entitled to any of the relief praye

Dated at Chicago, Illinois, this 28th day of May, A.D. 1951.

(S.) F. RYAN DUFFY,
U. S. Circuit Judge.

(S.) PHILIP L. SULLIVAN,
U. S. District Judge.

(S.) M. L. IGOE,
U. S. District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action

File No. 50-C-1017

SWIFT & COMPANY, *Plaintiff*,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants*

ORDER

The above-entitled cause having come on for hearing before this Court on May 15, 1951, and the Court having heard all of the parties hereto and having thereafter and on May 28, 1951 entered its findings of fact and conclusions of law,

ORDERS, ADJUDGES AND DECREES that the complaint herein should be and the same is hereby dismissed.

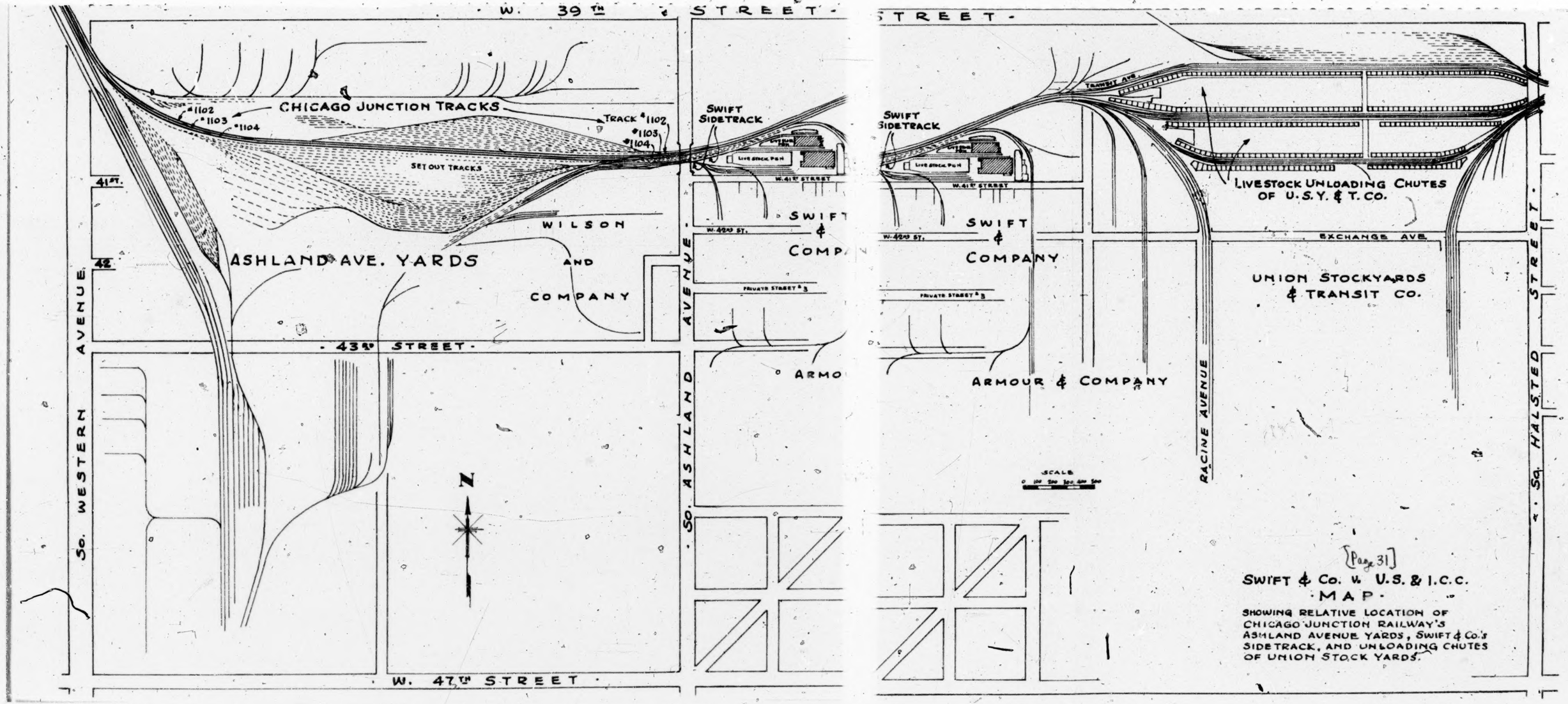
Enter:

F. RYAN DUFFY,
United States Circuit Judge.

PHILIP D. SULLIVAN,
United States District Judge.

M. L. IGOE,
United States District Judge.

Dated at Chicago, Illinois, this 21 day of June, 1951



[Page 31]

SWIFT & Co. vs. U.S. & I.C.C.

·MAP·

SHOWING RELATIVE LOCATION OF CHICAGO JUNCTION RAILWAY'S ASHLAND AVENUE YARDS, SWIFT & Co.'s SIDETRACK, AND UNLOADING CHUTES OF UNION STOCK YARDS.

Office-Supreme Court, U. S.
FILED
AUG 28 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, *Appellant*,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

Appeal from the United States District Court for the Northern District of Illinois

MEMORANDUM FOR APPELLANT IN OPPOSITION TO THE MOTIONS TO AFFIRM

FREDERICK BERNAYS WIENER,
1009-1015 Tower Building,
Washington 5, D. C.,

WM. N. STRACK,
JOHN P. STALEY,
ROSS DEAN RYNDER,
4115 S. Packers Avenue,
Chicago 9, Illinois,
Counsel for Swift & Company, Appellant.

AUGUST, 1951.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

Page

I. Neither motion deals with two glaring errors of law apparent on the face of the Commission's report 2

II. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, requires reversal of the rulings below rather than affirmance on motion 4

III. Neither motion explains how the factor of congestion can legalize an otherwise unlawful discrimination 6

IV. By relying on the interest in "expeditious centralized delivery", the rulings ignore the very different interests protected and sought to be enforced by the Interstate Commerce Act, and thus effectuate at appellant's expense a discriminatory covenant between carrier and stockyards 9

V. The discrimination approved and perpetuated by the rulings below cannot be waved aside by calling this a "rate" case 11

VI. The issues raised require review 12

AUTHORITIES

CASES:

Armour & Co. v. *Alton R. Co.*, 312 U. S. 195 10

Atchison, T. & S. F. Ry. Co. v. *United States*, 295 U. S. 193 ..... 10, 12

Chicago Live Stock Exch. v. *Atchison, T. & S. F. Ry. Co.*, 219 I.C.C. 531 6

Ex parte No. 175, I.C.C., decided Aug. 2, 1951 2

Hygrade Food Products Corp. v. *Atchison, T. & S. F. Ry. Co.*, 195 I.C.C. 553 12

Interstate Commerce Commission v. *Baltimore & O. R. Co.*, 145 U. S. 263 11

Livestock—Western District Rates, 176 I.C.C. 1 ... 6

Page

Mitchell v. *United States*, 313 U. S. 80 ..... 7, 8
Omaha Live Stock Exch. v. *Chicago & N. W. Ry. Co.*, 178 I.C.C. 1 6
Pennsylvania R. Co. v. *Puritan Coal Mining Co.*, 237 U. S. 121 3
Swift & Co. v. *United States*, 276 U. S. 311 10
Swift & Co. v. *United States*, 316 U. S. 216 ..... 9, 10, 13
United States v. *Baltimore & O. R. Co.*, 333 U. S. 169 ..... 4, 5, 6, 10, 11, 12, 13
United States v. *Steffan*, 338 U. S. 902 5
United States v. *Swift & Co.*, 286 U. S. 106 10

STATUTES:

Interstate Commerce Act:

Section 1(3)(a) 7
Section 1(5) 12
Section 1(9) 5, 10
Section 1(10) 7
Section 1(11) 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, *Appellant,*

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees.*

Appeal from the United States District Court for the Northern District of Illinois

---

MEMORANDUM FOR APPELLANT IN OPPOSITION TO THE MOTIONS TO AFFIRM

Pursuant to Rule 7, paragraph 3, of the Rules of this Court, Swift & Company, appellant, files this statement opposing the motions to affirm. The interveners' motion was served on August 9, 1951, the Interstate Commerce Commission's motion on August 11.

By way of preliminary, appellant notes that the United States, by not joining in these motions, concedes that the questions presented by the appeal are substantial. Of course such a concession admits nothing as to the merits. But an analysis of the two motions, in the light of what is said therein as to the issues raised and argued in appel-

lant's jurisdictional statement, and perhaps more particularly in the light of what is not said therein as to those issues, underscores both the substantiality of this appeal and the soundness of the Government's position respecting it. For this case simply bristles with issues which the moving appellees either evade or else do not even mention.

I. NEITHER MOTION DEALS WITH TWO GLARING ERRORS OF LAW APPARENT ON THE FACE OF THE COMMISSION'S REPORT.

A. At the outset, appellant pointed out that although the Commission rested its approval of the extra switching charge of $39.24* per car here in question on the ground that the livestock shipments sought by Swift without such charge would "adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted," the Commission not only failed to prohibit such livestock shipments altogether, but specifically categorized as "not just and reasonable" the proposal of the Chicago Junction Railway to exempt livestock (other than that consigned to the Union Stock Yards) from the traffic which that carrier would transport. We pointed out that Swift was accordingly left free, if it chose to spend $233,604 a year for the purpose, since increased to $254,628.36, "seriously [to] interfere with, delay and disrupt terminal transportation operations and the movement of livestock generally," and that such a course would be perfectly lawful under the rulings below. We argued that this result, "plainly, makes neither good sense nor good law."

Faced with this obvious infirmity in the rulings sought to be reviewed, those who now urge that no substantial questions are here presented pursue different courses.

---

*The amount of the switching charge was $28.80 at the time of the proceedings before the Commission and $36 at the time of the hearing below. After the appeal was allowed, the charge was increased by 9% in consequence of *Ex parte No. 175*, decided by the Commission August 2, 1951, and thus is now $39.24.

The interveners take refuge in silence, apparently in the view that the facile approach of "Out of sight, out of mind" not only avoids perplexities but also demonstrates their insubstantiality.

The Commission at least deals with the point. It says that "While the charge was entirely reasonable for the service the Commission knew it would be availed of when Swift had special need to have livestock moved in that way."

This is frank to the point of cynicism. This amounts to saying that the Commission knew that the charge was so high that Swift would never avail itself of the service, or, in plain English, that the Commission was enforcing a penalty in a situation where it had specifically ruled that an unequivocal prohibition was "not just and reasonable."

We doubt if the files of this Court will disclose a similar admission of covert regulation by any administrative agency, of any similar instance of a regulatory body forbidding indirectly what it frankly admits it cannot forbid directly. Even if this were the only issue in the case, it would be sufficient to call for extended argument. But it is far from being the only substantial issue on this appeal.

B. Appellant also pointed out, what is indeed apparent from inspection of the Commission's report, that it rested its dismissal of Swift's complaint, which had been based on Swift's present needs, on the ground that, if Swift's demand for the delivery of livestock at the line-haul rate were granted, "there would result demands from other packers requiring defendants to render like delivery service in an amount and volume which together with such service rendered [Swift]" would result in disruption (274 I. C. C. at 572). Appellant argued that "a carrier has no right to deny service now on the ground that in the future its capacities may be overtaxed," and pointed out that, even in cases of extreme congestion, all shippers were entitled to equality of treatment. *Pennsylvania R. Co.* v. *Puritan Coal Mining Co.*, 237 U. S. 121.

The Commission's report does not in our view answer these contentions adequately, and neither motion deals with them at all—unless the Commission's belated suggestion "that Swift has the preference in Chicago" because of its ownership of the sidetrack on the Chicago, Burlington & Quincy line can be thought to bear on the point.

Here again, we submit, silence, however dignified, does not establish insubstantiality.

II. UNITED STATES v. BALTIMORE & O. R. CO., 333 U. S. 169, REQUIRES REVERSAL OF THE RULINGS BELOW RATHER THAN AFFIRMANCE ON MOTION.

Appellant contends that the governing precedent here is *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, which declared unlawful a very similar discrimination at the Cleveland Stock Yards. This contention, also, is differently treated in the two motions. But in this instance it is the Commission which takes refuge in silence, while the interveners attempt to distinguish the cited case.

Actually, the Cleveland Stock Yards case is far closer to this one than the interveners' motion indicates. There, as here, Swift's sidetrack was physically connected with the carrier's main track.[1] There, as here, the carrier was prepared to deliver livestock at Swift's sidetrack upon payment of a substantial additional charge. There, as here, Swift as well as other packers were denied switching service as to livestock although given it as to other commodities.[2] There, as here, the discrimination was rested

[1] The Commission errs in its motion when it speaks of "Swift's proposed private side track." The track is in operation today (274 I. C. C. at 559, 563; see Exs. 2-8; Tr. 33, 37-39, 44-45, 47, 49-51). It is only the new plant and two stub tracks which are to be located on this sidetrack which are "proposed" (274 I. C. C. at 563). Needless to say, that plant could easily have been built during the many months (July 28, 1947-February 6, 1950) that this case was before the Commission.

[2] Interveners are in error when they say that in the Cleveland case "The defendant carriers continued to perform that service for appellant's competitors while refusing it to appellant." As this Court's opinion points out (333 U. S. at 174), "in 1938 the railroads ceased delivering livestock to the sidings of Swift *and other packers served by Spur No. 245*, although they have under agreement with Stock Yards continued to use the spur for delivery of all other kinds of commodity shipments to these sidings." (Italics added.)

on a contract between the carrier and the particular stockyards involved, by the terms of which the stockyards were to benefit at the expense of the consignee. The circumstance that in the Cleveland case that contract was exalted to the point of invoking constitutional protection for its provisions, see 71 F. Supp. 499, while in this case it was invoked to force the railroad interveners to oppose the shipper's complaint before the Commission (Ex. 57), is obviously a distinction of no more importance than the circumstance that the earlier case arose in Ohio while the present one concerns Illinois.

Indeed, the principal difference between the two cases is that in the Cleveland situation the Commission properly found that there had been a violation of, *inter alia*, Section 1(9) of the Interstate Commerce Act, while in the present case the Commission refused to find any such violation. It is doubtless for this reason that *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, is nowhere discussed in the Commission's motion to affirm.

The obvious similarity of the two cases, far from reflecting any such insubstantiality in the present appeal as would call for affirmance without argument,[3] all but suggest the appropriateness of a reversal on the motion papers. Cf. *United States* v. *Steffan*, 338 U. S. 902. But, in any event, the similarity of the facts and the dissimilarity of the results establish that appellant's contentions based on *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, are substantial by any standard.

---

[3] Significantly enough, the carriers in the Cleveland Stock Yards case filed a motion to affirm on the ground that the district court's conclusions of law there (R. 185-189, No. 223, Oct. T. 1947; see opinion, 71 F. Supp. 499) "are so sound and logical in the application of elementary principles that reasonable minds can come to no other conclusion" (Motion, p. 3). This Court, however, noted probable jurisdiction, and, after argument, reversed. 333 U. S. 169.

III. NEITHER MOTION EXPLAINS HOW THE FACTOR OF CONGESTION CAN LEGALIZE AN OTHERWISE UNLAWFUL DISCRIMINATION.

If there is any rational factual difference between this case and *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, it must be in the circumstance that there is more congestion at the Chicago Junction Railway's yards here than there was at the Cleveland Stock Yards there. But to concede this difference still does not justify what was done here, where the cost of separating particular freight out of a congested freight yard has been assessed in its entirety against a single commodity consigned to a single shipper.

Movants' endeavor to rest the discrimination on the peculiar nature of livestock fails for a number of reasons. After all, livestock is not a novel subject of rail carriage. Its nature was duly considered when the Commission fixed the present basic rates thereon (*Livestock—Western District Rates*, 176 I. C. C. 1), besides which the Commission has twice specifically ruled that the rates on livestock include normal terminal services. *Omaha Live Stock Exch.* v. *Chicago & N. W. Ry. Co.*, 178 I. C. C. 1, 14; *Chicago Live Stock Exch.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 542.

Moreover, and this is of the essence here, at least 37% of the livestock consigned to the Union Stock Yards arrives there in consolidated trains (*i. e.*, intermingled with dead freight), so that switching and "set outs" are necessary to get that livestock to the Union Stock Yards. See 274 I. C. C. at 561-562. Yet neither the Union Stock Yards nor their consignees are subjected to the $39.24 a car switching charge in respect of that 37% so switched. Furthermore, considerable switching of livestock takes place earlier, since—although the Commission significantly fails to advert thereto—it is the fact that even the trains destined to the Union Stock Yards which consist of livestock exclusively are made up at the several line-haul carriers'

break-up yards from mixed trains arriving at Chicago.[4] Yet, although both the Commission's report and its motion to affirm expound at some length the delicate nature of livestock, neither undertakes to demonstrate that the livestock proposed to be switched to appellant's siding is any more fragile than the livestock which is presently being switched out of consolidated trains, sometimes twice within the Chicago switching district, for delivery at the Union Stock Yards. It is at this point that the attempt to justify the discrimination to which appellant is subjected by the rulings below breaks down completely.

Undoubtedly, the Chicago Junction handles a large volume of traffic. But the record strongly suggests, if indeed it does not compel, the inference that the congestion now relied upon to justify the discrimination practiced against appellant is a consequence of the fact that the Chicago Junction's motive power has been reduced by 45% since it was leased by the intervener-appellee New York Central. It is for that reason that appellant urges that the Junction must be considered as a part of the New York Central, as required by Section 1(3)(a) of the Act; why appellant invokes Sections 1(10) and 1(11), which together require the carrier to render adequate switching service; and why appellant argues that the case in this aspect is governed by the rule of *Mitchell* v. *United States*, 313 U. S. 80, to the effect that inadequacy of facilities does not legalize a discriminatory practice.

The only answer attempted by movants to any of the foregoing is the Commission's comment in its motion that "The assumption that the use of any number of engines over 47 would slow down deliveries is much more logical

---

[4] The railroad interveners' operating witnesses testified, without contradiction or dispute, to the switching of livestock cars which takes place, at the break-up yards and in many instances at localities outside of Chicago as well, before any trains are moved to the Union Stock Yards. See Tr. 549 (C. B. & Q.), 587-589 (C. & N. W.), 611, 612-613 (C. R. I. & P.), 650-651 (C. M. St. P. & P.), 678-679 (A. T. & S. F.). Counsel for the railroad interveners called witnesses from only 5 carriers out of the 22 he represented in order to avoid repetitiousness (Tr. 672).

it would seem, then that an additional number would facilitate switching and relieve congestion." This notion, that more motive power means less switching service, appears to have been newly generated for purposes of the motion to affirm. It is perhaps not surprising that this bit of forensic invention is not based on anything in the Commission's report and that it is actually contradicted by the record. For the Superintendent of the Chicago Junction testified that that carrier did not have sufficient engines to take care of all of the industrial placement of cars (Tr. 422), and further (Tr. 424), "I know we have been trying to get some additional Diesel equipment. We want at least five of them if we can get them."

No decision of this Court even remotely suggests that congested facilities can legalize a discrimination otherwise unlawful. To the contrary, *Mitchell* v. *United States*, 313 U. S. 80, establishes that inadequacy of facilities does not justify discrimination, and that, where discrimination is palpable, "there is no room * * * for administrative or expert judgment with respect to practical difficulties" (313 U. S. at 97, *per* Hughes, C. J.)

The circumstance that, as the national economy continues to expand, more and more terminals are becoming congested and those already congested are becoming increasingly so, demonstrates the public importance of the congestion issue here, and serves additionally to underscore its substantiality.

IV. BY RELYING ON THE INTEREST IN "EXPEDITIOUS CENTRALIZED DELIVERY", THE RULINGS IGNORE THE VERY DIFFERENT INTERESTS PROTECTED AND SOUGHT TO BE ENFORCED BY THE INTERSTATE COMMERCE ACT, AND THUS EFFECTUATE AT APPELLANT'S EXPENSE A DISCRIMINATORY COVENANT BETWEEN CARRIER AND STOCKYARDS.

The Commission's report rests in substantial part on the supposed interest in the "expeditious centralized delivery" of livestock at the Union Stock Yards (274 I. C. C. at 568). This euphemism cloaks the circumstance that the Commission's ruling requires appellant to pay $39.24 a car more for livestock consigned to its own siding than commission merchants and other packers pay for livestock consigned to the Stock Yards, a few city blocks distant—and 37% of the latter shipments, as has been noted, arrive in consolidated trains, intermingled with dead freight, and so require switching before final delivery. Thus the Commission is forcing "expeditious centralized delivery" at the Yards—and consequently is enforcing the covenant (Ex. 57) which requires the Chicago Junction to be operated "in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the yards." For while consignees at the Stock Yards obtain the switching service at no increase over the line-haul rate, consignees at private sidetracks must either pay $39.24 per car additional or else, willy-nilly, pay yardage fees at the Stock Yards—fees which, be it noted, the Commission is without power to regulate. *Swift & Co.* v. *United States*, 316 U. S. 216.

It is no answer for the Commission now to say that "the lease of Junction to the River Road [New York Central subsidiary] completely divested the stockyards of operations and controls of the terminal railroad." The fact that the Stock Yards invoked the covenant and thereby forced the intervener railroads to defend the present proceeding,

which they would not otherwise have done (Ex. 57), supplies indisputable proof that the covenant is still very much alive, and that in fact the Stock Yards still exercise a significant residue of control over the operations of the Junction and its lessor. And the Commission, by giving effect to the interest in "expeditious centralized delivery" at the Stock Yards, is, despite protestations to the contrary, actually enforcing that covenant.

The vice of the rulings below is that they ignore the plain provisions of the Interstate Commerce Act. That statute says nothing of "expeditious centralized delivery". To the contrary, it provides in Section 1(9) that, after a switch connection is in operation, and appellant is operating one here, it then becomes the duty of the carrier to "furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper." The statute thus protects expeditious *decentralized* delivery at private sidetracks. The Commission's bland disregard of the statutory command accordingly emphasizes, from still another aspect, the substantiality of the present appeal.[5]

---

[5] Interveners exhume the old canard that the packars, who once made the Union Stock Yards their own terminal, are now in substance to be estopped by their prior conduct. This argument ignores the controlling circumstance that, after the packers were divested of all financial interest in any stockyards by the antitrust decree (see *Swift & Co.* v. *United States*, 276 U. S. 311, 328; *United States* v. *Swift & Co.*, 286 U. S. 106, 111), more than one stockyards, thus free from the packers' control, has sought to exact fees for unwanted services. Thus, in *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, the Cleveland Stock Yards began to assess yardage fees on livestock passing over its Track 1619 at about the time of divestiture. See R. 34, No. 223, Oct. T. 1947. A similar insistence on imposing yardage fees at Chicago for services not desired by the consignees of direct shipments is reflected, not only in this case, but also in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193; *Armour & Co.* v. *Alton R. Co.*, 312 U. S. 195; and *Swift & Co.* v. *United States*, 316 U. S. 216.

V. THE DISCRIMINATION APPROVED AND PERPETUATED BY THE RULINGS BELOW CANNOT BE WAVED ASIDE BY CALLING THIS A "RATE" CASE.

Both motions assert, in substantially similar language, that this is a "rate" case, "that the lawfulness of a particular rate or rates is a matter for the informed judgment of the Commission, and the determination of that expert body will not be disturbed if supported by substantial evidence of record."

But this is a too facile verbalism, and a thoroughly misleading one. For almost every unlawful discrimination involves an inequality in rates, and so is, in the movants' view, a "rate" case.

Thus, in the Cleveland Stock Yards case (*United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169), all that was involved was a rate; the stockyards there was perfectly willing to have the carrier move livestock over its Track 1619, provided only that someone paid it the equivalent of a yardage fee. Indeed, the carriers paid such fees on such shipments for a number of years (R. 34, No. 223, Oct. T. 1947). The controversy arose when the carrier refused any longer to absorb such yardage fees as part of the line-haul rate for delivery of livestock to Swift's Cleveland siding. After the Cleveland Stock Yards case was docketed in this Court, the Commission vigorously opposed the carriers' motion to affirm the judgment in that case (see Memorandum in Opposition, &c., No. 223, Oct. T. 1947), although on the Commission's present theory that would have been a "rate" case too.

Appellant here attacks the switching charge itself as discriminatory, quite apart from its amount. Or, in other words, as this Court early recognized (*Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 145 U. S. 263, 277), "a charge may be perfectly reasonable under section 1, and yet may create an unjust discrimination or an

unreasonable preference under sections 2 and 3." The present cause would be a "rate" case only if appellant's arguments were limited to a contention of unreasonableness in violation of what is now Section 1(5) of the Act; but of course their reach is far broader.

Indeed, the short answer to movants' present contention is what the Commission itself said in its report here (274 I. C. C. at 559):

> The issue presented is whether or not complainant is entitled to have direct shipments of livestock delivered by the Junction without a charge in addition to the line-haul rates on a private siding at a plant which it proposes to construct in the stockyard area in Chicago.

On the Commission's own statement of the basic issue, therefore, it is obvious that this is no "rate" case, and that the present contention to the contrary (which, assuredly, was formulated rather tardily), is wholly untenable.

VI. THE ISSUES RAISED REQUIRE REVIEW.

Appellant has shown, somewhat summarily, that the discrimination here practiced and sanctioned runs counter to principles and decisions long considered settled, of which *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, is simply the latest, and factually perhaps the closest.

Both motions to affirm, however, insist at some length that the discriminatory switching charge now under attack is foreclosed by the ruling in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193. In truth, however, the switching charge issue did not even lurk in that record after it reached the courts. It is true that in the proceeding before the Commission (*Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553), the switching charge was sustained, but Hygrade did not question that phase of the Commission's action. It was the carriers and the Union Stock Yards that sought to set aside the

Commission's order in respect of the yardage fees. The switching charge was therefore simply not in issue in the judicial proceedings. See answer of Hygrade, R. 50-54, Nos. 606-607, Oct. T. 1934. Consequently, both the statement of the interveners, that "this appeal involves the same questions before the Court" in 295 U. S., and of the Commission, that "The holding as to the reasonableness of the rate was not questioned or disturbed by the Supreme Court on appeal," are at best thoroughly misleading—though indeed they emphasize the movants' strong present disinclination to submit that same switching charge to the scrutiny of this Court.

Appellant has already pointed out in its jurisdictional statement that the present issues were expressly reserved in *Swift & Co.* v. *United States*, 316 U. S. 216, 227.

It is not, however, necessary to prolong the discussion; we submit that we have sufficiently shown that this case presents something to discuss. The Solicitor General, who has refrained from filing a motion to affirm, evidently agrees. Consequently, unless the Court is of opinion that its own recent decision in *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, calls for summary reversal, this case should be set down for argument.

Respectfully submitted,

FREDERICK BERNAYS WIENER,
1009-1015 Tower Building,
Washington 5, D. C.,

WM. N. STRACK,
JOHN P. STALEY,
ROSS DEAN RYNDER,
4115 S. Packers Avenue,
Chicago 9, Illinois,
Counsel for Swift & Company,
Appellant.

AUGUST, 1951.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
FEB 11 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, *Appellant*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

On Appeal from the United States District Court for the Northern District of Illinois.

BRIEF FOR THE APPELLANT

FREDERICK BERNAYS WIENER,
1009-1015 Tower Building,
Washington 5, D. C.,

WM. N. STRACK,
ARTHUR C. O'MEARA,
JOHN P. STALEY,
ROSS DEAN RYNDER,
4115 South Packers Avenue,
Chicago 9, Illinois,
Counsel for the Appellant.

INDEX.

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	5
Statement	6
A. The economics of direct shipments of livestock	7
B. Means open to appellant for receipt of direct shipments of livestock	11
(i) Consignment to Omaha Packing Co. sidetrack—$50,000 annually for additional trucking	11
(ii) Consignment to Union Stock Yards—$129,000 annually for services neither appropriate to nor desired for livestock already owned by the consignee	12
(iii) Consignment to own sidetrack—$254,000 annually for switching charges	13
C. Scope of the switching charge in question	15
(i) Inapplicability to livestock consigned to Union Stock Yards	15
(ii) Inapplicability to other commodities delivered at Swift's sidetrack	16
(iii) Switching charge not dependent on distance between Chicago Junction yards and line-haul carriers' break-up yards	16
D. Transportation of livestock to consignees in the stockyards district	17
(i) Route followed and switching performed	17
(ii) Percentage of mixed trains; incidence of trains composed of one and two cars of livestock	20
(iii) Transportation of livestock to Swift's Omaha Packing Co. plant	21
E. Congestion on Chicago Junction tracks	21

Page

F. Factors other than volume of traffic contributing to congestion on Chicago Junction tracks 23

(i) Decline in Chicago Junction's motive power since its lease by appellee New York Central ... 24

(ii) Effect of 1946 labor agreement 24

(iii) Operations of line-haul carriers on Chicago Junction tracks 25

(iv) Refusal of Chicago Junction to grant additional trackage rights 26

(v) Union Stock Yards rules directed at dead freight 26

G. Covenant in Chicago Junction lease and its invocation by Union Stock Yards 27

H. Evidence bearing on effect of granting appellant's prayer for relief 29

(i) Effect of appellant's shipments alone 29

(ii) Position of the other packers 30

(iii) Evidence as to congestion and disruption 33

I. Proceedings before the Commission and in the court below 35

Summary of argument 38

Argument 48

I. The Commission's report shows on its face that the high additional switching charge, assessed only against livestock delivered to sidetracks, bears no relationship whatever to the cost of the switching service rendered; that this charge was intended and understood to operate as a penalty; and that by upholding it the Commission was covertly sanctioning precisely the same prohibition against sidetrack delivery of livestock which, when proposed to be done directly, the Commission in the same report held to be "not just and reasonable" 50

A. The Commission's findings are inadequate to support the high additional switching charge assessed only against livestock delivered to sidetracks, and the evidence shows clearly that this charge bears no relationship whatever to the cost of the switching service rendered in such deliveries 50

Page

B. The high additional switching charge assessed only against livestock delivered to sidetracks was intended as, and understood to be, a prohibitive penalty 56

C. By upholding the switching charge on livestock, the Commission was covertly sanctioning precisely the same prohibition against shipment of livestock which, when frankly proposed by the railroad, the Commission in the companion case held to be "not just and reasonable" 58

D. Being a penalty and not a compensatory exaction, the high additional switching charge assessed only against livestock delivered to sidetracks is unreasonable *per se* and therefore illegal 60

II. The high additional switching charge assessed only against livestock delivered to sidetracks violates numerous provisions of the Interstate Commerce Act... 63

A. The switching charge violates Section 3(1) of the Act because it is unduly and unreasonably prejudicial to livestock 63

B. The switching charge violates Section 2 of the Act because it results in different rates for shipments of the same commodity, over the same line, for the same distance, under the same circumstances of carriage 69

(i) As a matter of fact, this case involves like and contemporaneous service under the same circumstances of carriage 70

(ii) As a matter of law, Section 2 applies to all deliveries in the same terminal or switching district 72

(iii) As a matter of law, the existence or nonexistence of trackage contracts can not justify or excuse violations of Section 2..... 76

(iv) Where discrimination is plain, there is no room for "expertise" 78

C. The switching charge violates Section 1(9) of the Act because it prevents the switch at appellant's sidetrack from being operated without discrimination 80

Page

D. No decision of this Court sanctions the present switching charge, and *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, specifically condemns it 83

III. Neither present nor future congestion justifies or renders lawful a charge otherwise discriminatory..... 90

A. The burden of congestion must be borne equitably by all users of congested facilities and may not be assessed in its entirety against a single commodity consigned to a single shipper 91

B. In any event, a carrier is not permitted to refuse service now on the ground that in the future its facilities may become overcrowded; and there is no substantial evidence to support the Commission's finding that the other packers would immediately make like demands for sidetrack delivery of livestock 95

C. The Commission's finding that appellant's shipments of livestock, averaging 18 cars daily, would considerably delay and burden the railroads' operations, is not supported by substantial evidence.. 99

IV. The Commission failed to alleviate the congestion on which it relied to justify the high additional switching charge assessed only against livestock delivered to sidetracks, although the Commission was amply empowered to do so, and although that congestion was shown by the record to be in substantial measure due to the appellees' own acts rather than to the volume of livestock traffic 105

A. The present record proves that, in fact, the congestion on the rails of the Chicago Junction is in substantial measure due to the appellees' own acts rather than to the volume of livestock traffic..... 105

B. The Commission failed to alleviate the existing congestion although it was amply empowered to do so 109

(i) Inadequate provision of motive power..... 109

(ii) Labor agreement which impairs efficiency.. 111

(iii) Obstructive rules of the Union Stock Yards 112

(iv) Refusal of Chicago Junction to grant trackage rights 112

(v) Virtual anarchy on the Chicago Junction tracks 113

Page

V. Both the high additional switching charge assessed only against livestock delivered to sidetracks, and the congestion on which the Commission relies to justify that charge, rest on and are perpetuated by a discriminatory and illegal covenant, still in force and still given effect by the parties thereto, whereby the New York Central agrees to operate the Chicago Junction for "the benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards 117

A. The covenant in the lease of the Chicago Junction, which requires the appellee New York Central to operate the Chicago Junction for "the benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards, is illegal on its face.... 118

B. The present record proves indisputably that, by virtue of the covenant in the lease of the Chicago Junction property, the Union Stock Yards still exercise a substantial measure of control over the operations by the New York Central of the Chicago Junction 121

C. The present record demonstrates that the illegal covenant continues and perpetuates the existing congestion, which is the sole factor relied upon by the Commission to justify the discriminatory switching charge 124

D. Despite its protestations to the contrary, the Commission in its ruling is, in fact, enforcing the illegal covenant between the Union Stock Yards and the New York Central to the detriment of the present appellant 128

E. Neither the fact that the present system of delivering livestock at Chicago has long been in effect nor the circumstance that appellant had a financial interest in the Union Stock Yards prior to 1920 precludes it from obtaining appropriate relief in this proceeding 134

Conclusion 141

Appendix A—Pertinent Statutory Provisions 142

Appendix B—Map showing relative location of Swift's sidetrack, the Union Stock Yards, and the Ashland Avenue yards of the Chicago Junction Railway 150

AUTHORITIES.

CASES:

Judicial Decisions: Page

Acker v. *United States*, 298 U. S. 426 122
Adams v. *Mills*, 286 U. S. 397 136
American Express Co. v. *Caldwell*, 244 U. S. 617 63
American Express Co. v. *United States*, 212 U. S. 522....90, 134
Arizona Grocery v. *Atchison Ry.*, 284 U. S. 370 91
Armour & Co. v. *Alton R. Co.*, 312 U. S. 195 .....30, 137
Assigned Car Cases, 274 U. S. 564 .....92, 93
Atchison, T. & S. F. Ry. Co. v. *United States*, 295 U. S. 193 .....14, 30, 41, 84, 86
Atchison, T. & S. F. Ry. Co. v. *United States*, 8 F. Supp. 825 .....14, 85
Baltimore & O. R. Co. v. *Chicago Junction Ry. Co.*, 156 F. 2d 357 .....23, 111
Baltimore & O. R. Co. v. *Chicago River & Indiana R. Co.*, 170 F. 2d 654 .....23, 111
Baltimore & O. R. Co. v. *United States*, 298 U. S. 349..... 122
Baltimore & O. R. Co. v. *United States*, 71 F. Supp. 499.... 81
Baltimore & O. R. Co. v. *United States*, 100 F. Supp. 1002.. 97
Barringer & Co. v. *United States*, 319 U. S. 1 75
Beaumont, S. L. & W. Ry. v. *United States*, 282 U. S. 74..51, 60
Bradley, Allen, Co. v. *Union*, 325 U. S. 797 .....44, 111
Central Transfer Co. v. *Terminal R. R.*, 288 U. S. 469..... 128
Chicago Junction Case, 264 U. S. 258 23
Chicago, R. I. & P. Ry. Co. v. *United States*, 274 U. S. 29.. 69
Chicago Stock Yards Co. v. *Commissioner of Internal Revenue*, 129 F. 2d 937, reversed on other grounds *sub nom. Helvering* v. *Stock Yards Co.*, 318 U. S. 693 23
Cleveland, etc., Ry. v. *United States*, 275 U. S. 404 60
Florida v. *United States*, 282 U. S. 194 51
Great Northern Ry. Co. v. *Delmar Co.*, 283 U. S. 686 120
Henderson v. *United States*, 339 U. S. 816 .....79, 104
Illinois Cent. R. R. v. *Mulberry Coal Co.*, 238 U. S. 275.... 92
Interstate Commerce Comm. v. *Alabama M. R. Co.*, 168 U. S. 144 70
Interstate Commerce Comm. v. *Baltimore & O. R. Co.*, 145 U. S. 263 63
Interstate Commerce Comm. v. *Baltimore & O. R. Co.*, 225 U. S. 326 70
Interstate Commerce Commission v. *Mechling*, 330 U. S. 567 .....51, 60, 62, 90, 135
Interstate Stock-Yards Co. v. *Indianapolis U. Ry. Co.*, 99 Fed. 472 .....64, 66
Labor Board v. *Pittsburgh S. S. Co.*, 340 U. S. 498 96
Lochner v. *New York*, 198 U. S. 45 89
Los Angeles Switching Case, 234 U. S. 294.....134, 135, 137

Page

Louisville & N. R. Co. v. *Mottley*, 219 U. S. 467 134
Louisville & Nashville R. Co. v. *United States*, 238 U. S. 1 ..... 64, 112
Louisville & Nashville R. Co. v. *United States*, 242 U. S. 60 ..... 64, 112
Louisville & N. R. Co. v. *United States*, 282 U. S. 740 ..... 79, 90, 103, 134
Lovett v. *Hobbs*, 2 Show. 127 91
McDuffee v. *Railroad*, 52 N. H. 430 91
Merchants Warehouse Co. v. *United States*, 283 U. S. 501 ..... 79, 90, 103, 134, 135
Messenger v. *Pennsylvania R. R. Co.*, 36 N. J. L. 407 91
Midland Valley R. R. v. *Barkley*, 276 U. S. 482 92
Mitchell v. *United States*, 313 U. S. 80 ..... 78, 79, 90, 103, 104
Morrisdale Coal Co. v. *Pennsylvania R. Co.*, 230 U. S. 304 .. 92
National Broadcasting Co. v. *United States*, 319 U. S. 190 .. 121
New England Express Co. v. *Maine Central Railroad Co.*, 57 Me. 188 92
New Jersey Steam Navigation Co. v. *Merchants' Bank*, 6 How. 344 91
New York v. *United States*, 331 U. S. 284 ..... 79, 103
New York Cent. R. Co. v. *United States*, 99 F. Supp. 394, affirmed, 342 U. S. 890 ..... 51, 52, 97
North Penn. Railroad v. *Commercial Bank*, 123 U. S. 727 .. 77
Palmer v. *United States*, 75 F. Supp. 63 ..... 51, 52, 61, 62
Pennsylvania R. Co. v. *Puritan Coal Co.*, 237 U. S. 121 .... 92, 95
Pennsylvania R. R. v. *Sonman Coal Co.*, 242 U. S. 120 92
Philadelphia, Baltimore & Washington R. Co. v. *Schubert*, 224 U. S. 603 134
Railroad Trainmen v. *Baltimore & O. R. Co.*, 331 U. S. 519 ..... 23, 111
Riley v. *Horne*, 5 Bing. 217 91
Riss & Co. v. *United States*, 341 U. S. 907 96
Seaboard Air Line Ry. Co. v. *United States*, 254 U. S. 57 ..... 70, 72, 73
Shields v. *Utah Idaho R. Co.*, 305 U. S. 177 121
Shreveport Rate Case, 234 U. S. 342 ..... 79, 103
Skinner & Eddy Corp. v. *United States*, 249 U. S. 557 .... 89, 137
Swift & Co. v. *United States*, 276 U. S. 311 136
Swift & Co. v. *United States*, 316 U. S. 216 .... 13, 30, 40, 41, 72, 77, 86, 98, 131, 136, 139
Tagg Bros. v. *United States*, 280 U. S. 420 122
Tennessee Valley Authority v. *United States*, 96 F. Supp. 409 ..... 51, 53
Terminal Warehouse Co. v. *Pennsylvania R. Co.*, 297 U. S. 500 ..... 128, 135
Union Stock Yard Co. v. *United States*, 308 U. S. 213 .... 23, 136
United States v. *Baltimore & O. R. Co.*, 293 U. S. 454 51

Page

United States v. *Baltimore & O. R. Co.*, 333 U. S. 169 ... 36, 41, 45, 64, 65, 77, 79, 81, 83, 84, 86, 88, 91, 103, 104, 110, 112, 118, 134, 136
United States v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499 ... 51
United States v. *Detroit Navigation Co.*, 326 U. S. 236 ... 97
United States v. *Idaho*, 298 U. S. 105 ... 122
United States v. *Illinois Cent. R. R.*, 263 U. S. 515 ... 63
United States v. *Louisville & N. R. Co.*, 235 U. S. 314 ... 122
United States v. *Pennsylvania R. Co.*, 266 U. S. 191 ... 45, 77, 91, 104, 113
United States v. *Swift & Co.*, 286 U. S. 106 ... 136
United States v. *Union Stock Yard*, 226 U. S. 286 ... 23, 136
Universal Camera Corp. v. *Labor Board*, 340 U. S. 474 ... 96
Wight v. *United States*, 167 U. S. 512 ... 69, 72, 75
Yonkers v. *United States*, 320 U. S. 685 ... 51, 54

Interstate Commerce Commission Reports:
Albers Bros. Milling Co. v. *Great Northern Ry. Co.*, 256 I. C. C. 491 ... 72, 74
Benton Coal Mining Co. v. *Chicago, B. & Q. R. R. Co.*, 63 I. C. C. 396 ... 77, 113
Chicago Junction Case, 71 I. C. C. 631 ... 23, 106, 111, 125, 130
Chicago Junction Case, 150 I. C. C. 32 ... 23
Chicago Live Stock Exc. v. *Atchison, T. & S. F. Ry. Co.*, 197 I. C. C. 463 ... 11
Chicago Live Stock Exc. v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531 ... 11, 30, 67, 68, 72, 88
City of Milwaukee v. *Chicago & N. W. Ry. Co.*, 279 I. C. C. 521 ... 82, 83
Cudahy Packing Co. v. *Atchison, T. & S. F. Ry. Co.*, 234 I. C. C. 569 ... 67
Damage Tolerance on Shell Eggs, I. C. C. I. & S. Docket No. 5792 ... 54
Fifteen Percent Case, 1937-38, 226 I. C. C. 41 ... 14
Gar Wood Industries, Inc. v. *Alton & S. R.*, 263 I. C. C. 611 ... 75
Huerfano Coal Co. v. *Colorado & S. E. R. R. Co.*, 41 I. C. C. 657 ... 77, 113
Hygrade Food Products Corp. v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553 ... 13, 30
Import Rates on Manganese Ore, 25 I. C. C. 663 ... 70
Increased Freight Rates, 1947, 269 I. C. C. 33 ... 14
Increased Freight Rates, 1947, 270 I. C. C. 81 ... 14
Increased Freight Rates, 1947, 270 I. C. C. 93 ... 14, 15
Increased Freight Rates, 1948, 272 I. C. C. 695 ... 15
Increased Freight Rates, 1948, 276 I. C. C. 9 ... 15
Increased Freight Rates, 1951, 281 I. C. C. 557 ... 15

Page

Increased Per Diem Charge on Freight Cars, 268 I. C. C. 659 61
Increased Railway Rates, Fares, and Charges, 1942, 248 I. C. C. 545 14
Increased Railway Rates, Fares, and Charges, 1942, 255 I. C. C. 357 14
Increased Railway Rates, Fares, and Charges, 1946, 264 I. C. C. 695 14
Increased Railway Rates, Fares, and Charges, 1946, 266 I. C. C. 537 14
King Stone Co. v. *Chicago, I. & L. Ry. Co.*, 160 I. C. C. 245 110
Larrison v. *Chicago & Grand Trunk Ry. Co.*, 1 I. C. C. 147 91
Lawrenceville Cooperage Co. v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 773 70
Livestock—Western District Rates, 176 I. C. C. 1 .....11, 72
Loading Cotton in Oklahoma, 248 I. C. C. 643 75
Minneapolis Traffic Assn. v. *Chicago & N. W. Ry. Co.*, 266 I. C. C. 729 .....72, 74
Mitchell v. *Chicago, R. I. & P. Ry. Co.*, 229 I. C. C. 703 79
Mobile Traffic Assn. v. *Georgia & F. R.*, 266 I. C. C. 483 75
New York Mercantile Exchange v. *Baltimore & O. R. R. Co.*, 36 I. C. C. 156 54
Omaha Live Stock Exc. v. *Chicago & N. W. Ry. Co.*, 178 I. C. C. 1 67
Omaha Packing Co. v. *Atchison, T. & S. F. Ry. Co.*, 66 I. C. C. 44 .....16, 30
Omaha Packing Co. v. *Chicago, M. & St. P. Ry. Co.*, 37 I. C. C. 378 .....11, 30
Pacific Lumber Co. v. *Northwestern P. R. R. Co.*, 51 I. C. C. 738 70
Philadelphia Commercial Traffic Mgrs. v. *Baltimore & O. R. R. Co.*, 104 I. C. C. 173 75
Richfield Oil Corp. of N. Y. v. *Central R. Co. of N. J.*, 232 I. C. C. 505 75
Richmond Chamber of Commerce v. *Seaboard A. L. Ry.*, 44 I. C. C. 455 .....72, 73, 74
Riddle, Dean & Co. v. *New York, L. E. & W., etc., R. R. Cos.*, 1 I. C. C. 594 92
Special Regulations—Eggs, I. C. C. Docket No. 30030 54
Swift & Co. v. *Alton R. Co.*, 238 I. C. C. 179 .....13, 30, 72, 86
Swift & Co. v. *Baltimore & O. R. Co.*, 266 I. C. C. 55 69, 81, 83, 88, 110
Switching Rates in Chicago Switching District, 177 I. C. C. 669 .....14, 16
Train Service on Northern Pacific, 112 I. C. C. 191 110
Trojan Scrap Iron Corp. v. *Boston & M. R.*, 270 I. C. C. 727 .....81, 83

Page

Williams, R. C., & Co., Inc. v. *New York Central R. Co.*, 269 I. C. C. 297 ..... 70, 76
Williams Lime Mfg. Co. v. *Southern Ry. Co.*, 279 I. C. C. 561 ..... 73, 74
STATUTES:
Act of August 2, 1949, Sec. 1, c. 379, 63 Stat. 485 36
Administrative Procedure Act 97
Sec. 5 (5 U. S. C. 1004) 96
Sec. 7 (5 U. S. C. 1006) 96
Sec. 8 (5 U. S. C. 1007) 96
Sec. 10 (5 U. S. C. 1009) 96, 146
Sec. 11 (5 U. S. C. 1010) 96
Clayton Act, Sec. 16 (15 U. S. C. 26) 128
Federal 28-Hour Law (45 U. S. C. 71-74) 20, 21, 40, 65, 66, 67, 147-149
Interstate Commerce Act, as amended:
National Transportation Policy 58, 113, 115, 142
Sec. 1 (3) (a) 44, 110, 142
Sec. 1 (5) 2, 39, 48, 53, 62, 74, 118, 143
Sec. 1 (5) (a) 36
Sec. 1 (9) 3, 41, 80, 82, 83, 88, 118, 131, 135, 143
Sec. 1 (10) 44, 91, 109, 110, 144
Sec. 1 (11) 44, 91, 109, 110, 144
Sec. 2 ..... 3, 40, 41, 69, 70, 72, 73, 74, 75, 76, 77, 78, 118, 135, 144
Sec. 3 (1) 3, 39, 63, 64, 66, 68, 71, 74, 75, 82, 88, 118, 135, 145
Sec. 15 (5) 16, 67, 78, 145
Sec. 20 (11) 54
28 U. S. C. (Supp. IV) 1336, 1398, 2284, 2321-2325 7
MISCELLANEOUS:
American College Dictionary 109
Angell, *Carriers* (2d ed. 1851):
Sec. 124 91
Sec. 125 91
Burgess, *Federal Regulation of Railway Management and Finance*, 37 Harv. L. Rev. 705, 743 89
Chitty, *Carriers*:
p. *23 91
p. *25 91
Hutchinson, *Carriers* (1st ed. 1880):
Sec. 114 91
Sec. 296 91
Sec. 297 91
Moody's Manual, Railroads, 1951, pp. 463, 745, 1051, 1064 139
III-A Sharfman, *The Interstate Commerce Commission*, pp. 57, 59, 60-62, 66 114-115
Webster's *New International Dictionary* 109

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, *Appellant*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

On Appeal from the United States District Court for the Northern District of Illinois.

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The district court wrote no opinion. The majority and dissenting views to the report of the Interstate Commerce Commission (R. 57-89) appear at 274 I. C. C. 557.

JURISDICTION

The final judgment of the three-judge district court was entered on June 21, 1951 (R. 210). The petition for appeal was presented and allowed on July 26, 1951 (R. 210-211). The jurisdiction of this Court rests on 28 U. S. C. (Supp. IV) 1253 and 2101(b). Probable jurisdiction was noted on October 15, 1951 (R. 228).

QUESTIONS PRESENTED

The principal questions presented by appellant's assignment of errors (R. 212-217), may be formulated as follows:

1. Whether the Interstate Commerce Commission's ruling that the extra switching charge for livestock delivered to appellant's sidetrack was reasonable can be supported, in the absence of any findings of fact or evidence relative to the reasonableness of such charge by comparison with other commodities delivered to the same sidetrack, or by comparison with livestock delivered to the Union Stock Yards, a few city blocks beyond said sidetrack.

2. Whether the Interstate Commerce Commission may lawfully sanction a high additional charge for switching service in respect of a single commodity to a particular sidetrack, which service it asserts would lead to interference with and disruption of terminal transportation operations, where it refrains from prohibiting such switching service altogether, where it cancels as "not just and reasonable" a proposal by a carrier to exempt that particular commodity from transportation altogether, and where it permits the identical service by the same carrier without such additional switching charge in respect of the same commodity consigned to a stockyard on the same line of railroad, a few city blocks distant from the same sidetrack.

3. Whether the extra switching fee for livestock delivered to appellant's sidetrack violates Section 1(5) of the Interstate Commerce Act, because it bears no relationship to the cost of the switching involved, and was designed and understood to be a penalty to prevent indirectly the precise kind of livestock deliveries which the Interstate Commerce Commission refused to permit the carrier concerned to discontinue directly.

4. Whether the extra switching fee for livestock delivered to appellant's sidetrack, which is not exacted in respect of

any other commodity delivered to the same location, violates Section 3(1) of the Interstate Commerce Act because unduly and unreasonably prejudicial to livestock.

5. Whether the extra switching charge for livestock delivered to appellant's sidetrack violates Section 2 of the Interstate Commerce Act, because, by comparison with livestock delivered to the Union Stock Yards, distant only a few city blocks, it results in different rates for shipments of the same commodity, over the same line, for the same distance, and under the same circumstances of carriage.

6. Whether the extra switching charge for livestock delivered to appellant's sidetrack violates Section 1(9) of the Interstate Commerce Act, because, not being assessed in respect of other commodities delivered there, nor in respect of livestock delivered to the Union Stock Yards, distant only a few city blocks, it prevents the switch at appellant's siding from being operated without discrimination.

7. Whether either present or future congestion at a terminal justifies factual discrimination against a single consignee in respect of a single commodity at a particular sidetrack, which discrimination would otherwise be prohibited by Sections 3(1), 2, and 1(9) of the Interstate Commerce Act.

8. Whether an extra switching charge for delivering a particular commodity at a particular shipper's sidetrack can be justified on the ground of the increased congestion of terminal facilities which such deliveries would involve, where such extra switching charge is not demanded for other commodities to the same sidetrack or for any commodities at other sidetracks in the same terminal area, nor for the same commodity delivered to a stockyards a few city blocks beyond the same sidetrack.

9. Whether an extra switching charge for delivering a particular commodity at a particular shipper's sidetrack

can be justified on the ground that, if such deliveries are permitted without extra switching charge, other shippers of the same commodity might thereafter make demand for similar service to their sidetracks.

10. Whether, on the whole record, there was substantial evidence to support the Interstate Commerce Commission's finding that appellant's direct shipments of livestock, averaging some 18 cars daily, would result in disruptive congestion in terminal operations in the Chicago stockyards area.

11. Whether the Interstate Commerce Commission erred in relying on the Chicago Junction's dwindling motive power, its settlement of a labor controversy with its employees, and its trackage arrangements with line-haul carriers, to justify the high additional fee for switching service to the appellant's sidetrack in respect of livestock only.

12. Whether the Interstate Commerce Commission erred in failing to take steps within its power to alleviate the existing congestion.

13. Whether the Interstate Commerce Commission had power to, and whether it did, enforce a covenant whereby the carrier leasing the Chicago Junction undertook to operate that road for "the benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards, the effect of which, as reflected by the present record, was to require the Chicago Junction to deny normal transportation service to the appellant at its sidetrack of one commodity only, except at a high additional charge, in consequence of which appellant would become obliged either to accept and pay for non-transportation services from the Yards which it neither desired or requested but without which it could not obtain the shipments of this one commodity which it owned, or else become obliged to incur additional substantial expense to obtain those shipments by truck.

14. Whether the Interstate Commerce Commission unlawfuly preferred delivery of livestock to the Union Stock Yards over delivery of livestock to appellant's sidetrack, and whether in so doing it in fact enforced the covenant above-mentioned.

15. Whether the Interstate Commerce Commission erred in giving controlling weight to shipping practices at the Union Stock Yards which originated at a time when appellant and other packers were financially interested in those Yards, and before appellant and the other packers were required by suit under the antitrust laws to divest themselves of all stockyards holdings.

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act and related statutes involved on this appeal are set out in Appendix A, *infra*, pp. 142-149.

STATEMENT

The present controversy arises out of the attempt of the appellant, Swift & Company (hereinafter called Swift), to receive its own livestock at its own sidetrack in Chicago at the normal line-haul rates prescribed by the Interstate Commerce Commission for that commodity.

Swift filed a complaint with the Commission against the Chicago Junction and some twenty-odd line-haul carriers serving Chicago (R. 50-56). In that complaint it sought an order which would require those carriers to deliver Swift's direct shipments of livestock—*i. e.*, animals purchased by Swift in the producing areas, shipped to its plant for processing, and owned by it during transit—to its own sidetrack, which was connected with the rails of the Chicago Junction Railway, at the same flat line-haul rates under which the railroad defendants deliver livestock to the unloading pens of the Union Stock Yard and Transit Company of Chicago (hereinafter referred to as Union Stock Yards), also located upon the rails of the Chicago Junction Railway, only a few city blocks beyond Swift's sidetrack, and at the flat line-haul rates which are similarly applicable to the delivery of all line-haul freight other than livestock to the same Swift sidetrack.

The relative location of Swift's private sidetrack, the Union Stock Yards, and the tracks of the Chicago Junction Railway, is shown on a map, Appendix B, p. 150, *infra*.[1]

After Swift's complaint was filed, the Chicago Junction Railway filed schedules proposing (R. 59) "to specifically exempt livestock from the traffic which it will transport and to cancel the application on livestock of all switching charges published by it, except to and from chutes and sidings at the Union Stock Yards." Upon protest by Swift and others, the operation of the proposed schedules was

---

[1] This map is derived from Ex. 1, R. 1040 (map showing Swift's proposed new plant); Ex. 2, R. 1041 (map showing Chicago Junction tracks within stockyards area); and Ex. 14, R. 1092 (map of Ashland Avenue yards, Chicago Junction Ry.).

suspended. Thereafter the Commission after proceedings which are detailed below, *infra*, pp. 35-37, determined Swift's complaint and the Investigation and Suspension case on the same record. It filed a report, and entered an order dismissing Swift's complaint and requiring cancellation of the Chicago Junction Railway's suspended schedules.

The Chicago Junction took no further steps to put its schedules into force, but Swift brought an action pursuant to 28 U. S. C. (Supp. IV) 1336, 1398, 2284, and 2321-2325, to enjoin, set aside, and annul the Commission's report and order in the complaint case (R. 1-90). The carriers, the Union Stock Yards, and certain other interested parties intervened as defendants (R. 97-138). The district court dismissed the complaint (R. 210), without opinion, and this appeal followed.

The basic facts of record, as hereinafter set forth, are substantially undisputed; the differences between the parties relate primarily to the deductions and conclusions to be drawn from those facts, particularly with reference to future consequences of proposed action.

A. The economics of direct shipments of livestock.

As has been indicated, the only shipments of livestock herein involved are the so-called direct shipments, being livestock purchased by Swift in the producing areas and owned by it prior to rail transportation, as distinguished from livestock owned and shipped by producers to the Union Stock Yards at Chicago for sale there on commission. The latter shipments are not in issue here, though the difference between them and the direct shipments reflects the economic factors and conflicts which underlie the legal issues in this case.

Three salient trends condition the present controversy.

First, in the years following the First World War, the packing industry became greatly decentralized. Plants

were established in the regions where livestock was actually produced, and, in order to meet this competition, existing Chicago packers decentralized also, and reduced their Chicago operations correspondingly (R. 390-398, 407, 1006-1010, 1026-1028; see Ex. 55 at R. 1897-1928). Swift, which had three pork packing plants in Chicago in 1920, now has only one there (R. 403, 1009), and kills only half a million hogs annually in Chicago as against two million previously (R. 1019). By way of replacement, however, Swift now has four packing plants in Iowa (R. 395-396), and some 35 all told throughout the country (R. 415-416). This trend is not restricted to Swift alone, but affects all of Chicago. Cudahy now has no packing plants there (R. 376). Total slaughtering in Chicago declined from 14,028,431 head of livestock in 1923 to 7,522,397 in 1947, or a decrease of 46.4% (Ex. 43 at R. 1654-1657), while slaughtering in the producing regions has risen correspondingly (R. 390; Ex. 55 at R. 1910).

Second, over the same period there has been a phenomenal rise in direct marketing of livestock, *i. e.*, in livestock being sold directly by the producer to the packer, rather than being consigned to a public stockyards for sale on commission. This rise is attributable, basically to "the economics of the packing houses located elsewhere than at the terminal markets" (R. 1016), which bought their livestock in the producing regions; after that, the Chicago packers had to do likewise in order to remain competitive (R. 1006-1010, 1026-1028). Here are the comparative figures showing percentage of direct sales to total sales (R. 1011, 1026; Ex. 55 at R. 1899):

	1923	*1946*
Hogs	24.0%	64.4%
Sheep	14.63%	41.8%
Calves	13.98%	40.7%
Cattle	10.4%	25.5%

The larger packers make their direct purchases at buying stations in livestock territory (R. 391, 415, 718). The producers are able to bargain with assurance because of their access to market quotations which are made available by radio several times during the day (R. 848-849, 854-855, 865, 876, 879).

Both of these trends substantially reduced the business of the appellee Union Stock Yard and Transit Company of Chicago. Receipts of cattle, calves, hogs, and sheep at the Union Stock Yards, which aggregated 18,475,818 head in 1923 (Ex. 46 at R. 1848), had fallen to 6,646,705 head in 1947 (Ex. 43 at R. 1679; Ex. 26, not printed). This is a decline of 64%.[2]

And third, the large packers, including Swift, which prior to 1920 had been financially interested in the Union Stock Yards, were required by the antitrust decree of that year (Par. "Second" in Sub-Ex. 62 of Ex. 42, R. 1458, 1460) to divest themselves of their holdings in the Yards. The result was that Swift became, as one witness put it (R. 738), "a competitor that originally was one of our partners."

The present record contains voluminous evidence bearing on the relative advantages and disadvantages to all concerned of direct versus commission purchasing of livestock (R. 390-417, 708-824, 847-891, 908-930, 943-951, 1005-1031). Undoubtedly each producer sells "just where I think possibly I can get the most money" (R. 848); in this, as in other activities, "the end of the trail is the pocketbook" (R. 881). It may be that (R. 814) "the greatest mistake that a great many livestock producers are making today is in assuming that they are competent to do their own livestock selling", *cf.* also R. 715, 753, though an of-

---

[2] It is suggested in the record that the figures for 1945 and 1946 were not normal, because of OPA and black market conditions obtaining in those years (R. 730, 738). Actually, however, the receipts in those years were higher than in 1947, as follows:

	Head of livestock	*Decline from 1923*
1945	8,011,008	56.7%
1946	7,181,865	61.1%

ficial summary prepared by the United States Department of Agriculture indicates that direct sales result in higher prices paid the producer (Ex. 55 at R. 1908, 1913, 1915). Undoubtedly, that is one reason for the increase in direct sales, since the producer is obviously under no compulsion to market his livestock through any particular channel.

The commission men charge the packers with having "evaded the market by going out and intercepting hogs in the country" (R. 757); the packers say that unless they buy livestock in the country they will be unable to continue operations (R. 1006-1010, 1013, 1026-1028). It would seem, then, that it is to the advantage of both producers and packers to deal directly, but to the disadvantage of the commission men. For to the extent that direct purchases increase, commission purchases (and commissions thereon) decline; as an officer of one of the interveners testified (R. 744), "Any facilitating of this [direct] movement of livestock, anything that tends to encourage it by making it more profitable or less expensive or anything of that kind would contract,—would tend to contract or reduce the volume coming to the market for sale." This in turn would reduce commissions earned at public stockyards.[3] And counsel for the Union Stock Yards said of the prayer of Swift's complaint seeking sidetrack delivery of livestock at the line-haul rate (Ex. 57, R. 1961):

> If the request of Swift is granted, and the other packers demand and are accorded similar treatment (which may be anticipated), the effect will be substantially to destroy the business of the Yard Company.

The foregoing facts are set forth, not because the economic conflict presents a justiciable issue, but simply to

---

[3] The same witness, an official of the appellee Chicago Live Stock Exchange, which is an association of commission men, testified (R. 753):

> Q. That percentage of directs even to Chicago has been constantly growing over the years, hasn't it?
>
> A. Unfortunately, yes.

show how that conflict affects the interests and influences the alignment of the non-rail interveners in this case.

B. Means open to appellant for receipt of direct shipments of livestock.

At the present time, and in the present posture of this case, Swift can receive its direct shipments of livestock, which average 6489 carloads per year (R. 69, 199), in three ways:

(i) *Consignment to Omaha Packing Co. sidetrack—$50,000 annually for additional trucking.*

Swift can, and presently does, receive all direct shipments of livestock at the pens of the Omaha Packing Company, a wholly owned subsidiary, on a sidetrack connected with the appellee Chicago, Burlington & Quincy Ry. Co. Such livestock, in accordance with the Commission's decision in *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 546, 547 (Fdg. 10), 548, is delivered to those unloading pens at the flat Chicago line-haul rate, without the addition of switching or terminal charges (R. 67), and this is so regardless of the identity of the line-haul carrier which brings the shipment to Chicago (R. 286, 836-838, 842-843).[4]

But the Omaha Packing Co. plant pens are some 2½ miles distant from Swift's present meat packing plant, in

---

[4] Ever since the Commission's decision in *Omaha Packing Co.* v. *Chicago, M. & St. P. Ry. Co.*, 37 I. C. C. 378, livestock had been delivered to the Omaha Packing Co. sidetrack on the Burlington rails at the line-haul rate plus the same additional terminal charge then exacted in respect to livestock deliveries to the Union Stock Yards. That charge was held to be neither unreasonable nor unlawful in *Livestock—Western District Rates*, 176 I. C. C. 1, 122-124 (1932) and again in *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 197 I. C. C. 463 (1933). It was not until the further hearing in the latter case, *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 546-548, decided in 1936, that the terminal charge was held to be unreasonable for deliveries both to the Union Stock Yards and to the Omaha Packing Co. sidetrack on the Burlington.

consequence of which further transportation of the livestock, by motor truck through the city streets, becomes necessary. Such additional transportation, as of the time of the hearing before the examiner, cost Swift about $50,000 a year for the quantity of livestock here involved (R. 67-68).

(ii) *Consignment to Union Stock Yards—$129,000 annually for services neither appropriate to nor desired for livestock already owned by the consignee.*

A second available method for the receipt of direct shipments would be for Swift to consign those shipments to itself at the Union Stock Yards. This method involves only payment of the flat line-haul rate to the carrier concerned, but requires Swift, in respect of all livestock so consigned, to pay yardage charges for non-transportation services, simply to march the livestock through the Union Stock Yards into its own packing plant, *i. e.*, for the privilege of recovering its own animals from the stockyard pens (R. 68, 387-388, 426, 428-429).

These yardage charges range from $16.25 per car on cattle to $18.75 per car on a single-deck carload of sheep (R. 68), and aggregate, for the shipments here involved, about $129,000 a year (Cmplt., par. 10(b), R. 19; admitted, R. 104, 128).

The yardage charge is uniform for each animal of the same species arriving by rail (R. 986), and entitles that animal to (a) "the use of a very extensive system of alleys, streets, underpasses, runways, inclines, bypasses and overhead viaducts, all frequently divided by fences and gates for keeping various lots of animals from becoming mixed" (*id.*); (b) "to the use of pens for as many days as it may remain in the yards, without any limit" (*id.*); (c) "to one weighing" (R. 987); and (d) to the recording by yard employees of all changes in the animal's location (*id.*); and moreover (e) "covers a proportional share of the many general expenses connected with the maintenance and op-

eration of the stockyard" (R. 987-988). See also R. 424-426. Thus the yardage fee covers services appropriate and necessary for animals consigned to the Union Stock Yards for sale on commission to a purchaser there. However, with respect to direct shipments, already owned by the ultimate consignee, who desires prompt delivery of his livestock and who is prepared to receive them at his own plant, only a limited use of the runways (Ex. 2, R. 1041; Ex. 61, not printed) is required, and the other services are neither needed nor desired (R. 264). But this Court held in *Swift & Co.* v. *United States*, 316 U. S. 216, sustaining the Commission's order in *Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179, that rail transportation ended with the unloading of the livestock at the Union Stock Yards, and that the Commission lacked jurisdiction to regulate the yardage fees thereafter assessed.

(iii) *Consignment to own sidetrack—$254,000 annually for switching charges.*

Swift now has a private sidetrack, which is connected to the rails of the Chicago Junction Railway by a switch presently in operation (R. 65, 268, 270-271, 276-277; Exs. 2-4, 6, 8, R. 1041-1045). At this location, Swift proposes to build a new packing plant, to replace existing obsolescent and inadequate facilities, which will have substantial facilities for unloading livestock brought by rail, as well as adequate holding pens (R. 65; see Ex. 1, R. 1040).

But for the delivery of its own livestock at this sidetrack over the switch now in operation, Swift must pay the extra switching charge which is in issue in this case, and which is presently $39.24 per car [5]—*i. e.*, $39.24 per car in excess of

[5] The following is the history of the Chicago Junction switching rate on livestock consigned to sidetracks since February 1, 1921:

(a) On February 1, 1921, a tariff of the Chicago Junction Railway (the Chicago River and Indiana R. Co., Lessee) published a proportional switching rate of 2¢ per 100 lbs., subject to a minimum weight of 60,000 lbs. Thus the switching charge was $12.00 per car, and it stood at that level at the time the *Hygrade* litigation began (*Hygrade Food Products Corp.* v. *Atchison, T. &*

what Swift now pays for the identical delivery of all other classes of freight to the same sidetrack (R. 288-289, 370), and similarly $39.24 per car in excess of the line-haul rate for delivery of livestock to the Union Stock Yards, distant a few city blocks from the same sidetrack. See *infra*, pp. 15-17. The result is that if Swift employed this third method, and consigned to its own sidetrack all of its direct shipments of livestock, it would pay on the average $254,628.36 per year under the Commission's order and the ruling of the court below.

S. F. Ry. Co., 195 I. C. C. 553, sustained, *Atchison, T. & S. F. Ry. Co.* v. *United States*, 8 F. Supp. 825 (S. D. N. Y.), reversed, *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193.

(b) On September 20, 1933, the rate became 3¢ per 100 lbs., and $18.00 per car pursuant to *Switching Rates in Chicago Switching District*, 177 I. C. C. 669.

(c) On January 19, 1939, the rate became 3¼¢—$19.50 per car—in consequence of *Fifteen Percent Case, 1937-38*, 226 I. C. C. 41.

(d) On March 18, 1942, the rate became 3½¢—$21.00 per car—pursuant to Commission approval in *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545 (Ex Parte No. 148).

(e) On May 15, 1943, the rate again became 3¼¢ per 100 lbs. and $19.50 per car, in consequence of a ruling in which the authority in the original report, 248 I. C. C. 545, was suspended. *Increased Railway Rates, Fares, and Charges, 1942*, 255 I. C. C. 357.

(f) On July 1, 1946, the rate rose to 3.7¢ per 100 lbs. and $22.20 per car, pursuant to *Increased Railway Rates, Fares, and Charges, 1946*, 264 I. C. C. 695 (Ex Parte No. 162).

(g) On January 1, 1947, the rate became 4¢ and $24.00 per car, in consequence of *Increased Railway Rates, Fares, and Charges, 1946*, 266 I. C. C. 537; this was the rate when the present complaint was filed with the Commission (R. 52).

(h) On October 13, 1947, the basic rate remained 4¢, but the charge based on that rate was increased 10%, making the cost per car $26.40; this followed from *Increased Freight Rates, 1947*, 269 I. C. C. 33 (Ex Parte No. 166).

(i) On January 5, 1948, the charge superimposed on the basic 4¢ rate was increased to 20%. *Increased Freight Rates, 1947*, 270 I. C. C. 81. This made the switching charge $28.80 per car, which is where it stood when the present proceeding was heard by one of the Commission's examiners (R. 60, 232, 289, 838).

(j) On May 6, 1948, the rate became 5½¢ per 100 lbs. and $33.00 per car. *Increased Freight Rates, 1947*, 270 I. C. C. 93.

(k) On May 11, 1948, the rate was reduced to 5¢ per 100 lbs. and $30.00 per car; this was published voluntarily by the carriers in an effort to comply

C. Scope of the switching charge in question.

As has been indicated, the switching charge of $39.24 per car now in issue applies only to livestock consigned to sidetracks such as Swift's, located on the tracks of the Chicago Junction Railway (R. 288-289, 370).

(i) *Inapplicability to livestock consigned to Union Stock Yards.*

There is no similar switching charge on livestock consigned to the Union Stock Yards (R. 289), which are also located on the Chicago Junction, and this is so notwithstanding the circumstance that the distance from the several railroad appellees' break-up yards to the Ashland Avenue yards of the Chicago Junction is precisely the same whether a particular car of livestock is consigned to the Union Stock Yards or to Swift's sidetrack (R. 283), and notwithstanding the circumstance that the distance from the Ashland Avenue yards to the Union Stock Yards is

---

with the Commission's order in 270 I. C. C. 93, *supra*, as it was thought that the 5½¢ rate did not comply.

(l) On July 12, 1948, in another effort by the carriers to comply with 270 I. C. C. 93, the rate became 5¼¢ per 100 lbs. and $31.50 per car.

(m) On January 11, 1949, the basic rate remained 5¼¢, but it was increased by 6%, making the charge per car $33.39. *Increased Freight Rates, 1948*, 272 I. C. C. 695 (Ex Parte No. 168).

(n) On September 1, 1949, the rate was increased to 6¢ per 100 lbs. and $36.00 per car. *Increased Freight Rates, 1948*, 276 I. C. C. 9. This was the rate in effect at the time of the proceedings in the district court. (Complaint, pars. 4(a), 8(a), 8(b), 10(a), 15, 20, R. 2, 11, 13, 18, 25, 28; Statement as to Jurisdiction, pp. 5, 8, 11, 12.)

(o) On August 28, 1951, the 6¢ rate became subject to a 9% increase, pursuant to Commission approval in *Increased Freight Rates, 1951*, 281 I. C. C. 557 (Ex Parte No. 175). This made the switching charge $39.24 per car, which was the rate in effect while this brief was being written.

Addendum: On January 14, 1952, Divisi - 2 of the Commission (Commissioners Aitchison, Splawn, Alldredge, and Mahaffie) commenced hearings in supplemental proceedings in Ex Parte No. 175 to consider the railroads' contentions that increased costs require that the full 15% increase therein requested, which was granted only in part in 281 I. C. C. 557, be now granted to the extent then denied.

somewhat longer than from the Ashland Avenue yards to the Swift sidetrack (R. 284, 684-685; and see map, Exhibit B, *infra*, p. 150).

Moreover, when livestock is delivered at the Union Stock Yards, the line-haul carriers absorb an unloading charge of $2.08 per double-deck car and $1.73 per single-deck car, while when livestock is delivered at private sidetracks, as at Swift's Omaha Packing Co. plant or at the proposed new plant, all unloading costs are borne by the consignees and not by the carriers (R. 301). This follows from the terms of Section 15(5) of the Interstate Commerce Act (*infra*, p. 145), and from the Commission's ruling in *Omaha Packing Company* v. *Atchison, T. & S. F. Ry. Co.*, 66 I. C. C. 44, applying that provision.

(ii) *Inapplicability to other commodities delivered at Swift's sidetrack.*

There is no switching charge on any commodity other than livestock delivered at Swift's sidetrack; such other commodities are delivered at the flat line-haul rate (R. 286, 370). Commodities so delivered without switching charge include (Ex. 10, at R. 1058-1060) live poultry, eggs, fresh fruits, meats, and vegetables, liquid milk, dressed poultry, ice, butter, and cheese—among a host of others.

(iii) *Switching charge not dependent on distance between Chicago Junction yards and line-haul carriers' break-up yards.*

The Chicago Switching District is over forty miles in length, from seven to fifteen miles wide, and over 600 square miles in extent; within its boundaries are over 4,000 private industries served by thirty-five railroads and more than 5,000 miles of track. See *Switching Rates in Chicago Switching District*, 177 I. C. C. 669, 675-676, 712-713; and see map, Ex. 9, R. 1046.

Subject to certain restrictions, not otherwise shown in the record, all carload freight transported to Chicago by the line-haul carriers is delivered to any industrial location within the Chicago Switching District at the flat Chicago line-haul rates without the addition of other switching or terminal charges, and this is so regardless of the distance between the line-haul carriers' break-up yards and the industrial siding in question (R. 280-283, 286-288, 298-299, 368-369).

Thus eggs, for instance, consigned to Swift's sidetrack from distant break-up yards, such as the Bensenville Yard of the Milwaukee Road and the Proviso Yard of the Chicago & North Western, both in the northwest portion of the Switching District, or from the Burr Oak Yard of the Rock Island in the southwest portion, involve no greater transportation expense to the shipper than if they were consigned there from reasonably adjacent yards, such as the Western Avenue Yard of the Burlington, the Corwith Yard of the Santa Fe, or the 47th Street Yard of the Wabash (R. 280-283).

But livestock transported over the same distances, long or short, involves the $39.24 switching fee for each car (R. 288-289, 370)—not for the entire movement, but only for the switching done by the Chicago Junction in moving the car in question from its own Ashland Avenue yard to the Swift sidetrack (R. 838). See map, Ex. 9, R. 1046, and map, Appendix B, *infra*, p. 150, for the relative distances involved.

D. Transportation of livestock to consignees in the stockyards district.

(i) *Route followed and switching performed.*

Consolidated trains containing livestock and dead freight arrive at the several carriers' outer break-up yards in the Chicago Switching District (R. 609, 634-635, 649-650, 675-676, 692). Only rarely does any train carrying livestock exclusively arrive at those yards (*cf.* R. 609, 634, 649, 675,

692). Frequently some switching has already occurred before the trains reach Chicago (R. 634-635, 649, 675-676). On arrival, the cars of livestock and dead freight are separated at the break-up yards, those reflected in the record being the following: the Hawthorne Yard of the Burlington, entrance at Clyde, the yard being 9.3 miles distant from the Ashland Avenue Yards of the Chicago Junction (R. 609); the Proviso Yards of the Chicago & North Western, 18 miles distance (R. 69); the Burr Oak Yards of the Rock Island, 14 miles away (R. 70, 650); the Bensenville Yards of the Milwaukee Road, some 27 miles away (R. 69); and the Corwith Yard of the Santa Fe, 3 miles away (R. 692-693).[6] Similar separations occur at the break-up yards of the other line-haul carriers.[7]

The loaded freight cars then are moved to consignees on the Chicago Junction's tracks in three ways:

(*a*) Trains of livestock cars only, destined to the Union Stock Yards, are hauled directly to those yards by a line-haul carrier's engine (R. 62-63, 70). When the train comes from the west, the engine goes over east-bound track 1103 to the unloading chutes. While the cars are being unloaded, the engine cuts off, passes around the train, couples on to the other end, and then hauls the empty cars over west-bound tracks 1102 or 1104 to the line-haul carrier's break-up yard (R. 62-63). These trains, of livestock cars only, do not pass through the Junction's Ashland Avenue yards (R. 63, 70).

(*b*) Trains of dead freight only, consigned to industry tracks on the Junction, are delivered by the line-haul carriers to the 9 receiving tracks in the Ashland Avenue south yard; under the terms of a labor agreement, set forth in greater detail below, pp. 24-25, such cars may not be de-

---

[6] The figure "5" at line 29 of R. 69 is a misprint, as appears from inspection of the original record and from line 5 of 274 I. C. C. 567; they show "3 miles".

[7] Counsel for the railroad appellees called operating witnesses from only 5 carriers out of the 22 he represented in order to avoid repetitiousness (R. 687).

livered elsewhere. After delivery, and after completion of the necessary inspection and carding by the Junction, the cars are switched at intervals by Junction break-up crews to the adjoining classification tracks for regrouping and movement to base yards serving the respective operating districts (Ex. 13, R. 1091). There the cars are reclassified and switched to team tracks or to the private sidings of the consignees. (R. 61.)

(*c*) Consolidated trains consisting of livestock for the Union Stock Yards and dead freight for industry sidetracks on the Junction, are handled as follows (R. 63): In such trains, the dead freight is on the head and behind the engine. The cars of livestock are cut off and left standing at the eastern end of the east-bound running track while the line-haul carrier's engine sets the dead freight on one of the 9 receiving tracks in the Ashland Avenue south yard. The engine then returns and hauls the livestock to the Union Stock Yards. The line-haul engine then disposes of the empty livestock cars as in (*a*) above, while the dead freight is switched by Junction motive power to the proper industry sidetracks as in (*b*).

(*d*) If livestock were to be delivered to Swift's sidetrack, the initial movement, from the point of origin to the line-haul carrier's break-up yard to the stockyards area, would be precisely the same as for livestock destined for the Union Stock Yards (R. 283-285, 476-478, 480-483, 505, 506-507, 684-685). Thereafter, consolidated trains would proceed to the eastern end of the Ashland Avenue Yards, as at present, with (1) livestock for the Union Stock Yards, (2) dead freight for Junction sidetracks, and (3) livestock for the Swift sidetrack. At that point, the dead freight and the livestock for the Swift sidetrack would be pushed onto one of the Junction receiving tracks and left there for subsequent delivery by Junction motive power, while the line-haul switching engine would proceed immediately to the Stock Yards with the livestock consigned there. The sub-

sequent delivery of Swift's livestock to its own sidetrack would be effected just as dead freight is delivered there now (R. 66-67, 238-239).

(ii) *Percentage of mixed trains; incidence of trains composed of one and two cars of livestock.*

A train, in railroad parlance, means any movement of an engine with one or more cars attached (R. 674, 945). To the extent, therefore, that short trains are involved, the percentage of trains does not accurately reflect the volume of livestock carried.

The record indicates that approximately 63% of the trains of the line-haul carriers going to the Union Stock Yards handle livestock exclusively (R. 62). The record also indicates that, in order to comply with the Federal law limiting the time that livestock may be confined in cars without unloading for watering and feeding (45 U. S. C. 71-74; *infra*, pp. 147-149), many trains going to the Union Stock Yards which carry livestock exclusively are composed of only one or two cars (R. 64).

The record shows the shipments of short-time livestock over a test period of about three weeks (Ex. 45, R. 1681-1842): 80% of the trains involved contained only one or two cars, with the consequence that, in respect of those short-time shipments, 80% of the trains carried only about 56% of the short-time livestock.[8] The short-time trains in question, which averaged 1.96 cars per train, amounted to 46.2% of the total livestock receipts at the Union Stock Yards during the test period (R. 825). Thus more than one-third of the livestock received at the Union Stock Yards in that time arrived in trains averaging less than two cars of livestock per train. The present record does not permit of more exact computations, nor does it indicate how far the cited percentages can be accurately projected. But the

[8] Ex. 45, R. 1681-1842, lists 574 trains, aggregating 1124 cars. Of these 574 trains, 292 contained only a single car.

figures are believed sufficient to establish that the incidence of short trains, required to comply with the 28-hour law, is so high that, although 63% of the trains going to the Union Stock Yards handle livestock exclusively, substantially less than 63% of the livestock destined there arrives in such trains. Or, otherwise stated, well over 37% of the livestock consigned to the Union Stock Yards arrives in consolidated trains.

(iii) *Transportation of livestock to Swift's Omaha Packing Co. plant.*

Livestock consigned to Swift's Omaha Packing Co. plant pens on the sidetrack off the Burlington lines, averages some 18 or 20 cars every day in the aggregate (R. 69, 75). Around 45% of these shipments arrive via the Burlington, while the balance originate on other lines (Ex. 36, R. 1161). And the Commission found (R. 69) "that the blocking out in outer yards of direct shipments consigned to the Omaha plant pens is a minor operation which, except as to the Burlington, averages but one or two cars per day, or less, for the individual lines." None of the shipments consigned to Swift at its Omaha Packing Co. plant move through the Ashland Avenue yards of the Chicago Junction (R. 70).

E. Congestion on Chicago Junction tracks.

The Ashland Avenue yards of the Chicago Junction handled an average of 726,144 loaded and empty cars per annum during 1945-1947 (R. 60), and now receive an average of about 1000 loaded cars per day (R. 61). But the record shows that the number of cars of livestock transported over the Chicago Junction's tracks to the Union Stock Yards has markedly decreased since 1920.

In the early 1920s, over 250,000 cars of livestock were transported annually to the chutes of the Union Stock Yards, with a high in 1923 of 303,228 cars (Ex. 46 at R. 1845). After that time the number declined; here are the

figures for the last three years shown (Ex. 46 at R. 1846; Ex. 28, R. 1117; R. 996):

YEAR	CARLOADS	DECREASE SINCE 1922 PER CENT	DECREASE SINCE 1922 CARLOADS
1945	83,457	72.4	219,771
1946	65,139	78.5	238,089
1947	53,561	82.3	249,667

The Chicago Junction's trackage has remained the same since 1909, including the single running track, No. 1103, from west to east (R. 62, 461, 523). Since all line-haul carriers must use the same east-bound track into the Union Stock Yards, any delay to a train on that track results in a piling up of other trains. Frequently, as many as four trains must wait to enter this track because of blockage at the east end. Delays are also experienced because of "set outs" made by consolidated trains; in the case of such trains, the livestock remains on the single east-bound running track while the engine puts the dead freight on another track, and this blocks the running track until the engine returns and hauls the livestock into the Union Stock Yards. (R. 62-63.) On occasion this blocks eight or ten lines bringing trains from the west (R. 489). Moreover, the line-haul engines coming to Ashland Avenue from the west must pull through to the east end to leave the cars of dead freight, while those reaching it from the east must pull through to the west to leave the dead freight and then return over the single east-bound track (R. 63, 70, 452-453, 512-513, 649-650, 658-659, 669).

The Commission found that, during a test period in December 1947, the time per car consumed between delivery to the Junction of 511 cars of perishable freight and 1570 cars of other dead freight, by connecting lines at the Ashland Avenue south yards, and actual or constructive placement at sidetracks on the Junction, was 23 hours 30 minutes for perishable freight and 31 hours 48 minutes for other dead freight (R. 68).

The evidence bearing on the effect of the foregoing operations on transportation of livestock to sidetracks is set out below, pp. 29-34, after the evidence dealing with the other factors relevant to congestion has been summarized.

F. Factors other than volume of traffic contributing to congestion on Chicago Junction tracks.

Briefly, the rail system now known as the Chicago Junction Railway was originally operated by the appellee Union Stock Yard and Transit Company of Chicago as a portion of its livestock receiving facilities. After this Court's decision in *United States* v. *Union Stock Yard*, 226 U. S. 286, the management of the railroad and the stockyards portions was separated, see *Union Stock Yard Co.* v. *United States*, 308 U. S. 213, 215-216, and in 1922 the railroad portion, then as now named the Chicago Junction Railway, was, with the approval of the Interstate Commerce Commission, leased by a wholly owned subsidiary of appellee New York Central Railroad Company. See *Chicago Junction Case*, 71 I. C. C. 631.[9] Since that time the Chicago Junction has been operated as a part of the New York Central System, though Union Stock Yards still owns the fee of the railroad facilities. See *Union Stock Yard Co.* v. *United States*, 308 U. S. 213; see also, for full details of the corporate structure of the Stock Yards interests, *Chicago Stock Yards Co.* v. *Commissioner of Internal Revenue*, 129 F. 2d 937 (C. C. A. 1), reversed on other grounds *sub nom. Helvering* v. *Stock Yards Co.*, 318 U. S. 693.

[9] For related proceedings, see *Chicago Junction Case*, 264 U. S. 258; *Chicago Junction Case*, 150 I. C. C. 32; *Baltimore & O. R. Co.* v. *Chicago Junction Ry. Co.*, 156 F. 2d 357 (C. C. A. 7); *Railroad Trainmen* v. *Baltimore & O. R. Co.*, 331 U. S. 519; *Baltimore & O. R. Co.* v. *Chicago River & Indiana R. Co.*, 170 F. 2d 654 (C. A. 7).

(i) *Decline in Chicago Junction's motive power since its lease by appellee New York Central.*

The Commission found (R. 68) that "The present motive power of the Junction is being operated to capacity," and listed the 35 steam and 12 Diesel engines owned by that carrier. Of the former, 11 are of a type that do not lend themselves readily to industrial work, being too heavy for sharp curves (R. 68). Moreover, 14 of the remaining engines were received from the U. S. Railway Administration during World War I, and thus are at least 30 years old (R. 525).

The record reveals a gradual shrinkage in the Chicago Junction's motive power since it was leased by the New York Central, as follows (Ex. 58, R. 1963-1965):

1923	77 engines
1925	86 engines
1935	64 engines
1940	47 engines.

The Chicago Junction's Superintendent testified that his road did not have sufficient engines to take care of all the industrial placement of cars (R. 524; see also R. 547, 555), and further (R. 525-526), "I know we have been trying to get some additional Diesel equipment. We want at least five of them if we can get them."[10]

(ii) *Effect of 1946 labor agreement.*

Prior to January 1946, the several line-haul carriers delivered their freight cars to the various yards of the Chicago Junction. Thus cars for Armour and Co. were delivered at 47th and Peoria Streets, while lines from the east

[10] See also the testimony of the Rock Island's operating witness (R. 656), "One thing, for example, that undoubtedly is going to add to our troubles is the inadequate supply of switch engines and crews on the Rock Island and other line haul carriers today"; and that of the Milwaukee's (R. 680): "We have an acute shortage of power and men * * *."

and south delivered freight at the Oakley Avenue Yard, or at Loomis Street, or to the Ashland Avenue north yard. None of this freight went through the crowded Ashland Avenue receiving or classification facilities. Similarly, empty cars for loading hogs and sheep eastbound were placed in the North Yard by the eastern lines. But this arrangement, under which cars were delivered by the line-haul carriers to at least four different yards of the Junction, was abrogated by a demand of the Junctions employees. In order to avert a threatened strike by those employees, the Junction agreed that all of the foregoing traffic would be received at the Ashland Avenue south yard, which has but one running track to the east, and that is the arrangement now in effect. (R. 463-464, 515-517; see also R. 443, 494, 527, 539, 699.)

In 1947, the first full year after this change took effect, the Junction used 3800 more crews, each of 5 men (R. 64), in moving its traffic with no increase in the number of cars handled (R. 518-519). Moreover, the restriction of classification work to Chicago Junction employees results in delays farther back; as the Junction's Assistant Superintendent testified (R. 539), "foreign line crews are delayed waiting to set cars out in our receiving yard due to our inability to classify them quickly enough to avoid these delays."

The record also reflects other delays in making shipments by reason of restrictive labor agreements (R. 635, 639-640, 660-661).

(iii) *Operations of line-haul carriers on Chicago Junction tracks.*

The line-haul carriers operate over the Chicago Junction's tracks by virtue of trackage rights (R. 62), exercised, as the Commission found (R. 64), in the following manner:

> During a test period from December 1 to 7, 1947, inclusive, there were 1,171 foreign crews moving on the Junction's rails or an average of 167 crews per day.

> The average time each crew was on the Junction's tracks was 3 hours 12 minutes. A crew consists of three members in addition to the engineer and fireman. The are no restrictions by the Junction limiting the time within which connecting lines may deliver freight on Junction tracks. They are privileged to and do operate over the Junction's rails at their convenience for the purposes stated above and may be on those tracks at all hours of the day or night.

(iv) *Refusal of Chicago Junction to grant additional trackage rights.*

Mr. R. G. Raasch, Chairman and Tariff Publishing Agent of the Illinois Freight Association, who testified to the existence and scope of the foregoing trackage rights (R. 839, 842), indicated their limitations as well. He said (R. 840):

> If the stock were to be moved to the proposed new facilities of Swift & Company, the trunk line carriers do not now have and would not have trackage rights to run into such location with their own engines and crews as they now do at the Union Stock Yards. The trunk line carriers have been advised by the Chicago Junction Railway that they would not be permitted to make such deliveries by use of their own power. * * * Trackage rights would not be granted for that purpose, and it would be necessary for the trunk lines to make such deliveries to the Chicago Junction Railway at the interchange tracks in the Ashland Avenue Yard.

(v) *Union Stock Yards rules directed at dead freight.*

The rules of the Union Stock Yards forbid the line-haul carriers, which bring cars of livestock directly into the chutes there, see p. 18, *supra*, from pulling into those chutes with any cars loaded with dead freight (R. 664, 668-669). The effect of these rules on operations was testified to as follows by one of appellees' operating witnesses (R. 668):

* * * If I had a man leaving Burr Oak of [on?] a 96 with one car of U. S. livestock and one car for C. P. T. [Chicago Produce Terminal?], I have got to set either one of those cars out at our [Rock Island] 47th Street Yard before entering the C. J. tracks and then either let this engine go over and deliver the U. S. Yards stock, unload it and come back and pick up C. P. T. or have another engine there to take that one car of stock over to the yards and unload it and bring the empty back.

Q. Is that a requirement of the C. J. or is—your own operating practice?

A. No, sir, it is an operating requirement of the Stockyards people, U. S. Y. & T. I certainly would like to cancel it if I could. It would save me a lot of trouble.

G. Covenant in Chicago Junction lease and its invocation by Union Stock Yards.

After Swift had filed its complaint with the Commission, and after the several railroad defendants had answered,[11] counsel for the Union Stock Yards addressed the following letter to counsel for the New York Central (Ex. 57, R. 1961-1962):

WINSTON STRAWN & SHAW
First National Bank Building
Chicago 3

September 4, 1947.

Mr. Sidney C. Murray,
General Counsel,
New York Central Lines,
1236 La Salle Street Station,
Chicago 5, Illinois.

Dear Sir:

In response to a telephone inquiry made by us last week, Mr. W. C. Douglas, Assistant Vice President of the River Road and the New York Central, stated that neither of those companies planned to offer any

[11] The file in I. C. C. Docket No. 29809, the complaint case, indicates that the railroad defendants filed answers on various dates in August, 1947.

evidence or to take any other steps to defend the complaint in Swift & Company vs. The Atchison, Topeka & Santa Fe Railway Company, et al., I. C. C. Docket 29809. In this complaint Swift is asking the Interstate Commerce Commission to compel the line-haul carriers and the River Road to deliver livestock at its plant at rates which do not exceed those charged for delivery of livestock to the unloading pens of The Union Stock Yard and Transit Company of Chicago.

If the request of Swift is granted, and the other packers demand and are accorded similar treatment (which may be anticipated), the effect will be substantially to destroy the business of the Yard Company.

In Article VI of the lease from the Yard Company to Chicago Junction Railway Company dated December 1, 1913, the Junction agreed "to conduct, manage, and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards." In the lease of May 19, 1922, by the Junction to the River Road (see Art. III, Sec. 2, and Art. IX), the River Road and the New York Central undertook to perform the above-quoted covenant of the Junction in the earlier lease.

Most of the evidence necessary to defend the Swift complaint and the power to raise the necessary issues for the determination of all the questions involved are in the possession of the River Road. We believe that if this evidence is adduced, and if the proper issues are raised by that road, the case can be successfully defended.

It is our considered opinion that the River Road and the Central are obligated under the terms of the foregoing provision of the lease of 1913 to defend this case and to take every other step appropriate to prevent irreparable injury to the Yard Company, and that any failure to do so will be a breach of this covenant of the lease.

Yours truly,

WINSTON, STRAWN & SHAW.

Thereafter, the New York Central and the River Road separately appeared by counsel and defended the complaint case before the Commission's examiner (R. 250), and, in due course, the New York Central and the River Road intervened and filed answers in the action brought in the court below (R. 97-124). Also, after the foregoing letter was written, the Chicago Junction on November 19, 1947,[12] proposed specifically to exempt livestock from the traffic which it will transport and to cancel the application on livestock of all switching charges published by it, except to and from chutes and sidings at the Union Stock Yards (R. 59).

H. Evidence bearing on effect of granting appellant's prayer for relief.

The evidence relative to the possible effect of granting Swift's prayer for relief covers what is factually the most controversial aspect of the present case. But even this aspect can be broken down to show the uncontradicted elements.

(i) *Effect of appellant's shipments alone.*

The Commission found that (R. 74-75), "Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants' operations." A discussion of the evidence of record, if any, bearing on this finding would necessarily be argumentative, and hence it is postponed to Point III C, pp. 99-104, below.

The Commission then went on to consider the possibility that other packers would be entitled to the same relief, and proceeded to deal with the case on the basis of congestion believed to result on that footing (R. 76). The following sections set out the evidence of record reflecting the attitude of the other packers, the assumptions underlying the

[12] This date appears in the file of the Commission's Investigation and Suspension Docket No. 5543.

railroad witnesses' prognostications of threatened congestion, and the direct testimony as to such congestion.

(ii) *Position of the other packers.*

Since before 1915, Swift has used the Omaha Packing Co. sidetrack on the Burlington line and has received and unloaded its direct shipments of livestock there at the same rate applicable to deliveries of livestock to the Union Stock Yards, except for absorbing the expenses of unloading. See *Omaha Packing Co.* v. *Chicago, M. & St. P. Ry. Co.*, 37 I. C. C. 378; *Omaha Packing Co.* v. *Atchison, T. & S. F. Ry. Co.*, 66 I. C. C. 44; *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 546-548. No other packer has seen fit in all the intervening years to acquire a similar siding off the tracks of a line-haul carrier,[13] use of which would necessarily involve the construction and maintenance of adequate holding pens.[14]

In the so-called "egress" cases, dealing with the packers' demands for receipt of direct shipments of livestock consigned to themselves *at the Union Stock Yards* without payment of yardage fees, only one small packer was at first concerned. *Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553; *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193. In the next attempt on the part of a packer to obtain free egress for its own animals, Armour & Company at first pursued an independent course in the courts, see *Armour & Co.* v. *Alton R. Co.*, 312 U. S. 195, and later joined with Swift in the proceeding which Swift had commenced before the Commission. *Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179; see *Swift & Co.* v. *United States*, 316 U. S. 216, 217-218. The basis of the

[13] This circumstance caused the Commission to assert (I. C. C. Motion to Affirm, p. 13) that "it would appear that Swift has the preference in Chicago."

[14] Note the requirement imposed by the Commission in this case as a prerequisite to delivery *with* the switching charge (R. 81), "provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference * * *."

complaint of Swift and Armour was that, since they owned the livestock being shipped, they were entitled to claim their animals free from any exaction in the nature of yardage fees; their position was, in substance, that a consignee should not be subject to any extra charge for the use of the terminal.

But the rulings were adverse to the plaintiffs; the substance of the holdings in the cited cases was that transportation ended with the arrival of the livestock at the Union Stock Yards, and that yardage fees thereafter imposed were for non-transportation services which the Commission was without power to regulate. This Court none the less pointed out (316 U. S. at 227)—

> It does not appear, however, that the existence or adequacy of alternative facilities for delivery at other points is particularly important in the case, because the shipments involved are consigned to the packers at the Union Stock Yards by their own choice. It does not appear that they are demanding an increase of other facilities, and the case has not been considered in that light.

Having failed in its effort to strike down the yardage fees assessed against its direct shipments consigned to the Union Stock Yards, Swift turned its attention to the switching charge assessed on direct shipments consigned to its own sidetrack, and brought the present complaint before the Commission, attacking the high additional switching charge assessed only against livestock delivered to sidetracks.[15] This time Swift stood alone. Armour & Company

[15] The complaint as amended also contained a prayer (R. 56) for the establishment of joint through rates between the line-haul carriers and the Chicago Junction. The merits of that prayer turn in part on the difference between the absorption of a switching rate by the line-haul carrier, which is the general practice throughout the country, and a division of the joint rate, which is the practice in Chicago (R. 293-294, 295, 843-845). Since, however, the basic issue in the present controversy, is, on the Commission's own statement (R. 59), the legality of the switching charge, and since in our view a joint rate which included the switching charge would be equally illegal, we have thought it conducive to clarity to omit all further reference to the establishment of joint rates.

entered an appearance in the related Investigation & Suspension case, but not in the complaint case.[16] And no other packer, large or small, intervened in either aspect of the present case, on either side, before the Commission or in the court below. On the issues now in litigation, Swift still stands alone.

The following is the evidence in the present record directly bearing on the probability of the other packers making similar demands for plant deliveries of livestock at the line-haul rate.

All seven railroad operating witnesses who gave expert testimony as to the consequences which in their view would follow the making of plant deliveries assumed that they would be faced with demands from "all the packers" and that the present proceeding involved all direct shipments of livestock to Chicago (R. 488, 493, 539, 540-541, 544, 548, 618, 636, 640-641, 655, 657, 679, 680, 684, 699). All of these witnesses who were questioned on the point admitted that they had no knowledge whether the other packers would or would not make similar demands, and admitted moreover that they had made no inquiries on that score (R. 514-515, 553, 646-647, 666, 684, 704).

The only evidence in the record tending affirmatively to indicate that the other packers would join in Swift's demand (R. 739, 928, 988) came from witnesses hostile to Swift: Park, the representative of the commission men selling livestock on the Chicago market (R. 708-710), who also testified to the sharp economic conflict between direct sales and commission sales (R. 744, 753); Heinemann, an expert retained by the Union Stock Yards (R. 423, 944), whose associations (R. 908) likewise had an adverse inter-

---

[16] See R. 251-252: "Mr. Blanchard: Mr. Examiner, I appear in the nature of a special appearance here; Mr. Paul E. Blanchard, representing Armour & Company. * * * We are interested primarily in the I. & S. case. * * * I will enter an appearance in the I. & S. case but not in the formal case unless from the development of the facts and the evidence here it appears that we have some interest in the formal case at a later time. At the present time we know of no such interest."

est (R. 944); and O'Connor, General Manager of the Union Stock Yards (R. 982).

No appellee called any witness connected with any packer, large or small, to adduce direct testimony of what such other packers' attitude might be.

On the basis of the foregoing the Commission concluded (R. 75-76) and found (R. 76) "that, if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like delivery service * * *."

(iii) *Evidence as to congestion and disruption.*

As has been indicated, every one of the seven railroad operating witnesses who testified as to the effect of the granting of Swift's demand based his answer on the assumption that all the other packers would similarly require and receive plant delivery. *Supra*, p. 32. All of the answers, moreover, because of the circumstance that, in fact, the Chicago Junction has never delivered livestock except at the Union Stock Yards (R. 60), were based not on actual experience but on hypothesis. Indeed, one operating witness frankly said (R. 647), "We are here somewhat on a clairvoyant adventure."[17]

The Chicago Junction witnesses testified, on the assumption of existing operating conditions and on the basis of all direct shipments going to sidetracks, that an additional 1 to 8 hours would be required before cars could be set for unloading (R. 64).

The other witnesses, also on the foregoing assumptions, testified to the congestion which they believed would follow (R. 618-627, 636-645, 655-664, 678-683, 699-703).

---

[17] The Superintendent of the Chicago Junction likewise testified (R. 469, 490): "If the proposed method were employed it would mean conditions I will have to visualize, it never actually having occurred." * * * "Not having done it I don't know, nor do they know, just how they would handle a consolidated train."

The Commission found that it would be physically possible to make the desired delivery to Swift, and in its report detailed at some length the procedure for such delivery (R. 66-67, 72-74). Laying considerable stress on the circumstance that livestock can not be "kicked" (R. 72-73), the Commission concluded that direct deliveries of direct shipments of livestock "would result in serious disruption of operations and services and serious delays in the delivery of livestock" (R. 71); that "a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the large movement of livestock to the stockyards area and the return movement of the empty cars, were performed by the Junction" (R. 71); that while "any cars of livestock consigned to [Swift] could be handled in consolidated trains by grouping such cars at the head of the train with the cars of dead freight intended for set-out in the south yard, nevertheless, because of difficulties peculiar to livestock traffic, such handling would, it appears, affect adversely the line-haul carriers' operations in carrying livestock to the stockyards" (R. 72); that "there would result demands from other packers requiring defendants to render like delivery service in an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction's lines" (R. 76); and that "the inauguration of a continuing practice of delivering livestock directly to packers" in these circumstances "would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally" (R. 77).

I. Proceedings before the Commission and in the court below.

As has been indicated above in general terms, Swift brought this complaint before the Commission against twenty-five common carriers by rail serving Chicago (R. 50-56), presenting primarily the issue (R. 59) "whether or not [Swift] is entitled to have direct shipments of livestock delivered by the Junction without a charge in addition to the line-haul rates on a private siding at a plant which it proposes to construct in the stockyard area in Chicago."

The Union Stock Yards, and numerous parties representing commission men and buyers and sellers of livestock intervened in opposition to the complaint. The United States Department of Agriculture also intervened. (R. 198.)

Thereafter, as has also been indicated, the Junction proposed to cancel all tariffs on livestock, except to and from chutes and sidings at the Union Stock Yards. Operation of the proposed schedules was suspended on protest by Swift and Armour, who appeared as protestants (R. 254) in the I. & S. proceeding, which was heard on the same record with the complaint case.

The case was extensively heard before an examiner (R. 248-1039) and argued orally before the Commission (R. 58). The Commission filed a comprehensive report (274 I. C. C. 557; R. 57-81), concluding with the findings that "in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for the transportation of livestock for delivery on the private sidetracks to be constructed by complainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference," and that "the proposal to specifically exempt livestock from the traffic which will be transported by the Junction at Chi-

cago and to cancel the application on livestock of switching charges, except to and from chutes and sidings at the Union Stock Yards at that point, is not just and reasonable" (R. 81).

An order was accordingly entered dismissing the complaint and requiring cancellation of the suspended schedules (*ibid.*).

Commissioner Alldredge dissented (R. 81-89) on several grounds: He was of opinion that the covenant between the Stock Yards and the Junction, which had been assumed by the Junction, and which the correspondence (Ex. 57, set out *supra*, pp. 27-28) indicated (R. 82) "is recognized as still in force and effect and of some controlling importance," brought the case within the condemnation of *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169. "It is difficult to escape the conclusion," wrote Commissioner Alldredge, "that the pecuniary interest of the owners of the stockyards in these terminal facilities has been permitted to work itself out in such manner as to deprive Swift of a service to which it would ordinarily be entitled" (R. 83). He concluded that it was the obligation of the Junction's lessor to operate Swift's sidetrack without discrimination by reason of the command of Section 1(9) of the Act (R. 86); "that the singling out of livestock as the exclusive type of freight which will not be accorded the switching service without extra charge is not only unjust and unreasonable, under sections 1(4) and 1(5)(a)[18] of the act, but unduly and unreasonably prejudicial under section 3(1)" (R. 87); and that if, by reason of the service sought, an increased congestion of yard operations and facilities would result, then, in accordance with familiar principles, the additional cost should be distributed over all traffic flowing through the yards and not be charged in its entirety to a single commodity consigned to a single shipper (R. 89).

---

[18] Section 1(5)(a) was renumbered Section 1(5) by Sec. 1 of the Act of August 2, 1949, c. 379, 63 Stat. 485.

The Chicago Junction took no action to set aside the Commission's order in the I. & S. case requiring cancellation of its proposed schedules.

Swift, however, after its petition for rehearing had been denied (R. 90), brought the present action in the District Court for Northern Illinois against the United States and the Interstate Commerce Commission to set aside the Commission's order (R. 1-90). All of the carriers who had been defendants before the Commission, with the exception of the Chicago Junction, intervened as defendants (R. 97-98). The Union Stock Yards and four groups of commission men and livestock traders who had been interveners before the Commission also intervened in the action (R. 124, 131, 134-135).[19] The district court, three judges sitting (Duffy, Circ. J.; Sullivan and Igoe, D. JJ.), dismissed Swift's complaint (R. 210), but without writing any opinion. It made findings of fact which, after setting out the parties to the action and their interests and contentions (Fdgs. 1-8, R. 197-199), simply set forth, either in summary or by direct quotations, the facts found by the Commission (Fdgs. 9-34, R. 199-209). The latter findings, with the exception of a single proposed finding which was omitted (No. 25, R. 192), were taken verbatim from those suggested by the railroad interveners (R. 185-195). The court also made five generalized conclusions of law (R. 209), likewise taken verbatim from those suggested by the railroads (R. 195), none of which however enunciated any principles peculiar to the Interstate Commerce Act, as amended.

This appeal followed (R. 210-228).

---

[19] The Chicago Live Stock Exchange is an organization of commission men (R. 709-710). The Chicago Traders Live Stock Exchange is an organization of dealers and order buyers buying and selling livestock on their own account (R. 786-788). The National Live Stock Producers Exchange and the Chicago Producers Commission Association are cooperative associations engaged in selling and buying livestock for their own members and others (R. 803, 772-773).

SUMMARY OF ARGUMENT

I.

A. The Commission's finding that the high additional switching charge assessed only against livestock delivered to sidetracks is not unreasonable is without the support either of subsidiary findings or of evidence. There are no findings, and there is no evidence, as to the difference in cost between switching livestock to Swift's sidetrack, which costs $39.24 per car more than the line-haul rate, and the cost of switching perishables or fragile goods to the same sidetrack, both of which are delivered at the flat line-haul rate. Similarly, there are neither findings nor evidence as to the difference in cost between switching livestock to Swift's sidetrack, which incurs the $39.24 per car switching charge, and switching livestock out of consolidated trains for delivery at the Union Stock Yards; the latter operation incurs no switching charge, although it requires the carrier to bear the cost of unloading, and although it involves well over 37% of all livestock shipped by rail to the Union Stock Yards.

B. Such necessary subsidiary findings and such evidence are both lacking because the switching charge was never based on cost of service, but was fixed at its present level in order to preclude sidetrack delivery of livestock from ever being asked or rendered. The Commission, which found that even Swift's direct shipments would delay and burden the carriers if delivered to its plant sidetrack, and which found that sidetrack delivery of the direct shipments of all the packers would result in interference, delay, and disruption in terminal operations; went on to find that the maintenance of the present switching charge would not have any detrimental effect upon such operations. In other words, the Commission recognized that the high additional switching charge assessed only against livestock delivered

to sidetracks will prevent disruption because it will prevent such deliveries, *i. e.*, the Commission recognized that the charge operates as a prohibitive penalty.

C. If the Commission had determined that it was essential to efficient and expeditious terminal operations to prohibit altogether livestock shipments into the Ashland Avenue yards of the Chicago Junction, this case would be very different. But when the Chicago Junction proposed that very step, the Commission condemned the proposal as "not just and reasonable." Thus appellant is free to cause "disruption" if it will pay the price, and the Commission is itself doing indirectly precisely what it refused to permit the carrier to do directly.

D. Since the switching charge here in question is a penalty, bearing no relation to the cost of the services rendered, it is unreasonable *per se* as a matter of law, and thus violates Section 1 (5) of the Interstate Commerce Act.

II.

Apart from its unreasonableness, the high additional switching charge assessed only against livestock delivered to sidetracks violates numerous other provisions of the Act.

A. It violates Section 3 (1) because it is unduly and unreasonably prejudicial to livestock. A long line of cases establishes that it is unlawful for common carriers to exclude a particular commodity from the traffic which they will transport, and of course there is no difference between outright exclusion and a prohibitive penalty. Both result in an illegal disadvantaging of the particular commodity.

The circumstance that livestock requires handling different from that accorded dead freight does not justify the result reached here. Over 37% of the livestock destined to the Union Stock Yards comes out of consolidated trains and so undergoes quite as much switching as the livestock con-

signed to appellant's sidetrack, yet it is not subjected to the additional switching charge. Neither is there any switching charge on any other commodities, fragile or perishable or otherwise, consigned to the identical sidetrack. The 28-hour law, which applies to all livestock shipments by rail throughout the country, has been held not to justify a similar discrimination against livestock. Finally, the Commission has specifically ruled that the line-haul rates cover all transportation services necessary to deliver livestock at sidetracks, and that such services subject the carrier to less expense in two respects (unloading and reloading in transit, and unloading at destination) than do similar deliveries of livestock to public stockyards.

B. The high additional switching charge assessed only against livestock delivered to sidetracks violates Section 2 because it results in different rates for shipments of the same commodity, over the same line, for the same distance, under the same circumstances of carriage.

As a matter of fact, the shipment of livestock to the Union Stock Yards and to appellant's sidetrack both involve like and contemporaneous service under the same circumstances of carriage, since both shipments follow the same rail movement from point of origin to point of destination. Over 37% of the livestock consigned to the Union Stock Yards is switched quite as much as any car of livestock consigned to appellant's sidetrack. And the yardage fees exacted at the former location are for non-transportation services, as held in *Swift & Co.* v. *United States*, 316 U. S. 216, and so are not related to "the matter of carriage" with which Section 2 deals.

In view of the repeated rulings on the point, Section 2 applies to all deliveries within the same terminal or switching district as a matter of law. Also as a matter of law, the existence or non-existence of trackage contracts—*i. e.*, the circumstance that the delivery of livestock to the Union Stock Yards is made by the line-haul carriers' engines un-

der trackage contracts, while the delivery of livestock to appellant's sidetrack would be made by engines of the Chicago Junction—can not justify or excuse violations of Section 2. Where the discrimination is as plain and as palpable as in this case, there is no room for "expertise" as to which carrier's engines perform the final switching operation.

C. The high additional switching charge assessed only against livestock consigned to sidetracks violates Section 1 (9) of the Act because it prevents the switch at appellant's sidetrack from being operated without discrimination. All the requirements of the statute have been complied with. The interest protected by Section 1 (9)—and ignored by the Commission—is that of expeditious *decentralized* delivery.

D. No decision of this Court sanctions the present high additional switching charge assessed only against livestock delivered to sidetracks. It was not in issue in the judicial proceedings decided by *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193; and in *Swift & Co.* v. *United States*, 316 U. S. 216, there were considered only direct shipments consigned by the packers to themselves at the Union Stock Yards by their own choice.

The controlling precedent here, and the one which condemns the present charge, is *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; the facts in the two cases are the same in every relevant particular. The Commission, reaching a diametrically opposed result in this case because the removal of the present obvious discrimination is thought to result in disruption, is espousing the dogma of Railroad Statics. But for the rulings under review, there is no support for any such reasoning to justify the continuance of a discriminatory charge.

III.

The decisions of this Court, in an unbroken line, condemn the Commission's justification of discrimination on the stated grounds of congestion, inconvenience, and long-continued practice.

A. The burden of congestion must be borne equitably by all users of congested facilities, and may not be assessed in its entirety, as is done in this case, against a single commodity consigned to a single shipper. The rulings on this point since the time of the Commission's creation simply restate the common law standard that a carrier must accord equal treatment to all patrons.

B. *A fortiori*, a carrier has no right to deny service now on the ground that in the future its capacities may be overtaxed. Until "his coach be full", the carrier may not refuse service. On the whole record in this case, there is no substantial evidence to support the Commission's finding that, if this appellant obtained the relief sought, the other packers would request similar service. The examiner found to the contrary; there was not a word of evidence from any packer's official on the point; and the Commission's rationalizations as to competitive compulsion ignore completely the circumstance that no other Chicago packer has ever acquired what Swift has had for over 35 years, a sidetrack directly off the rails of a line-haul carrier.

C. Nor is there, on the whole record, substantial evidence to support the Commission's finding that the sidetrack delivery of Swift's direct shipments standing alone would considerably delay and burden the railroads' operations. Such shipments are less than 2% of all the traffic now flowing through the Chicago Junction's Ashland Avenue yards, and could moreover have been absorbed several times over in recent years by the decline in rail shipments of livestock to the Union Stock Yards during that period. Furthermore, all of the evidence as to congestion and disruption

was predicated on the assumption of sidetrack delivery of all of the packers' direct shipments, and not a single operating witness testified to what he believed would happen if only this appellant's shipments were so delivered.

But appellant's argument does not rest on the infirmities of the two findings just examined. Even if those findings are taken at face value, even if Swift's shipments alone will produce congestion, even if all the other packers follow Swift in demanding similar service, even if the combined influx of all the direct shipments produces more congestion, still those facts can not and do not excuse discrimination. The removal of discrimination is and has been the primary purpose of the Interstate Commerce Act. That aim, under the decisions, can not be frustrated either by inadequacy of facilities, or by practical difficulties, or by conflicting interests of owners of track, or by equivalent discrimination caused other groups, or by long-continued practice. The categorical command of the Act may not be so watered down.

IV.

A. The volume of rail receipts of livestock at the Union Stock Yards has decreased in the last 25 years by more than 80%, or some quarter of a million carloads annually. The record does not show the extent of the increase of other traffic on the rails of the Chicago Junction, but it does show five other factors, attributable to appellees' acts and not to the volume of traffic, which contribute materially to the congestion which is relied upon to justify the discrimination here complained of.

(i) The motive power of the Chicago Junction has decreased by some 45% since its lease by the New York Central, and is stated by the Junction's operating personnel to be inadequate.

(ii) A labor agreement signed by the Chicago Junction requires 3800 more train crews, each composed of 5 men, in

order to move the same volume of traffic theretofore carried, and moreover forces more cars into the Ashland Avenue yards.

(iii) The rules of the Union Stock Yards forbid the line-haul carriers from pulling into its chutes any car loaded with dead freight, a factor which is shown to add to those carriers' difficulties in delivering consolidated trains containing both livestock and dead freight.

(iv) The Chicago Junction has granted the line-haul carriers trackage rights to deliver livestock to the Union Stock Yards, but refuses them trackage rights to deliver livestock at Swift's sidetrack.

(v) The line-haul carriers' crews may and do operate over the Chicago Junction's rails without regulation and without any limitation as to time or hours.

B. The Commission failed to alleviate the existing congestion although it was amply empowered to do so.

(i) Sections 1 (10) and 1 (11) of the Act empower the Commission to require the Chicago Junction to provide sufficient suitable switching locomotives to effect all necessary switching. Moreover, since the Junction is under lease by the New York Central, Section 1 (3) (a) of the Act makes it a part of the Central as a matter of law; and indeed the Commission approved that lease in 1922 because, *inter alia*, it would insure to the Junction's shippers the assistance of an interested trunk line in times of car shortage.

(ii) The Junction can not rely on a labor agreement to justify a violation of the Interstate Commerce Act, any more than an employer can rely on a labor agreement to justify a violation of the Sherman Antitrust Act. *Allen Bradley Co. v. Union*, 325 U. S. 797.

(iii) The obstructive rules of the Union Stock Yards are condemned by the decisions which hold that the owner of a piece of track may not require the using carrier to refuse

to transport a particular class of merchandise over it. *E.g., United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169.

(iv) The Commission's power to correct discrimination, in the face of a contention that the carrier concerned lacked the necessary trackage rights, has been unquestioned since *United States* v. *Pennsylvania R. Co.*, 266 U. S. 191.

(v) There are ample precedents for the Commission's power—and duty—to correct the anarchic conditions obtaining on the tracks of the Chicago Junction. The circumstance that the Commission not only takes no corrective action, but in fact specifically puts forward those conditions as a reason for continuing the present discrimination, shows the extent to which it carries its devotion to the philosophy of Railroad Statics.

V.

The heart of this case is the covenant whereby the New York Central agrees to operate the Chicago Junction for "the benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards.

A. That covenant is an undertaking to favor a particular patron, consequently it is a covenant to discriminate, and therefore it is illegal on its face. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169. It is not saved by the clause, "in so far as possible", even if that clause be construed as "in so far as *legally* possible". Since there are no legal discriminations under the Act, such a construction would render it nugatory; and the record shows that the parties to the covenant did not treat it as meaningless.

B. The covenant was invoked under threat of cancelling the Central's lease of the Junction. Thereafter, the Central proceeded to defend appellant's complaint before the Commission, which it would not otherwise have done, and thereafter, also, the Junction proposed to cancel all switching

tariffs on all livestock not consigned to the chutes of the Union Stock Yards. Thus, far from being divested of control over the Junction, as the Commission asserted, the Union Stock Yards is shown on this record to be still exercising a substantial element of control over the Junction's operations.

C. More than that, the covenant continues and perpetuates the existing congestion. The Central is under no incentive to improve operating practices, because, to the extent that it does so and facilitates sidetrack delivery of livestock, that circumstance disadvantages the business and affairs of the Union Stock Yards—in violation of the covenant. In the light of the operating practices disclosed by the record, the covenant appears as what it is, not simply an abstract generalization, but as the unifying factor of an effective combination in restraint of trade.

D. Despite its protestations to the contrary, the Commission's ruling, in fact, enforces the illegal covenant between the New York Central and the Union Stock Yards to the detriment of the present appellant. For, under the decision below, the Chicago Junction is, with the sanction of the Commission, managed and operated so as to assure a direct and uninterrupted movement of livestock to and from the Union Stock Yards under trackage contracts, with consequent benefit and advantage to the business and affairs of the Yards by reason of the yardage fees assessed on livestock so delivered, while at the same time the Junction is permitted to exact a high additional switching charge for the transportation of livestock to any consignee on its rails not using the services of the Yards. No other conclusion is fairly possible when the five obstructive factors discussed under Point IV are viewed in their setting. However much the Commission may have minimized the covenant, its ruling in fact enforces it, perpetuates the congestion, and consequently perpetuates the discriminatory switching charge which that congestion was held to justify.

E. The circumstance that the present system of delivering livestock at Chicago has long been in effect does not insulate it against change when, as here, it is shown to violate the Interstate Commerce Act. Neither contract nor long-continued custom can justify a practice that the statute was designed to suppress. Nor do difficulties involved in the correction of a long-standing discrimination operate as a valid reason against corrective action. The doctrine of Railroad Statics must yield to the primary Congressional purpose of removing inequalities and preferences; discrimination does not attain legitimacy through prescription.

The circumstance that this appellant was once financially interested in the Union Stock Yards and so contributed to the existence of the present physical arrangement is of no moment now, after Swift has been divested of those interests by an antitrust decree. The interests of the Union Stock Yards and of this appellant are now divergent. In any event, there is no estoppel against the assertion of rights under the Interstate Commerce Act; and, preeminently, the removal of a restraint on interstate commerce can not justify the continuance of a discrimination in interstate commerce.

ARGUMENT

The questions involved in this appeal concern primarily the Interstate Commerce Commission's errors in the application of rules of law, and the Commission's inability to perceive the effect of a discriminatory covenant whose existence and terms are unquestioned. Only secondarily, despite the apparent complexity of the record under review, does this appeal involve controverted questions of fact, and even in that realm there is no dispute as to any present, existing fact; the differences between the parties turn on predictions of the possible future effects of action yet to be taken.

Appellant's case rests on the asserted illegality of the high additional switching charge, amounting to $39.24 per car, which is exacted in respect of livestock delivered to its own siding over a switch connection which is now and has long been in active operation. That charge is not imposed on any other commodities delivered to the same siding, nor on livestock delivered to the Union Stock Yards, a few city blocks away.

We contend, first, that this high additional switching charge, which is assessed only against livestock delivered to sidetracks, is unreasonable in and of itself, in violation of Section 1 (5) of the Interstate Commerce Act, because it was imposed and understood to operate as a penalty, to prevent sidetrack delivery of livestock—although the Commission expressly declined to permit the carrier concerned to refuse sidetrack delivery of livestock altogether. Point I, *infra*, pp. 50-62.

We contend, next, that the high additional switching charge assessed only against livestock delivered to sidetracks is discriminatory and prejudicial, in violation of numerous provisions of the Interstate Commerce Act (Point II, *infra*, pp. 63-89), and that the congestion which is the Commission's sole reliance for approval of the discriminatory charge can not as a matter of law justify such palpable violations of the Act. Point III, *infra*, pp. 90-104.

We go on to analyze the operation of the Chicago Junction Railway (the carrier on whose tracks both appellant's sidetrack and the Union Stock Yards are located), show that the congestion relied upon to justify discrimination is in fact the result of the appellees' own acts rather than of the volume of livestock traffic involved, and point out how the Commission has failed to relieve the congestion although possessed of ample and effective powers to do so. Point IV, *infra*, pp. 105-116.

Finally, we draw attention to the undisputed evidence which shows that the covenant whereby the New York Central agrees to operate the Chicago Junction for "the benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards is still in full force and effect. We show how this covenant operates to discourage improved operating conditions or reduced congestion, since any step facilitating sidetrack delivery of livestock would disadvantage the business of the Union Stock Yards, in violation of the covenant; that it is this covenant which is the focal point of the discrimination that infects the high additional switching charge, here under attack, which is assessed only against livestock delivered to sidetracks; and, finally, that the Commission's ruling, which sanctions that charge, is in consequence enforcing the covenant—which, being discriminatory, is obviously illegal. Point V, *infra*, pp. 117-141.

We proceed now to the step-by-step development of the foregoing contentions.

I. THE COMMISSION'S REPORT SHOWS ON ITS FACE THAT THE HIGH ADDITIONAL SWITCHING CHARGE, ASSESSED ONLY AGAINST LIVESTOCK DELIVERED TO SIDETRACKS, BEARS NO RELATIONSHIP WHATEVER TO THE COST OF THE SWITCHING SERVICE RENDERED; THAT THIS CHARGE WAS INTENDED AND UNDERSTOOD TO OPERATE AS A PENALTY; AND THAT BY UPHOLDING IT THE COMMISSION WAS COVERTLY SANCTIONING PRECISELY THE SAME PROHIBITION AGAINST SIDETRACK DELIVERY OF LIVESTOCK WHICH, WHEN PROPOSED TO BE DONE DIRECTLY, THE COMMISSION IN THE SAME REPORT HELD TO BE "NOT JUST AND REASONABLE."

We direct attention at the outset to the switching charge itself, now amounting to $39.24 per car of livestock, which has been sustained as reasonable by the Commission. Quite apart from all its other infirmities, which are discussed at length below, we contend that this is not a *bona fide* charge for services rendered; that it was and is known to be a penalty, designed to prohibit indirectly what the Commission refused to permit the Chicago Junction to prohibit directly; and that it was upheld on grounds which patently reflect those conclusions.

A. The Commission's findings are inadequate to support the high additional switching charge assessed only against livestock delivered to sidetracks, and the evidence shows clearly that this charge bears no relationship whatever to the cost of the switching service rendered in such deliveries.

The sole finding of the Commission as to the quantum of the switching charge was (R. 80):

> The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the

line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of services that would be required for the desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plant.

There are no findings whatever as to the cost of the "services and modification of services that would be required." Accordingly, it follows, without more, that the Commission's ultimate finding lacks the support of those basic subsidiary findings which are requisite to its validity. *Florida* v. *United States*, 282 U. S. 194; *United States* v. *Baltimore & O. R. Co.*, 293 U. S. 454; *United States* v. *Chicago, M. St. P. & Pac. R. Co.*, 294 U. S. 499; *Interstate Commerce Commission* v. *Mechling*, 330 U. S. 567; *New York Cent. R. Co.* v. *United States*, 99 F. Supp. 394 (D. Mass.), affirmed, 342 U. S. 890; *Tennessee Valley Authority* v. *United States*, 96 F. Supp. 409 (N. D. Ala.); *Palmer* v. *United States*, 75 F. Supp. 63 (D. D. C.).

This is not a matter of the *elegantia juris*, *cf. Yonkers* v. *United States*, 320 U. S. 685, 695; *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U. S. 74, 86-87, this is an insistence that there be basic findings of subsidiary facts to lend rational support to the ultimate conclusion. For without such findings of subsidiary facts, the administrative agency's ultimate conclusion is not shown to have been rationally arrived at; it may have been—and frequently is—simply the recording of a predetermined administrative fiat; and assuredly it lacks the foundation of reason—without which agency action is merely arbitrary.

The books are full of instances where extra charges imposed by the Interstate Commerce Commission have been set aside on review because unsupported by subsidiary findings which would demonstrate the reasonableness of the imposition in question. Thus, in the *Mechling* case, this Court said (330 U. S. 581, 583)—

> * * * the extra service must fit the extra charge * * * To justify increasing the reshipping rates of ex-barge grain the Commission would have to make findings supported by evidence to show how much greater is the cost to the eastern roads of reshipping ex-barge grain than of re-shipping ex-lake or ex-rail grain moving from the same localities and requiring the same service as does the ex-barge grain.

So, in the recent case involving grain rates to Baltimore (*New York Cent. R. Co.* v. *United States*, 99 F. Supp. 394 (D. Mass.), affirmed, 342 U. S. 890, where the Commission's order was set aside for, *inter alia*, lack of sufficient findings, Judge Magruder said (99 F. Supp. at 401):

> * * * the Commission does not fulfill its duty, in a case such as the present one, if it does no more than state as its ultimate conclusion that "the proposed schedules have not been shown to be just and reasonable". * * * As stated in United States v. Pierce Auto Freight Lines, Inc., 327 U. S. 515, 533, an ultimate finding is not enough in the absence of a basic finding to support it. * * * And these basic findings should be clearly stated and identified as such, so that the reviewing court will not be groping in the dark as to the grounds for the Commission's ultimate conclusion.

Similarly, in *Palmer* v. *United States*, 75 F. Supp. 63 (D. D. C.), where the district court set aside an order of the Commission increasing the per diem charge for foreign freight cars, one of the bases for such action was the lack of essential findings. On this point Judge Prettyman said (75 F. Supp. at 76):

> The contention of Commission counsel, and of counsel for the intervening-defendant railroads, that the order involved can be sustained as an order fixing compensation in the wholly remunerative sense, is quickly disposed of. * * * There are no findings of fact upon which the order could rest, if upon that theory. Such findings are wholly missing. The court could not possibly tell from the findings whether the order, if it pur-

> ported to fix only remuneration for car ownership, was fair and reasonable, or was unfair, unreasonable, and arbitrary. No findings of underlying facts which might be used as standards for that determination are in the report. We think it clear that the Commission neither intended to, nor did, rest its order upon that theory, and we doubt its ability to do so.

The Commission did not in the foregoing case appeal from the judgment setting aside its order.

And, in another case where an Interstate Commerce Commission order was set aside for want of basic findings (*Tennessee Valley Authority* v. *United States*, 96 F. Supp. 409 (N. D. Ala.)), the court specifically pointed out, *id.* at 415, that—

> No effort was made to sift the understatements and overstatements and to translate them, clearly and unambiguously, into terms of actual difference in cost involved in switching ex-barge and ex-rail freight.

In that instance, likewise, the Commission did not appeal the adverse ruling of the district court.

On the basis of the foregoing authorities, it would be necessary, in order to justify the switching charge in the present case as to amount (*i. e.*, its reasonableness under Section 1(5) of the Act), for the Commission to make findings as to the difference in cost between switching livestock to Swift's sidetrack, which involves such a charge, and the cost of switching perishables or fragile goods to the same sidetrack, both of which are delivered at the flat line-haul rates. The Commission would also be required to make findings as to the difference in cost between switching livestock to Swift's sidetrack, and switching livestock out of consolidated trains to the Union Stock Yards; the latter operation involves no switching charge, requires the carrier to bear the cost of unloading, and covers well over 37%, see pp. 20-21 *supra*, of all livestock shipped by rail to the Union Stock Yards.

Without findings of this nature, there is no support for the Commission's conclusion that the high additional switching charge assessed only against livestock delivered to sidetracks is not shown to be unreasonable. That conclusion stands simply as an arbitrary *ipse dixit*. And appellant's argument under this heading can not fairly be characterized as insistence on empty formalism, *cf. Yonkers* v. *United States*, 320 U. S. 685, 698, for the compelling reason that it is impossible for anyone on this record to make the necessary subsidiary findings which are absent from the Commission's report. The evidence shows that the real reason for the Commission's failure to find subsidiary and basic facts is that such facts are simply nonexistent.

There is evidence in the record that the handling of livestock is similar to the handling of perishables generally (R. 619, 706-707). And eggs, notably, like livestock, require special care in handling. The Commission's reports demonstrate that at some points the damage claims in respect of egg shipments aggregate on occasion almost 60% of the revenue derived from their carriage. See *New York Mercantile Exchange* v. *Baltimore & O. R. R. Co.*, 36 I. C. C. 156, 158-159. A proceeding now pending before the Commission shows that during the year 1947 claim payments at four terminal cities for eggs damaged in transit came to 41.7% of the total freight charges for that commodity, and at New York were 50.5% of the total freight charges.[1] But the delivery of eggs and other perishables to Swift's sidetrack involves no switching charge (Ex. 10 at R. 1058-1060), and yet such delivery is effected in precisely the same manner as the physical delivery of livestock to the same sidetrack, which costs $39.24 a car extra.

---

[1] See sheets 9-10 of the Examiners' Report in *Special Regulations—Eggs*, I. C. C. Docket No. 30030, and *Damage Tolerance on Shell Eggs*, I. C. C. I. & S. Docket No. 5792, argued before the Commission on October 26, 1951. These findings were not excepted to by any of the parties, and the issue in the consolidated proceeding is whether the carriers' proposed percentage limitation of liability rule is lawful in the face of Section 20(11) and other sections of the Interstate Commerce Act.

Similarly, it can not be disputed that when livestock arrives at the Union Stock Yards in consolidated trains, and over 37% does so arrive, considerable switching is necessary within the Chicago Switching District before such delivery can be effected, *supra*, pp. 17-19. And there is no evidence in this record even remotely suggesting that the livestock so shipped in consolidated trains is any less fragile or any more sturdily fashioned than the livestock which Swift seeks to receive at its own sidetrack, similarly free of a switching charge.

There is not a syllable of evidence in this record supplying proof of the expense of switching a car of livestock to Swift's sidetrack, as compared with the expense incident to switching a carload of eggs there. Similarly, there is not a shred of testimony among all the voluminous data presented to the Commission showing the expense of switching a car of livestock to the Union Stock Yards out of a consolidated train sent to the Ashland Avenue yards of the Chicago Junction, by comparison with the cost of switching the car a few blocks in the other direction, to Swift's sidetrack.[2]

---

[2] The "cost studies" included in Exhs. 50-52 (R. 1856-1867) do not consider or show line-haul rates; they set up no comparative costs of switching services; and they only purport to show switching costs within the Chicago Switching District for the two carriers having by far the longest haul from their break-up yards to the stock yards area (R. 952-971, 976-982). (The distance from the Milwaukee's Bensenville Yard to the Union Stock Yards is 27 miles, from the Proviso Yards of the Chicago & North Western it is 18 miles (R. 69).) The engine hour costs are divided into the number of cars in the switching movement to get the cost per car. This, obviously, shows (a) nothing as to the difference in the costs of switching a car of eggs to Swift's sidetrack as compared with the cost of switching a car of livestock to the same sidetrack, and (b) nothing as to the difference in cost of switching a car of livestock to the Union Stock Yards as compared with switching a car of livestock to Swift's sidetrack.

It was said in the Commission's Motion to Affirm (p. 10) that "the record reveals (Exhibit 50-52) that the carriers receive no revenue on the basis of the line-haul rates that would allow them to pay the switching charge." This comment misapprehends both the contents of the cited exhibits and the direction of appellant's argument, which on this point is based on Assignment of Error 31, R. 216.

The short of the matter is that the Commission's negative conclusion as to the lack of showing of unreasonableness of the high additional switching charge of $39.24 per car, assessed only against livestock delivered to sidetracks, is not only unsupported by any subsidiary findings on which that ultimate conclusion can be rested, it is likewise unsupported by any evidence in this record, or—we submit with assurance—by any evidence which could be adduced in any other proceeding.

Of course we do not for a moment concede that any additional switching charge assessed only against livestock delivered to sidetracks, however reasonable in and of itself, however well supported by evidence and subsidiary findings, could possibly be lawful. Even a reasonable charge so limited would be unjustly discriminatory and unduly prejudicial in violation of numerous provisions of the Interstate Commerce Act, as we go on to show under Point II, *infra*, pp. 63-89. But we think it is highly significant that no appellee up to now has undertaken to defend the reasonableness *per se* of the high additional switching charge now in question, either by pointing out the existence of the criteria which would establish such reasonableness, or by reasoned argument in support of that charge's present level. This pointed omission serves both to introduce—and to underscore—our next contention, *viz.*, that the present switching charge was and is designed as a penalty, rather than as an honest fee measured by the cost of services to be rendered.

B. The high additional switching charge assessed only against livestock delivered to sidetracks was intended as, and understood to be, a prohibitive penalty.

The reason why the Commission's finding as to the reasonableness of the amount of the high additional switching charge assessed only against livestock delivered to sidetracks is unsupported either by subsidiary findings or by evidence as to the cost of the switching service involved

in such delivery is not hard to find: That amount, now $39.24 per car, was not and is not based on cost of service, but was and is placed thus high in order that this kind of service would never be demanded. It was intended to be and is a prohibitive penalty, to preclude such service ever being asked or rendered. And the Commission's report shows on its face that the Commission itself fully understood and appreciated—and approved—this aspect of the switching charge.

As we have shown, the Commission found that the delivery to Swift of "even 18 cars of livestock daily"—the average of Swift's direct shipments—"would considerably delay and burden defendants' operations" (R. 74-75). Moreover, the Commission placed great stress on the circumstance that plant delivery of livestock to packers generally "would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally." See pp. 33-34, *supra*. To the extent that the Statement herein and the Commission's report fail to convey the full details of the disruption thought by certain of the witnesses to result from compliance with the anti-discrimination provisions of the Interstate Commerce Act, the intervening appellees' briefs will doubtless, as they did in the court below, supply any lurid touches that may have been overlooked. The significant point for present consideration is that the Commission, which found that the claimed disruption would occur, made no move to preclude its occurrence. Instead, it found (R. 80-81):

> The published switching charge is appropriate for any switching that may occur of cars of livestock to complainant's proposed plant. *It does not appear that the maintenance of a switching charge for livestock will have any detrimental effect upon terminal operations.*

We have ourselves italicized the last sentence, because it proves our point: Maintenance of a high additional switching charge assessed only against livestock consigned to sidetracks will prevent disruption because it will keep live-

stock from being shipped to sidetracks. Plainly, therefore, the switching charge operates as a prohibitive penalty, and the Commission knew it and so stated. The truth of our contention that the present switching charge of $39.24 per car of livestock is not an honest charge, measured by the cost of services rendered, is thus established by the Commission's report itself.

C. By upholding the switching charge on livestock, the Commission was covertly sanctioning precisely the same prohibition against shipment of livestock which, when frankly proposed by the railroad, the Commission in the companion case held to be "not just and reasonable".

We recognize, of course, that terminal operations may well be regarded as a subject peculiarly within the competence of a body "appointed by law", "informed by experience", and dedicated to the public interest in the removal of unlawful discriminations. Consequently, if the Commission had, in furtherance of the National Transportation Policy, *infra*, p. 142, "to promote safe, adequate, economical, and efficient service," determined that it was essential to "efficient and expeditious terminal operations generally" (R. 71) to prohibit altogether livestock shipments into a particular area, we should have a very different case. A court might well hesitate before setting aside such an order. But no such order is involved here.

To the contrary, when the Chicago Junction Railway proposed to take the precise step which would avoid the disruption which was testified to and which the Commission found would result in interference, delay, and disruption in terminal transportation operations, the Commission denied the Junction permission to do so.

The Junction proposed (R. 59) "to specifically exempt livestock from the traffic which it will transport and to cancel the application on livestock of all switching charges published by it, except to and from chutes and sidings at the Union Stock Yards." In other words, the Junction

undertook to prohibit entirely the precise kind of traffic which on the Commission's reasoning would result in disruption, and to restrict itself to its existing method of delivering livestock, *viz.*, to the chutes of the Union Stock Yards. Did the Commission seize upon this opportunity to prevent the possibility of destructive disruption? It did not. It said (R. 77) that "The proposed complete exemption of livestock from transportation by the Junction under any circumstances is not justified." It pointed out (R. 80) that "The Junction provides for switching charges on 'all carload freight.' That provision, without qualification, includes livestock. There is therefore a holding out by the Junction to switch livestock to and from industries, sidings, team tracks, and districts listed in the tariff." And, accordingly, the Commission found (R. 81),

> that the proposal to specifically exempt livestock from the traffic which will be transported by the Junction at Chicago and to cancel the application on livestock of switching charges, except to and from chutes and sidings at the Union Stock Yards at that point, is not just and reasonable.

The result of the foregoing is that the Commission in this case is enforcing a penalty—"It does not appear that the maintenance of a switching charge for livestock will have any detrimental effect upon terminal operations"—in a situation where it has specifically ruled that an unequivocal prohibition is "not just and reasonable."

It follows that, if Swift cares to spend $254,628.36 annually—6489 cars a year at $39.24 per car—it is entirely free "seriously [to] interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally" (R. 77)—and, under the order of the Commission and the ruling of the court below, such a course would be perfectly lawful. That conclusion, obviously, makes neither good sense or good law. If what Swift sought was against the public interest, it should not be permitted at any price.

The Commission's report does not, doubtless because it can not, face this inherent infirmity in the orders made. The court below, ignoring repeated admonitions of this Court,[3] wrote no opinion to explain or justify the result, an omission which is the more disturbing where, as here, the case comes to this Court on direct appeal as of right, without any further sifting or clarification of the issues involved. The intervening appellees ignored the inconsistency in their motion to affirm. And the position of the Commission's legal representatives, as disclosed in this Court, is even more tongue-in-cheek than the Commission's original report.[4]

D. Being a penalty and not a compensatory exaction, the high additional switching charge assessed only against livestock delivered to sidetracks is unreasonable per se and therefore illegal.

The present case will not be the first instance where the courts have prevented the Interstate Commerce Commission from doing indirectly what it could not lawfully do directly.

In *Interstate Commerce Commission* v. *Mechling*, 330 U. S. 567, one of the grounds on which the setting aside of the Commission's order was affirmed was that the regulatory agency had attempted to produce indirectly a result which Congress had forbidden to be done directly. In the language of this Court (330 U. S. at 577-578)—

> Recognizing that it could not require these barge carriers to raise these inbound rates which it accepted as reasonable, the Commission has here approved an order which would bring about the same prohibited

---

[3] *Cleveland, etc., Ry.* v. *United States*, 275 U. S. 404, 414; *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U. S. 74, 86-87, and cases there cited.

[4] "The Commission will not, and should not be required to resort to legalistic thinking as a substitute for the application of reason to practical problems. While the charge was entirely reasonable for the service the Commission knew that it would be availed of when Swift had special need to have livestock moved in that way." I. C. C. Motion to Affirm, p. 19.

result by raising the railroad rates charged by eastern roads for ex-barge grain shipments east from Chicago. Congress has forbidden this.

In *Palmer* v. *United States*, 75 F. Supp. 63 (D. D. C.), already cited in another connection, where the court had under consideration the Commission's order in *Increased Per Diem Charge on Freight Cars*, 268 I. C. C. 659, the issue was whether, wholly apart from fixing reasonable remuneration for car ownership—*i. e.*, the charge that the using carrier must pay the owning carrier for the use of the latter's cars—the Commission had power to increase the established per diem charge so as to make that charge an instrument of regulation to control the prompt movement and return of foreign freight cars. The district court, *per* Prettyman, Circ. J., held that the Commission had no such power, saying *inter alia* (75 F. Supp. at 67, 68, 75):

> While the determination of proper compensation is a phase of the regulation of use, it is a specific power with definite characteristics and limitations. It is not an elastic concept adaptable in amount for use for other regulatory purposes. • • •
>
> • • • • •
>
> The penalty or incentive characteristic of the per diem is merely an inherent quality of a charge based upon time. Reference to that quality is not equivalent to saying that a rental can, by a prohibitive amount, be made an instrument of compulsion. An inherent quality of its reasonable amount is one thing, but an indefinite expansibility of its amount for regulatory purposes is quite another.
>
> In the second place, in its ordinary and generally-accepted meaning, "reasonable compensation" does not include amounts in addition to actual remuneration. The term is a widely-used and familiar expression, not unlike expressions such as reasonable salaries, reasonable rents, reasonable prices. We know of no departure from the concept that they are based on an equivalence with the thing or service given. "Reasonable compen-

> sation for use," does not convey a prohibitory or regulatory idea.
>
> * * * * *
>
> We hold that the statutory authority to fix reasonable compensation for the use of cars does not empower the Commission to establish, solely for general car-service regulatory purposes, rentals in excess of any purported reasonable recompense to the owner.

The Commission did not appeal the adverse judgment in the case cited; which is to say, it confessed correctness.

The considerations outlined in the *Mechling* and *Palmer* cases are fully applicable here. The Commission lacks the power to approve an admittedly unreasonable charge, since to do so would violate Section 1(5). Here it is not necessary to argue the rate level, since the Commission's own report (R. 80-81) frankly admits that the high additional switching charge assessed only against livestock delivered to sidetracks is a penalty. Hence that charge is unreasonable *per se,* and illegal. Indeed, the present case is more flagrant than those just discussed, for here the Commission itself has, in the same report, specifically declined to sanction directly the precise step of preventing all sidetrack delivery of livestock which, with the same breath, it is now sanctioning indirectly through the approval of an excessively high switching charge. We doubt if the files of this Court, or, indeed, the history of American administrative law, will disclose a similar admission on the part of any regulatory agency of the kind of covert regulation undertaken in this case and now sought to be defended.

II. THE HIGH ADDITIONAL SWITCHING CHARGE ASSESSED ONLY AGAINST LIVESTOCK DELIVERED TO SIDETRACKS VIOLATES NUMEROUS PROVISIONS OF THE INTERSTATE COMMERCE ACT.

Our next point is that the switching charge of $39.24 per car, which is assessed only against livestock delivered to sidetracks, in addition to being unreasonable—or, *arguendo*, even assuming it to be reasonable standing alone[5]—is discriminatory and prejudicial in violation of numerous sections of the Act.

A. The switching charge violates Section 3(1) of the Act because it is unduly and unreasonably prejudicial to livestock.

The present switching charge violates Section 3(1) of the Act (*infra*, p. 145), because it subjects livestock consigned to Swift's sidetrack to an undue prejudice as compared with other species of traffic consigned to the same point, in violation of the provision that carriers shall not subject "any particular description of traffic" to such a disadvantage. Livestock consigned to Swift's sidetrack from any point must pay a switching charge of $39.24 a car in addition to the line-haul rate, while all other freight consigned to the identically same track, including eggs and perishables, pays only the line-haul rate, without more, regardless of what switching may have been involved within the Chicago Switching District.

---

[5] It was early recognized that "a charge may be perfectly reasonable under section 1 [now Section 1(5)], and yet may create an unjust discrimination or an unreasonable preference under sections 2 and 3." *Interstate Commerce Comm.* v. *Baltimore & O. R. Co.*, 145 U. S. 263, 277.

Accord: "Both rates may lie within the zone of reasonableness and yet involve unjust discrimination." *American Express Co.* v. *Caldwell*, 244 U. S. 617, 624. "Both rates may lie within the zone of reasonableness and yet result in undue prejudice." *United States* v. *Illinois C. R. Co.*, 263 U. S. 515, 524.

As we have shown, the switching charge on livestock so consigned is not based on the need for expeditious handling, for perishables are not subject thereto, nor is it based on fragility, as eggs likewise are delivered free from any switching charge. We have also shown that the switching charge was intended to prevent, and was found by the Commission to be effective for the purpose of preventing, the shipment of livestock to Swift's sidetrack.

The result is a clear violation of Section 3(1), as it has long been settled that railroads can not lawfully single out and exclude a particular commodity from the traffic transported by them as common carriers over their lines to a particular destination. *Louisville & Nashville R. Co.* v. *United States*, 238 U. S. 1; *Louisville & Nashville R. Co.* v. *United States*, 242 U. S. 60, 74; *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; *Interstate Stock-Yards Co.* v. *Indianapolis U. Ry. Co.*, 99 Fed. 472, 493 (C. C. D. Ind.). As this Court said in the case first cited (238 U. S. at 19):

> Having made the Yard a facility for many purposes and to many patrons, such railroad facility is within the provisions of § 3 of the statute which prohibits the facility from being used in such manner as to discriminate against patrons and commodities. The carriers cannot say that the Yard is a facility open for the switching of cotton and wheat and lumber but cannot be used as a facility for the switching of coal. Whatever may have been the rights of the carriers in the first instance; whatever may be the case if the Yard was put back under the protection of the proviso of § 3, the Appellants cannot open the Yard for most switching purposes and then debar a particular shipper from a privilege granted the great mass of the public. In substance that would be to discriminate not only against the tendering railroad, but also against the commodity which is excluded from a service performed for others.

Obviously there is no difference in substance between an absolute refusal to deliver livestock at the line-haul rate,

such as was involved and condemned in *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, and a refusal to deliver livestock except upon payment of a prohibitive—and admittedly effective—penalty, which is the situation here. In either event, livestock is being subjected to an illegal disadvantage.

The only portions of the Commission's report which even bear on Swift's contention that livestock as a commodity was being subjected to undue prejudice and disadvantage are those which suggest (R. 65) that "The measure of the transportation services rendered shipments of live animals is substantially greater than that accorded dead freight," those stressing the delicate nature of livestock (R. 73), and those dealing with the carriers' obligations under the Federal 28-hour law (45 U. S. C. 71-74, *infra*, pp. 147-149) (R. 64).

There are several answers to these suggestions.

First. 37% of the trains carrying livestock to the Union Stock Yards—which means substantially more than 37% of the livestock so carried, see pp. 20-21, *supra*—are consolidated trains, carrying livestock and dead freight, with the result that switching and "set outs" are necessary to get that livestock to the unloading chutes (R. 62-63). Yet neither the Union Stock Yards nor its consignees are subjected to the $39.24 per car switching charge in respect of the livestock so switched.

Moreover, considerable switching of livestock takes place long before any livestock reaches the Chicago Junction's tracks. For, although the Commission significantly failed to advert thereto, it is the fact that even the trains for the Union Stock Yards which consist of livestock exclusively are made up at the several line-haul carriers' break-up yards from mixed trains arriving at Chicago (R. 609, 634-635, 649-650, 675-676, 692). In many instances, too, considerable switching takes place before arrival in the Chicago Switching District (R. 634-635, 649, 675-676). But, while the Commission's report expounds at some length the

delicate nature of livestock and the need for special handling in connection therewith (R. 73), that report nowhere undertakes to explain why or in what respect the livestock proposed to be switched to Swift's sidetrack is so much more fragile than those remarkably sturdy animals which the carriers switch out of consolidated trains, sometimes twice within the Chicago Switching District, for delivery at the Union Stock Yards or to the carriers' team tracks in Chicago (Ex. 17, R. 1101-1102), that the former involves an additional charge of $39.24 for each car so switched, while the latter costs nothing beyond the line-haul rate. Nor does the record reflect any data as to the relative stamina of the two groups of livestock, although the Commission has ruled that the livestock destined to Swift's sidetrack must pay the switching fee, while the livestock consigned to the Union Stock Yards or to the carriers' team tracks, does not.

Second. It is also the fact that other fragile and perishable commodities, notably eggs and live poultry, also require a substantially greater measure of transportation services than that accorded other dead freight. See p. 54, *supra*, for the statistics relative to the staggering extent of claims for damages to egg shipments. But such other commodities are not subjected to any switching charge when delivered to the same Swift sidetrack (Ex. 10 at R. 1058-1060).

Third. With respect to the 28-hour law, that law—or its predecessor—has been specifically held not to justify a Section 3(1) discrimination against livestock. See *Interstate Stock-Yards Co.* v. *Indianapolis U. Ry. Co.*, 99 Fed. 472, 483, *supra*. Moreover, every delivery of livestock throughout the land is subject to the 28-hour law, whether the animals being carried are consigned to the Union Stock Yards, to Swift's sidetrack at the Omaha plant in Chicago, to the several carriers' team tracks in Chicago (Ex. 17, R. 1101-1102), or to the sidetracks at the many packing plants throughout the entire country which are listed in Exhibits 10 and 12 (R. 1063-1069, 1083-1090).

Fourth. There is a longer technical answer which is equally conclusive.

In *Omaha Live Stock Exc.* v. *Chicago & N. W. Ry. Co.*, 178 I. C. C. 1, 14, and again in *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 542, the Commission specifically declared that the basic livestock rates which it prescribed and which are now in effect (plus general increases subsequently authorized) were placed by it on a level adquate to compensate for the receipt, line-haul transportation, and delivery of livestock to all points. The Commission on these occasions said (178 I. C. C. at 14):

> Those rates have been designed, not only to afford uniformity and equality as between shippers and as between markets, but they have also been designed to cover, not only line-haul service, but also terminal service involving both receipt of shipments at points of origin and their delivery at destination.

And again (219 I. C. C. at 542)—

> * * * the through rates prescribed in the latter proceeding [*Livestock—Western District Rates*, 176 I. C. C. 1] were designed to cover the cost of normal terminal services, including unloading charges.

Next, carriers need not pay for the service of unloading livestock delivered to a private sidetrack, while they are required to absorb such charges, out of the line-haul rate, in respect of livestock delivered at a public stockyards such as the Union Stock Yards; this follows from the terms of Section 15(5) of the Act, *infra*, p. 145. Moreover, the Commission has held that the railroads are not required, without extra charge, to unload and reload livestock at intermediate points as required by the 28-hour law when destined for delivery to a private sidetrack. *Cudahy Packing Co.* v. *Atchison, T. & S. F. Ry. Co.*, 234 I. C. C. 569. This has the effect of relieving the carriers of the cost of an intermediate service in respect of deliveries of livestock to pri-

vate sidetracks which the carriers must assume in the transportation of livestock to public stockyards. And, finally, the Commission has specifically held that the line-haul rates on livestock are adequate to cover delivery to Swift's sidetrack at the Omaha Packing Co. location on the rails of the Burlington. *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 546, 547 (Fdg. 10), 548.

The result is that, under the Commission's own rulings, there are specific findings that (1) the line-haul rates are intended to and do cover all transportation services necessary to the delivery of livestock to private sidetracks, and (2) that such transportation services involve less expense to the carrier than do similar shipments to public stockyards, in two respects, *viz.*, unloading and reloading in transit, and unloading at destination. Consequently, the Commission's attempts on general principles to justify the switching charge here in question, which is directed solely against livestock delivered to sidetracks, breaks down completely, and the discrimination against livestock as a commodity is revealed in all its stark inequality.

We do not now urge a further violation of Section 3(1), to the effect that the carriers discriminate against appellant with respect to delivery of livestock at points on their lines other than Chicago. To pursue this contention would involve inquiry as to whether conditions at these other points, where one or more of the railroad appellees here effect delivery of livestock at the flat line-haul rate to the sidetrack of the packer concerned, are similar to or different from those obtaining at Chicago. We call attention here to these other sidetrack deliveries of livestock without switching charges simply to show that what Swift is seeking in this case is no novelty, but that on the contrary the delivery of livestock to the sidetracks of meat packing companies is the normal practice throughout the United States. See Ex. 10 (at R. 1063-1069), offered by appellant, and Ex. 12 (R. 1083-1090), introduced by the railroad appellees, which together include substantially all of the important meat pack-

ing points in the nation, with the sole significant exception of the packing plants on the rails of the Chicago Junction. The consignees at all of these points get what Swift is seeking here, *viz.*, sidetrack delivery of livestock at the line-haul rate.

B. The switching charge violates Section 2 of the Act because it results in different rates for shipments of the same commodity, over the same line, for the same distance, under the same circumstances of carriage.[6]

Section 2 of the Act (*infra*, pp. 144-145) forbids rebates and similar devices and likewise forbids the receipt of different compensation "for doing * * * a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions * * *".

The construction of this provision was fixed soon after its passage. See *Wight* v. *United States*, 167 U. S. 512, 518, where the Court said:

> It was the purpose of the section to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor.
>
> It may be that the phrase "under substantially similar circumstances and conditions," found in section 4 of the act, and where the matter of the long and short haul is considered, may have a broader meaning or a wider reach than the same phrase found in section 2. It will be time enough to determine that question when

[6] Interveners contend (Motion to Affirm, p. 7, n. 4) that appellant can not raise here any issue under Section 2 because that provision was not mentioned in the complaint before the Commission. But the Commission's report states clearly that the legality of the switching charge is the issue (R. 59), and Section 2 obviously bears thereon. Consequently, interveners' contention is completely disposed of by the undoubted proposition that it is not necessary to plead law in a proceeding before the Commission. *Chicago, R. I. & P. Ry. Co.* v. *United States*, 274 U. S. 29, 36-37; *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55, 56.

it is presented. For this case it is enough to hold that that phrase, as found in section 2, refers to the matter of carriage, and does not include competition.

The foregoing standard represents the settled rule for the interpretation of Section 2, both in the decisions of this Court (*Interstate Commerce Comm.* v. *Alabama M. R. Co.*, 168 U. S. 144, 166; *Interstate Commerce Comm.* v. *Baltimore & O. R. Co.*, 225 U. S. 326, 341-342; *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57, 62) and in the rulings of the Commission (*Import Rates on Manganese Ore*, 25 I. C. C. 663, 668; *Pacific Lumber Co.* v. *Northwestern P. R. R. Co.*, 51 I. C. C. 738, 760; *Lawrenceville Cooperage Co.* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 773, 781-782; *R. C. Williams & Co., Inc.* v. *New York Central R. Co.*, 269 I. C. C. 297, 300).

We propose to show that, as a matter of fact, the transportation of livestock to the Swift sidetrack for the line-haul rate plus $39.24 per car switching fee, while similar transportation of the same commodity to the Union Stock Yards is made at the line-haul rate without any switching fee, involves a like and contemporaneous service under the same circumstances of carriage. Thereafter we will go on to show that, as a matter of law, nothing in this record justifies the resultant discrimination.

(i) *As a matter of fact, this case involves like and contemporaneous service under the same circumstances of carriage.*

First. About half of the livestock arriving at the Union Stock Yards by rail represents direct shipments, already owned by the consignees, and is consigned there because such consignees prefer to accept delivery through those facilities (Ex. 28, R. 1117). Among such consignees are Armour & Company, Wilson & Company, and some 20 or so others who, like Swift, operate meat packing plants in or adjacent to the Stock Yards areas, and so are competitors of Swift (R. 947-948; Ex. 29, R. 1118-1121).

Second. A car of livestock consigned to one of Swift's competitors at the Union Stock Yards, and one consigned to Swift at its private sidetrack, follow precisely the same rail movement from point of origin, to the several line-haul carriers' break-up yards in the Chicago Switching District, to the eastern limits of the Junction's Ashland Avenue yards, for precisely the same distance (R. 283-285, 476-478, 480-482, 505, 506-507, 684-685). Beyond this point, as the map, Exhibit B (*infra*, p. 150) shows, the distance to Swift's sidetrack on the Junction is somewhat less than to the Union Stock Yards' unloading pens, also on the Junction; so that the total distance over which the car of livestock would be transported to Swift's sidetrack from point of origin would normally be slightly less than the distance over which a competitor's car of livestock would be transported to the Union Stock Yards from point of origin. But for this slightly shorter journey, Swift must under the Commission's ruling—now sustained by the court below—pay an extra switching fee of $39.24 per car over and above the amount paid by its competitors at the Union Stock Yards.

Third. As has already been pointed out in the discussion of Section 3(1), substantially over 37% of the livestock arriving at the Union Stock Yards by rail arrives in consolidated trains; such livestock requires additional switching and "set outs" beyond the simpler operation involved in delivering to the same point trains containing livestock exclusively; and even as to the latter deliveries, substantial switching is involved before and after arrival in the Chicago Switching District. See pp. 17-21, *supra*. Yet there is no switching charge for the livestock delivered to Swift's competitors at the Union Stock Yards, whether in consolidated trains or otherwise, while cars proposed to be delivered to Swift at its own sidetrack a few city blocks distant, are subject to such a charge in the amount of $39.24 per car.

Fourth. The services performed at the Union Stock Yards in respect of livestock consigned there, for which yardage fees are charged and paid, are not comprehended within "carriage" or "transportation" by rail. In *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, the Commission held that the carriers were required to deliver livestock at the pens of the Union Stock Yards on the Junction rails without any terminal charge in addition to the line-haul rates (which latter had previously been prescribed in *Livestock—Western District Rates*, 176 I. C. C. 1). Subsequently, the Commission ruled that the transportation of direct shipments of livestock "ends when the livestock has been unloaded into the unloading pens at the Union Stock Yards" (*Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179, 196), and this Court held, sustaining the Commission, that it had "properly decided that transportation ended when the livestock reached the unloading pens" at the Union Stock Yards. *Swift & Co.* v. *United States*, 316 U. S. 216, 231. Since Section 2 relates only to "the matter of carriage", see *Wight* v. *United States*, *supra*, 167 U. S. at 518, it follows that any yardage charges paid after transportation has ended are not factors which may properly be considered in determining whether the carriers are providing that equality of rates for like services which Section 2 enjoins upon them.

(ii) *As a matter of law, Section 2 applies to all deliveries in the same terminal or switching district.*

The foregoing facts bring the present case squarely within the decisions which hold that Section 2 applies to all deliveries within the same terminal or switching district. *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57, sustaining the Commission's report in *Richmond Chamber of Commerce* v. *Seaboard A. L. Ry.*, 44 I. C. C. 455; *Albers Bros. Milling Co.* v. *Great Northern Ry. Co.*, 256 I. C. C. 491; *Minneapolis Traffic Assn.* v. *Chicago & N. W.*

Ry. Co., 266 I. C. C. 729; *Williams Lime Mfg. Co.* v. *Southern Ry. Co.*, 279 I. C. C. 561.

The *Richmond* case involved a situation where, when freight was received at a point served by any two or more of the carriers concerned, the switching charge was absorbed if the freight was delivered on the line of either, but not if delivery was to an industry served only by a non-competitive carrier. The Commission found that these practices involved an unlawful discrimination under Section 2, saying (44 I. C. C. 455, 464-466):

> Section 2 is primarily directed against discrimination between shippers located in the same community. It is aimed to put all shippers within a switching district upon a substantial equality. * * *
>
> * * * where the industries are situated within the switching district of the same city and are substantially equidistant from the respective interchange tracks, we are of the opinion that the service which the line-haul carrier renders, whether the traffic is ultimately destined to industry B or industry C, is like service within section 2. It is the line-haul movement which that section primarily contemplates. Where the short delivery service within the switching district is substantially the same in either instance, we are of the opinion that the line-haul carrier is receiving a greater compensation from one shipper than from another for a like service when it absorbs the switching charges of one switching line and not those of another.

That determination was sustained by this Court in *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57, 62, the Court saying:

> We are of the opinion that the Commission was correct in regarding the service in question as a like and contemporary service rendered under substantially similar circumstances and conditions, and amply sustained as matter of law in *Wight* v. *United States*, 167 U. S. 512 * * *.

Here, as in the *Richmond* case, Swift and the Union Stock Yards are on the lines of the same carrier, the Chicago Junction, and within the same switching district; and the distance from the interchange point to Swift's sidetrack is slightly less than to the Stock Yards pens (*supra*, pp. 15-16). Application of the *Richmond* rule, therefore, would have produced a result quite the opposite of that actually reached by the Commission in the present case.

The *Richmond* rule, *viz.*, that Section 2 applies to all deliveries within the same switching district, was followed by the Commission in *Albers Bros. Milling Co.* v. *Great Northern Ry. Co.*, 256 I. C. C. 491; it was followed by the Commission in *Minneapolis Traffic Assn.* v. *Chicago & N. W. Ry. Co.*, 266 I. C. C. 729, 768; and it was again applied by the Commission, after its ruling in the present case, in *Williams Lime Mfg. Co.* v. *Southern Ry. Co.*, 279 I. C. C. 561. Thus, so far as the Interstate Commerce Commission is concerned, the *Richmond* rule is law everywhere except on the tracks of the Chicago Junction when livestock is being delivered to sidetracks.

In the *Williams Lime Mfg. Co.* case, to take the latest example, complaint was made because the defendant carriers failed to accord the flat Knoxville rates on inbound shipments of coal, and outbound shipments of lime, crushed stone, and cement, to and from complainant's plant at South Knoxville, while according such rates to other industries within the Knoxville industrial area. The Commission found that there was no undue prejudice in violation of Section 3(1), and further found that the rates were not unreasonable in violation of Section 1(5). But it found that there was none the less an unjust discrimination in violation of Section 2, because (279 I. C. C. at 566):

> The Southern receives its published charge for switching Louisville & Nashville line-haul traffic to industries at present accorded Knoxville rates and it is entitled to reasonable compensation for such service, but since the service performed to and from complainant's plants is shown to be substantially the same

as that performed for the Louisville & Nashville in connection with like traffic on which the Southern's charge is absorbed by the Louisville & Nashville, there is no sound basis for greater charges on the complainant's traffic than on like traffic accorded the Knoxville rates. See *Albers Bros. Milling Co.* v. *Great Northern Ry. Co.*, 256 I. C. C. 491, at pages 498 and 499.

An order was entered accordingly.

Barringer & Co. v. *United States*, 319 U. S. 1, is not to the contrary. That case dealt with tariffs which eliminated a loading charge on cotton moving from points in Oklahoma to certain points on the Gulf of Mexico, while retaining it on cotton moving to the Southeast. The question was whether the Commission erred in refusing to set aside those tariffs. See *Loading Cotton in Oklahoma*, 248 I. C. C. 643. Since the cotton shipments involved were destined to different rate territories, and moved over different railroads at different rate levels to reach their destinations, the case obviously did not involve the Section 2 situation of "shipping over the same line, the same distance, under the same circumstances of carriage" (*Wight* v. *United States*, 167 U. S. 512, 518, *supra*). Therefore, while the *Barringer* case is authority for the proposition that the rates there considered were not unduly prejudicial in violation of Section 3(1), anything therein said as to the effect of Section 2 is, we submit with deference, mere dictum.

In view of the Commission's rulings, cited above, pp. 72-73, to the effect that Section 2 applies to all deliveries within the same terminal or switching district, and its other line of cases, holding that Section 2 does not apply where the deliveries in question have been over different lines (*Philadelphia Commercial Traffic Mgrs.* v. *Baltimore & O. R. R. Co.*, 104 I. C. C. 173, 177; *Richfield Oil Corp. of N. Y.* v. *Central R. Co. of N. J.*, 232 I. C. C. 505; *Gar Wood Industries, Inc.* v. *Alton & S. R.*, 263 I. C. C. 611, 616; *Mobile Traffic Assn.* v. *Georgia & F. R.*, 266 I. C. C. 483, 488; *R. C.*

Williams & Co., Inc. v. *New York Central R. Co.*, 269 I. C. C. 297, 300), it follows that the Commission's standards for the applicability or otherwise of Section 2 have hardened into fixed rules to such an extent that deviation from those rules for the purposes of a particular case involves the exercise, not of an informed discretion, but of arbitrary action contrary to law.

We submit, therefore, that the present case, which involves deliveries within the same switching district after movements over the same lines, falls within Section 2 as a matter of law.

(iii) *As a matter of law, the existence or non-existence of trackage contracts can not justify or excuse violations of Section 2.*

The only possible distinction in this record between the physical delivery of livestock to Swift at its own sidetrack and to Swift's competitors at the Union Stock Yards is that, under trackage agreements, the movement from the east end of the Ashland Avenue yards to the chutes of the Union Stock Yards is performed by motive power of the line-haul carrier, while to the Swift sidetrack it is performed by motive power of the Junction. (R. 60, 72.)

We submit that, under well-settled principles, the mere fact that the Junction elects to permit line-haul carriers to effect delivery from the eastern end of the Ashland Avenue yard to the Union Stock Yards by their own motive power, for a trackage charge, while with respect to deliveries of the identical commodity to Swift's sidetrack, it agrees with the line-haul carriers to perform the switching service by Junction motive power, is not sufficient to take the resultant disparity rates out of the anti-discrimination rule laid down by Congress in Section 2.

For, obviously, no voluntary agreement can be permitted to justify discrimination or to relieve carriers from the substantive requirement of equal treatment of shippers prescribed by Section 2 and a multitude of other provisions of

he Interstate Commerce Act. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, and cases there cited. And rackage agreements are simply voluntary agreements between carriers under which one carrier is permitted to perate its motive power and move its cars over the tracks f another carrier. Consequently, as the Commission itelf has pointed out, "Trackage arrangements have been onsidered by the Commission in a number of cases, in one of which have we ever allowed the contracting carriers under cover thereof to work unjust discrimination gainst shippers or localities." *Huerfano Coal Co.* v. *Colorado & S. E. R. R. Co.*, 41 I. C. C. 657, 659, citing many rulngs. Or, as was said in *Benton Coal Mining Co.* v. *Chicago, B. & Q. R. R. Co.*, 63 I. C. C. 396, 399: "We have epeatedly held that trackage arrangements can not be sed as a cloak to cover unjust discrimination."

This Court's holdings are to the same effect. In *United tates* v. *Pennsylvania R. Co.*, 266 U. S. 191, it was specifically held that neither the existence nor the absence of rackage rights could justify an unjust discrimination therwise prohibited by Section 2. And in the recent case f *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, was ruled that a railroad, operating over a portion of rack owned by another, could not justify discriminatory ractices in reliance on the covenant to discriminate conained in the very trackage agreement pursuant to which used the track segment in question.

It is no answer for the appellees to urge that Swift may onsign its livestock to the Union Stock Yards and there e free of the $39.24 per car switching charge. For then s livestock would be subject to yardage fees, which are ot included in transportation and which the Commission as no power to regulate. *Swift & Co.* v. *United States*, 16 U. S. 216. And of course, when Swift seeks delivery o its own sidetrack, delivery to the Union Stock Yards ould not be a good delivery. *North Penn. Railroad* v. *Commercial Bank*, 123 U. S. 727. The essential vice of the

Commission's ruling is that, through the operation of the high switching charge, it enforces delivery of livestock to the Stock Yards, the owner of the Junction property, thus enriching the Union Stock Yards & Transit Co. by the collection of fees for stockyards services which are neither necessary nor desired where a consignee is in a position to take delivery on his own sidetrack. Consequently, from still another aspect, the Commission again does indirectly what would not be lawful if done directly.

To the extent that delivery of livestock at Swift's sidetrack requires Swift to bear the cost of unloading, while when livestock is delivered at the Union Stock Yards the carriers are required to absorb that cost, the ensuing differentiation results from the terms of Section 15(5) of the Act (*infra*, p. 145), and so is lawful. But beyond that, the discrimination whereby Swift must pay $39.24 more per car of livestock than its competitors do, where both ship from the same point of origin, over the same distance (except that to Swift's sidetrack the distance is slightly less) and under identical circumstances of carriage except for the ownership of the final switching engine, is clearly unlawful by reason of Section 2.

(iv) *Where discrimination is plain, there is no room for "expertise".*

The minutiae of the car movements over the last few city blocks of the aggregate distance involved are obviously immaterial, and are disposed of by what this Court said in *Mitchell* v. *United States*, 313 U. S. 80, 97:

> On the facts here presented, there is no room * * * for administrative or expert judgment with respect to practical difficulties. It is enough that the discrimination shown was palpably unjust and forbidden by the Act.

Here, as in the *Mitchell* case, the Commission has been guilty of pushing into view the burdens which the render-

ing of equal treatment might place on the carriers, and of putting out of view the palpable discriminations visited upon the users of the carriers' facilities. In both instances, the Commission's reports reflect an "expertise" that concentrated primarily on finding reasons for continuing clear and obvious discriminations.[7] Contrariwise, neither here (R. 58-81) nor in the *Mitchell* case (229 I. C. C. 703) do the majority views to the Commission's reports indicate the slightest zeal for wiping out what this Court has over many years repeatedly characterized as the principal target of the Interstate Commerce Act—"the evil of discrimination". *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740, 749-750; *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501, 512; *Mitchell* v. *United States*, 313 U. S. 80, 94; *New York* v. *United States*, 331 U. S. 284, 296; *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, 175; *Shreveport Rate Case*, 234 U. S. 342, 356. Indeed, the Commission's report in the present case and the contentions now made in its support echo the arguments, made by the Commission and rejected by this Court in *Henderson* v. *United States*, 339 U. S. 816, to the effect that "the railroads know best", and that factual determinations by the Commission as to what is and what is not discrimination are unassailable.[8]

---

[7] In the *Mitchell* case, the Commission concluded (*Mitchell* v. *Chicago, R. I. & P. Ry. Co.*, 229 I. C. C. 703, 711):

> * * * we find that the present colored-passenger coach and the pullman drawing room meet the requirements of the act; and that, as there is comparatively little colored traffic, and no indication that there is likely to be such demand for dining-car and observation-parlor car accommodations by colored passengers as to warrant the running of any extra cars or the construction of partitions, the discrimination and prejudice is plainly not unjust or undue. Only differences in treatment that are unjust or undue are unlawful and within the power of this Commission to condemn, remove, and prevent.

[8] See Brief for the Interstate Commerce Commission in the *Henderson* case, No. 25, Oct. T. 1949:

> On the sole basis of equal treatment, the Commission has long been regarded by the courts as possessed of an informed judgment, needed for such decisions. (p. 58) * * * Only a vivid imagination could discover

C. The switching charge violates Section 1(9) of the Act because it prevents the switch at appellant's sidetrack from being operated without discrimination.[9]

Section 1(9) of the Interstate Commerce Act (*infra*, pp. 143-144) provides in pertinent part that

> Any common carrier subject to the provisions of this part, upon application of * * * any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any * * * private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper.

All of the requirements laid down in the statute have been complied with. The switchtrack in question is now and has been in operation for many years (R. 65, 268, 270-

---

inequality in the treatment accorded colored interstate passengers as revealed by this record. (p. 59)

* * * * *

It is to be supposed that the carrier knows its business, what is economically best, and what the vast majority of its patrons prefer in equipment and service. (p. 67) * * * At least experienced and informed railroad officials regard segregation as essential to their business, in order to keep peace and order between the races. (p. 68)

* * * * *

Questions of violations of the Act and equality of treatment require decisions under the facts of each case, a function exclusively for administrative action, here the Commission. As long recognized by this Court, review of such fact decisions is very limited, and where there is a rational basis for the administrative judgment, courts do not interfere. (pp. 102-103).

[9] Although Section 1(9) was not specifically cited in the complaint before the Commission, it is available here for the reason set out in footnote 6, p. 69, *supra*: It is not necessary to p[illegible] law before the Commission, any more than before a court.

271, 276-277; Exs. 2-4, 6, 8, R. 1041-1045); it has been used for shipments of all dead freight, including perishables, to and from the Swift plant. That circumstance alone establishes that it furnishes sufficient traffic, besides which the livestock proposed to be transported in addition averages nearly 20 cars a day.[10] And Swift duly made application to have the switch operated without discrimination (Ex. 10 at R. 1047-1048).

Or, as Commissioner Alldredge said (R. 86),

> Inasmuch as Swift's track has already been connected and is proposed to be operated in the handling of cars containing other kinds of freight than livestock, it seems conclusive that all the conditions set forth in section 1(9) have been met. In that event, it is the duty of the Chicago River and Indiana Railroad Company to operate the track for all kinds of traffic, including livestock, without discrimination. That is clearly the obligation of the statute.

And, the learned Commissioner might have added, that is precisely how the Commission has construed the statute in every case—save this one alone—and notably in *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55, where it required the carriers, who were delivering every commodity except livestock over an existing sidetrack to Swift's plant at Cleveland, to operate the switch to that sidetrack without discrimination, and to deliver livestock as well. The Commission's order in that case was sustained by this Court in *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, reversing the district court, which had enjoined enforcement of the order. *Baltimore & O. R. Co.* v. *United States*, 71 F. Supp. 499 (N. D. Ohio).

A similar ruling was made by the Commission in *Trojan Scrap Iron Corp.* v. *Boston & M. R.*, 270 I. C. C. 727, where the railroad refused to provide transportation to and from

---

[10] Twenty cars a month was held sufficient traffic to support an order directing the railroad to perform switching service in *Trojan Scrap Iron Corp.* v. *Boston & M. R.*, 270 I. C. C. 727, 730.

industries on Front Street in Troy, N. Y., "because it regards the operation over the Front Street track as difficult and expensive." *Id.* at 728. The railroad made a considerable showing of operating difficulties, see 270 I. C. C. at 728-729, but the Commission held that neither practical operating difficulties nor congestion could excuse the refusal to switch loaded cars to the track in question. Indeed, in the case of *City of Milwaukee* v. *Chicago & N. W. Ry. Co.*, 279 I. C. C. 521, decided after the ruling complained of here, the Commission required the Milwaukee road to provide switching service to the city's harbor terminal even though such service involved crossing the North Western road's right-of-way, in the face of the latter's refusal to grant permission therefor. Except in the present case, accordingly, the Commission has never been in doubt as to its power to compel carriers to comply with the requirements of Section 1(9).

But it is contended by the appellees here that Swift is complaining only of the measure of the charge, which, they assert, is irrelevant to Section 1(9) (see answer of railroad interveners, par. XXXVI, R. 120), and, moreover, that since Swift can receive livestock at its sidetrack upon payment of the switching fee, there is no violation of the statutory provision (I. C. C. Motion to Affirm, p. 21; Interveners' Motion to Affirm, p. 10).

Such an interpretation of Section 1(9) would effectually eliminate that provision from the law. Under that view, a railroad might indeed operate a switch connection, but, by a discrimination of $100 per car between shippers—or, for that matter, of $39.24 per car—close the connection to a particular shipper just as effectively as if the switch connection itself had been physically torn up. The statute simply does not permit of any such reading. And, moreover, the words in Section 1(9), "without discrimination", are not modified by any of the elastic adjectives such as "undue" or "unreasonable" that are to be found in Section 3(1) of the Act.

Nor does the contention just set forth fully measure the extent of the Commission's disregard of the plain provisions of the Interstate Commerce Act. The Commission's report rests in substantial part on the supposed interest in the "expeditious centralized delivery" of livestock at the Union Stock Yards (R. 71). But Section 1(9) says nothing of "expeditious centralized delivery." To the contrary, it provides that, after a switch connection is in operation, and the one here in question has been operated for years, it then becomes the duty of the carrier to "furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper." The statute thus protects expeditious *decentralized* delivery at private sidetracks—a command which the Commission, and the court below, have completely disregarded.

Looking to the provisions of the Interstate Commerce Act as a whole, it is plain that Section 1(9) was intended in the nature of a charter of liberty for the owner of a private sidetrack, affording him direct access to the rail network of the nation. In its earlier decisions, particularly the one dealing with the discrimination practiced against the present appellant at Cleveland (*Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55), the Commission gave effect to this underlying purpose. The same can be said of its later rulings (*Trojan Scrap Iron Corp.* v. *Boston & M. R.*, 270 I. C. C. 727; *City of Milwaukee* v. *Chicago & N. W. Ry. Co.*, 279 I. C. C. 521). Only in the present case has the Commission failed in its duty of enforcing the purpose—and the plain provisions—of Section 1(9).

D. No decision of this Court sanctions the present switching charge, and United States v. Baltimore & O. R. Co., 333 U. S. 169, specifically condemns it.

Apart from the question whether present or future congestion can render lawful a discrimination as obvious as the one here involved—a matter which we discuss at length

under Point III, *infra*, pp. 90-104—we contend that no decision of any court (other than the ruling under review) gives any sanction to the high additional switching charge assessed only against livestock consigned to sidetracks, and that, to the contrary, it is specifically condemned by this Court's recent decision in *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169.

1. Appellees' position appears to be that the legality of the present switching charge was affirmatively sustained in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193. Thus, the Commission says (I. C. C. Motion to Affirm, p. 20):

> The issues involved in this appeal are the same as were before the Court in *Atchison, T. & S. F. Ry.* v. *United States*, 295 U. S. 193, in which the Court only reversed the Commission insofar as it failed to make adequate findings in support of its order with respect to the yardage charges assessed by Union.

And further (I. C. C. Motion to Affirm, pp. 9-10):

> This charge, now said to be prohibitive and assessed as a penalty, is the identical charge, subject to certain general increases, which the Commission held to be reasonable in *Hygrade Food Products Corp.* v. *Atchison T. & S. F. Ry. Co.*, 195 I. C. C. 553 (1933). The holding as to the reasonableness of the rate was not questioned or disturbed by the Supreme Court on appeal in *Atchison T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193 (1935).

The interveners, likewise, assert that "this appeal involves the same questions before the Court in *Atchison, Topeka & Santa Fe Railway Co.* v. *United States*, 295 U. S. 193," saying (Motion to Affirm, pp. 7-8):

> As shown by the Commission's report in that case (*Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553) the Hygrade Company, a Chicago packer with a plant located in the same area as appellant's packinghouse, filed a complaint with the Commission alleging, among other things, that the pub-

lished switching charge in addition to the line-haul rates for delivery of livestock at its private track, was unreasonable, discriminatory, prejudicial and preferential. (195 I. C. C. at 553.) The switching charge attacked in that case was the identical charge assailed by appellant in this proceeding, subject only to authorized general rate increases since that time, and the Commission so found. (274 I. C. C. 557 at 573.) The Commission found in that case, as it has in this proceeding, that "the assailed switching charge on carloads of livestock placed for delivery at complainant's plant is not shown to be unreasonable or otherwise unlawful." (195 I. C. C. 553 at 558.) On appeal to this Court, the Commission's finding as to the lawfulness of the switching charge was specifically noted in language that leaves no doubt as to the similarity between that proceeding and this. The Court stated:

> "Consignee sought free delivery in cars switched into its plants, but the Commission found the switching charge not unreasonable" (295 U. S. 193 at 200).

The most charitable characterization of the appellees' contention that the issue involved in the present case has already been before this Court is that it involves a bizarre misreading of the earlier controversy.

For the question of the legality of the switching charge was simply not in issue in the judicial proceedings. Before the Commission, Hygrade attacked both the switching charge and the yardage fees. The Commission's ruling was adverse to Hygrade on the switching charge, and in its favor on the yardage fees. The railroads and the Union Stock Yards then sued to set aside the Commission's order in respect of the yardage fees, see *Atchison, T. & S. F. Ry.* v. *United States*, 8 F. Supp. 825 (S. D. N. Y.), but Hygrade, although it intervened in the suit, did not seek affirmative relief in respect of the switching charge. See Hygrade's answer, R. 50-54, Nos. 606-607, Oct. T. 1934. The question of the legality of the switching charge, therefore, did not even lurk in the record when the case reached the courts, and indeed all that was actually decided by this Court was

that the Commission's findings were inadequate to support its order as to the yardage fees. To say, therefore, that the *Atchison* case in 295 U. S. involved the same questions as this case does is simply to make an assertion that is demonstrably not so.

2. Thereafter, when the yardage fee question was again squarely raised, the Commission completely reversed itself, *Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179, and when that ruling in turn came before this Court, in the so-called "Egress Case", the Commission's order was sustained. *Swift & Co.* v. *United States*, 316 U. S. 216. But in the later proceeding, the only question passed upon concerned shipments consigned to Swift and other packers at the Union Stock Yards, and the issue involved in the present case was expressly reserved. The Court said (316 U. S. at 227):

> It does not appear, however, that the existence or adequacy of alternative facilities for delivery at other points is particularly important in the case, because the shipments involved are consigned to the packers at the Union Stock Yards by their own choice. It does not appear that they are demanding an increase of other facilities, and the case has not been considered in that light.[11]

3. The controlling precedent here, in our view, is *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, which declared unlawful a very similar discrimination at the Cleveland Stock Yards.

There, as here, Swift's sidetrack was physically connected with the carrier's main track. There, as here, the carrier was prepared to deliver livestock at Swift's sidetrack upon payment of a substantial additional charge levied on livestock alone. Here that charge is demanded by a terminal carrier, there it was demanded by the Cleveland

[11] The Commission had similarly disclaimed passing on any question involving requests for delivery elsewhere than at the Union Stock Yards. See *Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179, 189.

Stock Yards which owned a segment of the track that connected Swift's sidetrack with the main line. In the Cleveland case, the line-haul carrier had for a number of years paid the extra charge to the Stock Yards (R. 34, No. 223, Oct. T. 1947), while here the line-haul carriers have never paid such a charge and refuse to do so now (Ex. 10 at R. 1047-1052, 1073).

There, as here, Swift as well as other packers were denied switching service as to livestock although given it as to other commodities.[12]

There, as here, the discrimination was effected and sought to be justified by a contract between the carrier and the particular stockyards owning part or all of the physical tracks involved. In the Cleveland case, the agreement between the Stock Yards and the New York Central, which granted the latter "the free and uninterrupted use" of the Stock Yards' track, included a clause, "except for competitive traffic a charge for which use shall be the subject of a separate agreement"—and "competitive traffic" meant livestock. Here the Union Stock Yards, owner of the fee of the Chicago Junction, leased that property on condition that the lessor agree "to conduct, manage, and operate the line of railroad by this instrument demised, and insofar as possible, the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards" (Ex. 57, R. 1961). Here,

---

[12] The interveners do not present the full facts of the Cleveland case when they say (Motion to Affirm, p. 10), "The defendant carriers continued to perform that service for appellant's competitors while refusing it to appellant." That statement is correct only as to certain of Swift's Cleveland competitors—Long Dressed Beef Co., Lake Erie Provision Co., and Ohio Provision Co.—who had sidetracks connected directly with the main line of the New York Central. But those of Swift's competitors such as Koblenzer Co., who, like Swift, could be reached only via the segment of track owned by the Cleveland Stock Yards, were treated just as Swift was. As this Court's opinion points out (333 U. S. at 174), "in 1938 the railroads ceased delivering livestock to the sidings of Swift *and other packers served by Spur No. 245*, although they have under agreement with Stock Yards continued to use the spur for delivery of all other kinds of commodity shipments to these sidings." (Italics added.)

as there, accordingly, the carriers undertook to act in the interest of the stockyards-landlord at the expense of the consignees, by refusing to deliver livestock at the consignees' sidetrack except upon payment of a substantial additional fee not demanded in respect of any other commodity.

It would be difficult, we submit, to find two cases which are closer on their facts—and equally difficult to find two which are farther apart in their results. For while in the Cleveland case the Commission specifically found violations of, *inter alia*, Sections 3(1) and 1(9) of the Interstate Commerce Act (*Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55), here the Commission refused so to find, and referred to that and similar decisions only to distinguish them. It said (R. 79):

> Deliveries to private industrial tracks at those points did not require substantial modification of terminal operations and interferences with established operations in a manner required at Chicago for such deliveries, and did not involve, as at Chicago, serious disruption of operations. There is no showing of a similarity in any respect of the services required and circumstances affecting services.[13] There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred.

Neither the Commission's report nor its Motion to Affirm undertakes to discuss or analyze the Cleveland Stock Yards case in this Court, *United States* v. *Baltimore & O. R. Co.*,

---

[13] The finding in this sentence is almost diametrically opposed to the Commission's finding on the same point in an earlier case. *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 538:

> Although these facts do not establish that the terminal operations at the points mentioned [E. St. Louis, S. St. Paul, Sioux City, Omaha, St. Joseph, Milwaukee, Indianapolis, Kansas City] are identical with those at Chicago, it is clear that the character of the services rendered and the charges at the compared points do not vary greatly.

333 U. S. 169.[14] Since the Commission does not in any sense question the principles of law there laid down, it must follow that, in the Commission's view, an obvious discrimination violating numerous specific provisions of the Act is perfectly lawful whenever the removal thereof would involve "substantial modification of terminal operations and interferences with established operation" or "serious disruption of operations" (R. 79). Such an approach, assuredly, exalts the *status quo* of discrimination far beyond any level it has hitherto attained, and enacts, not Social Statics (*cf.* Holmes, J., in *Lochner* v. *New York*, 198 U. S. 45, 75), but a species of Railroad Statics. It is sufficient to say that, but for the rulings under review, no trace of any authority to support such a doctrine can be found in the books. To the contrary, as this Court prophetically pointed out about a generation ago (*Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 568, *per* Brandeis, J.), "Transportation conditions are not static."

The Commission's ruling on this aspect of the case is plainly wrong in its interpretation of the governing Act, and so is not saved by appellees' attempts to clothe the result in the language of discretion. For, as the railroad appellees' chief of counsel significantly pointed out some years back (Kenneth F. Burgess, *Federal Regulation of Railway Management and Finance*, 37 Harv. L. Rev. 705, 743),

> The Commission must act within the statute of its creation, conforming its decisions to the power therein contained, and arbitrary action by it can not be sustained on the ground that its action is purely discretionary.

---

[14] Interveners, after quoting from the Commission's report the quoted statement that "There is no showing of a similarity in any respect of the services required and circumstances affecting services," argue that our reliance on the Cleveland case "thus utterly disregards the fact that dissimilar situations produce different results" (Motion to Affirm, p. 11). We submit that we have sufficiently demonstrated the similarity between the two cases.

III. NEITHER PRESENT NOR FUTURE CONGESTION JUSTIFIES OR RENDERS LAWFUL A CHARGE OTHERWISE DISCRIMINATORY.

The burden of the Commission's report, and of the arguments which have been made in its support, is that to accord to Swift the non-discriminatory service to which it would otherwise be entitled under the plain provisions of the Interstate Commerce Act set out and discussed above, pp. 63-83, would (R. 77) "seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally", and, also, that it would involve changes in a method of delivering livestock which has been in effect for many decades. In short, it is sought to justify discrimination on the ground of congestion, inconvenience, and long-continued practice.

No authorities are cited for the proposition that these factors, or any of them, will justify a course of conduct otherwise discriminatory, and we are confident that none can be found. The rulings under review stand alone. For up to now the law has always been that the circumstance that a particular practice has been long continued does not render it immune if in law or in fact such practice is later held violative of the Interstate Commerce Act. *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501; *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740; *American Express Co.* v. *United States*, 212 U. S. 522. Up to now the law has always been that the possibility of disruption does not remotely justify discrimination. *Interstate Commerce Commission* v. *Mechling*, 330 U. S. 567. And up to now the law has always been that inadequacy of facilities does not legalize a discriminatory rate or practice, and that, where discrimination is palpably unjust and forbidden by the Act, "there is no room * * * for administrative or expert judgment with respect to practical difficulties." *Mitchell* v. *United States*, 313 U. S. 80, 97. Nor does the fact that a carrier does not own tracks or trackage rights justify it in discriminating against particular patrons.

United States v. *Pennsylvania R. Co.*, 266 U. S. 191, 198-199; *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169.

To the contrary, a carrier must supply adequate facilities to the extent that it is able to do so, see Sections 1(10) and 1(11), *infra*, p. 144, and, to the extent that it is unable with the exercise of reasonable energy and diligence to do so, its available facilities must be equitably prorated.

A. The burden of congestion must be borne equitably by all users of congested facilities and may not be assessed in its entirety against a single commodity consigned to a single shipper.

It was early recognized that "Most of the provisions of the Interstate [Commerce] Act but re-enact the common law and supply some new, while saving all the old remedies." *Larrison* v. *Chicago & Grand Trunk Ry. Co.*, 1 I. C. C. 147, 149 (1887); *cf. Arizona Grocery* v. *Atchison Ry.*, 284 U. S. 370. And the common law of carriers laid down the rule of equality of treatment. The carrier was bound to receive all goods and passengers, up to the limit of his capacity. Angell, *Carriers* (2d ed. 1851) sec. 124; *New Jersey Steam Navigation Co.* v. *Merchants' Bank*, 6 How. 344, 382-383; *Riley* v. *Horne*, 5 Bing. 217, 220-221: "He *must* take what is offered to him to carry to the place to which he undertakes to convey goods, if he has room for it in his carriage." [Italics in original.] It was only when the tender was beyond his capacity that the carrier was excused from failure to serve. Chitty, *Carriers*, *23; Angell, *Carriers* (2d ed. 1851) sec. 125; Hutchinson, *Carriers* (1st ed. 1880) secs. 114, 296; *Lovett* v. *Hobbs*, 2 Show. 127. The law exacted from the carrier only what was reasonable, but required in turn that he be reasonable in the treatment of his patrons; even at common law, preferences were illegal, and the carrier was obliged to carry for all alike. Hutchinson, *Carriers* (1st ed. 1880) sec. 297; Chitty, *Carriers*, *25; *McDuffee* v. *Railroad*, 52 N. H. 430; *Messenger* v. *Pennsylvania R. R. Co.*, 36 N. J. L.

407; *cf. New England Express Co.* v. *Maine Central Railroad Co.*, 57 Me. 188.

The same rules were carried over into the administration of the Interstate Commerce Act, and were specifically recognized by the Commission in one of its earliest reports. See *Riddle, Dean & Co.* v. *New York, L. E. & W., etc., R. R. Cos.*, 1 I. C. C. 594, 603, 604, where the Commission said:

> It is the duty of a common carrier to provide adequate equipment for the business of his line; if in time of special pressure some one must wait, the annoyance must be distributed with all possible equality. * * * The common carrier has no right to select either goods or customers.

But for the report now under review, that has been the settled doctrine applied by the Commission.

The principle of equality has been most contested in situations of car shortages, when the available supply of cars of a particular class has been insufficient to meet the demands of shippers therefor. Where the carrier's regulation for such situations has been disregarded by the carrier itself, with resultant discrimination, the injured shipper has been held entitled to sue for damages as at common law: *Pennsylvania R. Co.* v. *Puritan Coal Co.*, 237 U. S. 121; *Illinois Cent. R. R.* v. *Mulberry Coal Co.*, 238 U. S. 275; *Pennsylvania R. R.* v. *Sonman Coal Co.*, 242 U. S. 120. Where, however, it is the reasonableness of the carrier's rule which is attacked, the shipper must resort to the Commission in the first instance. *Morrisdale Coal Co.* v. *Pennsylvania R. Co.*, 230 U. S. 304; *Midland Valley R. R.* v. *Barkley*, 276 U. S. 482.

The Commission over the years devoted considerable time and study to the problem of car shortages, laying down first one formula and then another. See *Assigned Car Cases*, 274 U. S. 564, *passim*. Eventually it devised a rule designed "to improve the service and to prevent any mine (including one operated by a railroad) from securing, at the particular time, more than its ratable share of the

aggregate available coal transportation facilities" (*id.*, at 573), and that rule was sustained in the case cited. There is no suggestion in the careful opinion in the *Assigned Car Cases* that any other reasonable plan for attaining the same result would have been held unlawful or unauthorized, but, assuredly, nothing in that decision—nor in any other ruling of this Court that we have found—suggests in the slightest degree that the Court would have been willing to sanction an inequitable rule simply because discrimination represented the easier course.

The purported basis for justifying the present switching charge is that the congestion in the stockyards area on the tracks of the Chicago Junction is such that non-discriminatory service should not be rendered. This has the effect of assessing the entire cost of the congestion against a single commodity consigned to a single shipper. We submit that such a result is plainly illegal, that it is without precedent, and that it is condemned by every decision under the Act. Or, as Commissioner Allredge put it below (R. 88-89)—

> The action of the majority in authorizing an extra switching charge to deliver livestock at Swift's plant, on the ground that such additional compensation is justified by reason of an increased congestion of the yard operations and facilities, introduces a novel idea into the field of railroad regulation. Under such a theory the tendering of shipments of any kind to a railroad in excess of the capacity of its regular train schedules might well give rise to the assessment of an extra charge on the surplus shipments. The terminals of railroads and other agencies are subject to periods of congestion, particularly at the larger centers, which frequently occasion overtime work or the employment of additional help to restore normal conditions. While embargoes are often employed as an aid in overcoming difficulties of this kind, there is no record of an attempt to resort to the use of extra transportation assessments as a recompense to the carriers for the extra costs entailed. It is familiar practice, for instance, for carriers to run extra busses or passenger trains out of various terminals on week ends to take

care of overflows of passengers. If pursued to its ultimate conclusion, the principle which the majority here enunciates would authorize the charging of additional compensation to the overflow passengers. Such an idea is too closely akin to a punitive measure to be just and reasonable. A search of the authorities reveals no warrant of law for such action. As a matter of fact, it is condemned by the decision cited and quoted from in the preceding paragraph hereof. [*Pennsylvania R. Co* v. *Puritan Coal Mining Co.*, 237 U. S. 121.]

There is no more justification for assessing an extra charge against Swift for the switching of livestock in this instance than there would be for charging additional compensation over and above the line-haul rates on all traffic passing through the yards in question. If the handling of a heavy volume of traffic through the yards with Swift's livestock cars added should actually contribute to a higher rather than a lower cost per car, which is doubtful to say the least, then the additional cost should be distributed over all traffic flowing through the yards rather than be charged to one shipper alone.

Under the contrary theory, espoused by the Commission, the tendering of shipments of any commodity to a carrier, in excess of its current capacity, would give rise to an extra charge in respect of the surplus shipments. But for the rulings under review, no such proposition has yet been suggested for railroad traffic. Embargoes are frequently issued in instances of congestion, *e. g.*, against export traffic to particular port cities because of accumulations at those terminals beyond the capacity of vessels to transport and so clear the terminals. But in such instances no extra charge has ever been assessed, either against the traffic which was moved, or against the traffic which was delayed.

During the late war, the Government issued many priority orders for the immediate or preferred movements of essential defense materials. Such orders, clearly, were made necessary only by congested conditions; for, obviously, if the railroads could have transported all traffic

promptly as offered, there would have been no need for priority orders. But there was never any extra charge assessed, either for the traffic given preference under the priority order, or for the traffic which contributed to the congestion that necessitated such an order.

Similarly, passenger coaches are frequently overcrowded, at rush hours and during holiday seasons. But it has never yet been suggested that such conditions of congestion authorize the assessment of an extra charge on the passenger who, forced to stand in the aisle, produces the overcrowding.

The short of the matter is that the theory underwritten by the Commission in the present case, *viz.*, that where there is congestion, all of the cost thereof may be assessed against the additional traffic, is not only repugnant to the substantive antidiscrimination provisions of the Interstate Commerce Act, it is contrary as well to accepted custom and practice.

The only reply to any of the foregoing, whether in the Commission's report or in the briefs of the several appellees, is the argument *ab inconveniens;* and under the rulings of this Court already cited, that is insufficient.

B. In any event, a carrier is not permitted to refuse service now on the ground that in the future its facilities may become overcrowded; and there is no substantial evidence to support the Commission's finding that the other packers would immediately make like demands for sidetrack delivery of livestock.

A fortiori, a carrier has no right to deny service now on the ground that in the future its capacities may be overtaxed. Denial of service by the carrier can be justified "if his coach be full"—and then only. As this Court said *Pennsylvania R. Co.* v. *Puritan Coal Co.*, 237 U. S. 121, 133:

> The common law of old in requiring the carrier to receive all goods and passengers recognized that "if

> his coach be full" he was not liable for failing to transport more than he could carry. Hutchinson on Carriers, 146; *Lovett* v. *Hobbs*, 2 Shower, 127; *Riley* v. *Horne*, 2 Bing. 217; *Peet* v. *Ry.*, 20 Wisconsin 594. The same principle is applicable to those who transport freight in cars drawn by steam locomotives. The law exacts only what is reasonable from such carriers—but, at the same time, requires that they should be equally reasonable in the treatment of their patrons. In case of car shortage occasioned by unexpected demands, they are bound to treat shippers fairly, if not, identically.

This rule is apparently not controverted by the appellees but its application rests on two issues which must now be canvassed, the first being whether, if Swift's demand were granted, the other packers would join Swift and insist on similar switching service. The Commission found that (R. 76) "if complainant's demand for the delivery service at the line-haul rate were granted, there would result demands from other packers requiring defendants to render like delivery service * * *". Commissioner Alldredge thought this was a mere "speculative possibility" (R. 88).

In resolving this difference, consideration must necessarily be given to the standard of review. This Court has held, *Riss & Co* v. *United States*, 341 U. S. 907, that Sections 5, 7, 8, and 11 of the Administrative Procedure Act (5 U. S. C. 1004, 1006, 1007, 1010) apply to proceedings before the Interstate Commerce Commission. And Section 10(e)(B)(5), *infra*, pp. 146-147, specifically provides for setting aside agency findings that are "unsupported by substantial evidence in any case subject to the requirements of sections 7 or 8." Accordingly, the test here is whether, on the whole record, there is substantial evidence to support the Commission's findings now in question. *Universal Camera Corp.* v. *Labor Board*, 340 U. S. 474; *Labor Board*

v. *Pittsburgh S. S. Co.*, 340 U. S. 498; *Baltimore & O. R. Co.* v. *United States*, 100 F. Supp. 1002, 1006 (S. D. N. Y.).[15]

We recognize, of course, that the Commission is bound to look to the future, see *United States* v. *Detroit Navigation Co.*, 326 U. S. 236; *New York Cent. R. Co.* v. *United States*, 99 F. Supp. 394, 404-405 (D. Mass.), affirmed, 342 U. S. 890, since, obviously, one facet of its expertise lies in its ability to make reasonably accurate prognostications of events yet to come. That is true of every specialist within the field of his own specialty. The doctor proceeds on the basis that a particular course of therapy will induce certain reactions in the patient. The lawyer asks particular questions of a witness with an eye to the witness' answers several questions hence. The general plans a campaign with reference to his enemy's capabilities and potential future actions. And the wise judge writes an opinion mindful of the applicability of his language to controversies still distant.

But the judge is not possessed of the doctor's skills, nor the general of those of the lawyer. And while undoubtedly the Interstate Commerce Commission, through long exposure to the problems of the railroads, may be able to make a more accurate and hence more expert assumption as to the effect of one of its orders on the operations of railroads than, let us say, the American Meat Institute, it is not possessed of any specialized competence as to the future intentions of companies engaged in the slaughtering and processing of livestock. The expertise of the Interstate Commerce Commission does not extend to the mental processes of directors of meat-packing plants. As to that, it is restricted to the particular record before it. And in the present case, on the whole record, there is no sub-

[15] The cases just cited demonstrate that, since the effective date of the Administrative Procedure Act, earlier decisions as to the scope of judicial review of orders of the Interstate Commerce Commission are no longer law, and —depending on the point of view—are of only historical, reminiscent, or nostalgic interest.

stanfial evidence to show that the other packers in fact contemplate asking for the same kind of sidetrack delivery that Swift is demanding in the present proceeding.

No single packer intervened on Swift's side here, either before the Commission or in the district court. Swift's largest competitor, which some years earlier had intervened as a co-plaintiff in the egress case (*Swift & Co. v. United States*, 316 U. S. 216, 217-218), specifically disclaimed any interest in this case (R. 252). There was not a word of direct testimony from any representative of that or any other meat-packing company as to its course in the event that Swift were ultimately successful. Three hostile witnesses, representing interests admittedly adverse to any system of livestock delivery that would be free from the yardage fees of the Union Stock Yards and the commissions of the middlemen selling animals there, testified to their belief that the other packers would make the same demand for competitive reasons (*supra*, pp. 32-33). But even these witnesses did not undertake to explain how it was that, although Swift for at least thirty-five years has had a sidetrack and unloading facilities directly on the rails of a haul-line carrier at its Omaha Packing Co. plant (R. 265-266, 363, 836), a circumstance which the Commission has characterized in this Court as "the preference in Chicago" (I. C. C. Motion to Affirm, p. 13), not a single one of Swift's competitors in all that period has seen fit to construct or acquire a similar facility. This is the stubborn fact which undercuts all of the Commission's labored rationalizations (R. 75-76) about competitive compulsion.

The Examiner, who saw and observed the witnesses, proposed a report as follows (R. 241):

> The assumption that all direct shipments to complainant and to all the other packers in the Chicago district would have to be set out in the Ashland Avenue yards is not warranted on this record. Other packers were represented at the hearing but failed to indicate that they were in any way dissatisfied with the delivery

presently afforded them through the Union Stock Yards or that they would demand private track delivery if such delivery was furnished complainant, or that they had or could provide facilities therefor.

The likelihood that Swift's competitors will join in making similar demands, therefore, is simply a "speculative possibility", as Commissioner Alldredge rightly pointed out (R. 88), and is not supported in this record by that quantum of proof which the law now requires of the finding of an administrative agency.

Thus the assumption on which the operating witnesses rested their dire predictions, the rock on which they built their prophesy of total breakdown, is shown to be without existence in fact. Their conclusions in consequence are no more than what one of them frankly admitted them to be (R. 647), "a clairvoyant adventure." And the Commission's conclusion, which reflected their testimony, is correspondingly without foundation.

C. The Commission's finding that appellant's shipments of livestock, averaging 18 cars daily, would considerably delay and burden the railroads' operations, is not supported by substantial evidence.

The Commission found (R. 74-75) that, "Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants' operations." The dissenting Commissioner was of opinion that the limits of the carriers' capacity had not been reached on the basis of Swift's cars alone (R. 88-89). The examiner made no finding at all on that point (R. 230-247), so that obviously nothing turns on factors of credibility. And analysis of the record demonstrates that the Commission's finding, quoted above, does not rest on evidence.

(1) To begin with, more than 1000 loaded cars per day are received in the Chicago Junction's Ashland Avenue

yards (R. 61). Inasmuch as Swift's direct shipments of livestock average less than 20 loaded cars per day (R. 74-75), the Commission is thus finding as a fact that a 2% increase in traffic "would considerably delay and burden defendants' operations." This is an amazing conclusion which necessarily generates disbelief even on its face.

(2) But a first reading can not hope to measure the degree of disbelief which will follow an examination of the undisputed evidence. The record establishes that, in fact, the actual livestock traffic now passing over the rails of the Chicago Junction has been decreasing to such an extent that, if Swift's direct shipments had been added thereto, the total livestock traffic on the Chicago Junction would, for each of the last three years available, still have been substantially less than the total of such traffic for each of the immediately preceding years. In other words, the addition of Swift's direct shipments would not have made up the natural decline in the total of all livestock shipped to the Union Stock Yards by rail.

Here are the indisputable figures from the record:

Year	Swift's Direct Shipments of Livestock in Carloads (Ex. 36, R. 1161)	Decrease from Preceding Year in Carloads of Livestock to U. S. Y. (Ex. 28, R. 1117; Ex. 46, R. 1846)
1945	5021	12217
1946	4204	18318
1947	6393	11578[16].

In other words, the Commission in its finding ignores the incontrovertible fact that the decline in rail shipments of livestock would have been more than ample, several times over, to absorb the amount of the additional shipments which Swift was sending to its Omaha plant location during

---

[16] Livestock shipments to the Union Stock Yards in carloads for the last four calendar years, as shown by the cited exhibits, were as follows:

1944	95,674
1945	83,457
1946	65,139
1947	53,561

this period. This fact alone is sufficient to undermine the finding now under consideration.

(3) The switching involved in routing Swift's present direct shipments to the Omaha Packing Co. plant was found by the Commission to be "a minor operation" (R. 69). The operating witnesses had similarly characterized it (R. 641, 651, 663-664, 666). But the Commission went on to find that delivery at the Omaha Packing Co. plant pens was different from delivery at Swift's present sidetrack, saying (R. 78):

> The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those connected with the delivery here sought. There, the unloading chutes are on the rails of a line-haul carrier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington.

However, the Commission did not go on to explain how the "minor operation" at the Omaha Packing Co. location, even when transferred to the present sidetrack (which for purposes of argument under this heading we take to be "substantially dissimilar") could assume such proportions that it "could considerably delay and burden defendants' operations." The gap between premise and conclusion—we had more accurately said "yawning gulf"—is assuredly not spanned by the testimony of the operating witnesses. For all of their testimony as to congestion was predicated on the assumption that all of the packers would seek sidetrack delivery of all their direct shipments (*supra*, p. 32). There was not a word of testimony from any of the seven operating witnesses, even in the realm of opinion and conjecture, as to the effect on the Chicago Junction's operations of delivering only Swift's direct shipments to Swift's sidetrack. That subject was simply not explored on the record.

(4) When the Commission came to consider the operating problem involved in making delivery of cars of livestock direct to Swift's sidetrack, it said (R. 74):

> Indeed, it appears that in some instances, immediately upon arrival of a consolidated train including cars of livestock for complainant, the Junction might have to make a special run to deliver the cars at the latter's plant.

This was one of the factors relied upon to support the finding now under discussion. But the Commission in thus calling attention to the factor of special runs seems conveniently to have overlooked the large number of similar special runs now being made to the Union Stock Yards, many of which, as it found (R. 64), "are made with but one or two cars per train." Just how many appears from Ex. 45 (R. 1681-1842): During a test period of three weeks, over one third of the total livestock deliveries by rail to the Union Stock Yards were brought there by trains of one and two cars (*supra*, p. 20). But what is usual and regular for deliveries to the Union Stock Yards becomes a most unusual matter when deliveries to this appellant come into question.

It follows from all of the foregoing that the Commission's finding that Swift's shipments alone would result in burdensome congestion lacks the support of substantial evidence. Indeed, the circumstance that the examiner made no finding on the question either way strongly suggests that this "finding" was an afterthought on the part of the Commission, and that it was inserted in the interest of supplying logical consistency, and, perhaps, of adding a modicum of literary grace to the report. But, up to now at any rate, the *elegantia juris* can not do substitute for evidence when the results of the administrative process are subjected to judicial review.

The result is that both of the subsidiary findings on which the Commission rested its conclusion that the grant-

ing of the non-discriminatory service which Swift sought would result in delays, disruptions, and congestion, are shown to be without foundation on the evidence: The finding that all the other packers would immediately follow Swift rests not on evidence, but on an economic rationalization which ignores an economic fact of 35 years' standing; and the finding that Swift's shipments alone would result in congestion is shown to be a last-minute addition to the Commission's report, unsupported by any substantial evidence whatever.

We do not need, however, to rest our argument on the obvious infirmities of those two subsidiary findings. For present purposes our position is not impaired even if we assume *arguendo* that it is true that Swift's shipments alone will produce congestion, that every other packer, large and small, will immediately "me-too" in the event of Swift's success, and that the combined influx of all direct shipments of livestock now transported to Chicago by rail will in fact produce the congestion and disruption envisaged by the Commission.

Because, after all, the proposition that congestion and disruption may justify discrimination, the view that the practical difficulties incident to compliance will excuse violations of law, amount to no more than the argument of inconvenience. The basic aim of the Interstate Commerce Act, as this Court has iterated and reiterated, is the removal of every species of discrimination. *Shreveport Rate Case*, 234 U. S. 342, 356; *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740, 749-750; *Merchants Warehouse* v. *United States*, 283 U. S. 501, 512; *Mitchell* v. *United States*, 313 U. S. 80, 94; *New York* v. *United States*, 331 U. S. 284, 296; *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, 175. That aim would be but lip-service if the Commission were now to be permitted to grant dispensations from the command of the Act each time that the discrimination complained of were effected in a crowded terminal. There are many busy, crowded, congested terminals in this country—and there will be more congestion rather than less as the

national economy continues to expand. The course of Congressional legislation since 1887 lends no support to the notion that the imperative of the statute has been watered down to "no discrimination except in circumstances of congestion," and the Act in terms makes no exceptions on that ground. The command of the Act is categorical—and has been so read by this Court. Neither inadequacy of facilities (*United States* v. *Pennsylvania R. Co.*, 266 U. S. 191) nor practical difficulties (*Mitchell* v. *United States*, 313 U. S. 80) nor conflicting interests of owners of trackage (*United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169) nor equivalent discrimination caused other groups (*Henderson* v. *United States*, 339 U. S. 816) can justify a discrimination otherwise forbidden by the Interstate Commerce Act. The Commission can point to nothing which sustains the present ruling other than its own fiat in this case—and that is obviously insufficient.

IV. THE COMMISSION FAILED TO ALLEVIATE THE CONGESTION ON WHICH IT RELIED TO JUSTIFY THE HIGH ADDITIONAL SWITCHING CHARGE ASSESSED ONLY AGAINST LIVESTOCK DELIVERED TO SIDETRACKS, ALTHOUGH THE COMMISSION WAS AMPLY EMPOWERED TO DO SO, AND ALTHOUGH THAT CONGESTION WAS SHOWN BY THE RECORD TO BE IN SUBSTANTIAL MEASURE DUE TO THE APPELLEES' OWN ACTS RATHER THAN TO THE VOLUME OF LIVESTOCK TRAFFIC.

A. The present record proves that, in fact, the congestion on the rails of the Chicago Junction is in substantial measure due to the appellees' own acts rather than to the volume of livestock traffic.

Department of Agriculture statistics show that in 1947 the Union Stock Yards of Chicago still led all other public markets in the country in total receipts of livestock and in salable receipts of livestock (*i. e.*, excluding direct shipments).[17]

Even so, however, rail shipments of livestock to the Union Stock Yards have vastly decreased in the last quarter of a century. Here are the figures in carloads, showing the percentage of decrease from the high in 1923 (Ex. 46 at R. 1845-1846; Ex. 28, R. 1117):

[17] Ex. 26, not printed. In 1947 Chicago led in total and salable receipts of cattle and in total receipts of hogs; South St. Paul was highest for total and salable receipts of calves; St. Louis National Stock Yards (at East St. Louis) was first in salable receipts of hogs; Fort Worth was highest for salable sheep and lambs; and Denver highest in total sheep and lambs. The following 1947 figures may be of interest:

Public Market	*Total Receipts*	*Salable Receipts*
Chicago	6,646,705	4,811,918
Omaha	5,941,166	4,299,166
St. Louis Nat. S. Y.	5,243,683	4,020,680
South St. Paul	5,091,924	4,525,580

Year	Carloads	Decrease since 1923 Carloads	Percentage
1923	303,228		
1945	83,457	219,771	72.4%
1946	65,139	238,089	78.5%
1947	53,561	249,667	82.3%

It is therefore obvious that the volume of livestock shipments, far from contributing to the congestion on the rails of the Chicago Junction, would, if standing alone, have substantially eliminated it.

The record contains no figures from which the increase in other traffic on the Chicago Junction during the corresponding period, testified to in general terms by some of the witnesses (R. 501, 526, 950), can be accurately measured.[18] But the record does reveal at least five factors, not in any sense attributable to volume of traffic, which contribute materially to the congestion on which the appellees rely to deny delivery of livestock to Swift at the line-haul rate. These factors are:

(i) Inadequate provision of motive power.

(ii) Labor agreement which impairs efficiency.

(iii) Obstructive rules of the Union Stock Yards.

(iv) Refusal of Chicago Junction to grant trackage rights.

(v) Virtual anarchy on the Chicago Junction tracks.

---

[18] In the *Chicago Junction Case*, 71 I. C. C. 631, 633, decided in 1922 on a record presumably reflecting earlier statistics, the Commission said:

> Besides serving the stockyards and Packingtown, the Junction performs terminal service for all the carriers in reaching the Central manufacturing district, which as an institution has been in existence for about 15 years and has 180 industries, producing a tonnage of over 100,000 carloads per year and 100,000 tons per year of less-than-carload freight.

These figures are not comparable with the findings as to the present traffic of about "1,000 loaded cars per day" of non-livestock traffic (R. 61), since tons are not related to carloads. The amount of the Chicago Junction's non-livestock traffic over the years was not developed in the present case.

(i) As was pointed out in the Statement, *supra*, p. 24, there has been a gradual but on the whole steady decrease in the Chicago Junction's motive power since that road was leased by the New York Central. Whereas in 1925, the Chicago Junction had 86 engines, in 1940 it had only 47 (Ex. 58, R. 1963-1965), and of those 47, 11 are of a type that do not lend themselves readily to industrial work (R. 68), while 14 more were received from the U. S. Railway Administration during World War I, more than 30 years ago (R. 525). The Superintendent of the Chicago Junction admitted frankly that the supply of engines was insufficient to take care of all industrial placement (R. 524, 547, 555), and expressed his desire for at least five additional Diesel engines (R. 525-526). Obviously, then, an increase in the Chicago Junction's motive power would appreciably alleviate the existing congestion on its tracks.[19]

(ii) We also pointed out in the Statement, *supra*, pp. 24-25, that whereas prior to 1946, the various line-haul carriers had themselves placed freight cars in the various yards of the Chicago Junction, that road, in order to avert a threatened strike, agreed with its employees that in the future all such traffic would be received at the Ashland Avenue south yard, which has but one running track to the east. Under this arrangement, the Chicago Junction now uses 3800 train crews, each of five men, over and above what it employed previously, but with no increase in the traffic handled (R. 518-519), with the consequence that the crews of the line-haul carriers are delayed awaiting classification of the cars by the Junction (R. 539) and with the further consequence that the sole running track to the Ashland Avenue yard from the east is badly blocked, frequently

---

[19] In its Motion to Affirm, the Commission said (p. 21) that "The assumption that the use of any number of engines over 47 would slow down deliveries is much more logical it would seem, than that an additional number would facilitate switching and relieve congestion." This notion, that more motive power means less switching service, being directly contradicted by the testimony of the Chicago Junction's Superintendent (R. 525-526), will no doubt be abandoned in the Commission's brief on the merits.

tying up as many as four trains (R. 63). It is therefore plain that the new labor agreement, the existence of which the Commission noted without more (R. 61), makes a substantial contribution to the existing congestion.

(iii) We likewise pointed out in the Statement, *supra*, pp. 26-27, that the rules of the Union Stock Yards forbid the line-haul carriers, which bring cars of livestock directly into the chutes there, from pulling into those chutes trains containing any cars loaded with dead freight; and we pointed out, from the testimony of one of appellees' operating witnesses, Superintendent Heide of the Rock Island, how line-haul operations have been impeded by enforcement of these rules. As Mr. Heide said (R. 668), "I certainly would like to cancel it if I could. It would save me a lot of trouble." Surely here is the most expert type of expert testimony in support of Swift's contention that factors other than the volume of traffic combine to create the congestion relied upon to justify the discrimination assailed in this proceeding.

(iv) We also pointed out in the Statement, *supra*, p. 26, that the line-haul carriers do not now have trackage rights to make direct deliveries of livestock to Swift's sidetrack, and that they had been advised by the Chicago Junction that no trackage rights will be granted for that purpose (R. 840). There is no suggestion in the record that this refusal is predicated on the possibility of further congestion.

(v) Finally, we pointed out in the Statement, *supra*, pp. 25-26, quoting from the Commission's report (R. 64), that the line-haul carriers' crews may and do operate over the Chicago Junction's rails without any limitation as to time or hours, and that an average of 167 foreign crews per day are on those tracks at all hours of the day and night. It is not at all far-fetched to characterize such a method of

operation as virtual anarchy.[20] The only rule which seems to be observed is that, if possible, collisions shall be avoided. Obviously such a state of affairs contributes mightily to the congestion which obtains on the Chicago Junction's rails.

B. The Commission failed to alleviate the existing congestion although it was amply empowered to do so.

The Commission had ample power under the law to correct every one of the operating practices above considered which contribute so substantially to causing the congestion on which it relied to justify the discriminatory switching charge here assailed.

(i) *Inadequate provision of motive power.* Sections 1(10) and 1(11) of the Interstate Commerce Act clearly require the Chicago Junction to provide sufficient suitable switching locomotives to effect all necessary switching to private sidetracks on its rails. They provide—

> (10) The term "car service" in this part shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains by any carrier by railroad subject to this part.
>
> (11) It shall be the duty of every carrier by railroad subject to this part to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

---

[20] "Anarchy" is defined in Webster's *New International Dictionary* as "absence of regulating power in any sphere; confusion or disorder, in general"; and in the *American College Dictionary*, as "a state of society without government or law; * * * confusion in general; disorder."

These provisions have in the past been held by the Commission to require carriers to supply adequate placement of cars on private sidetracks. See *King Stone Co.* v. *Chicago, I. & L. Ry. Co.*, 160 I. C. C. 245; *Train Service on Northern Pacific*, 112 I. C. C. 191, 194. And, even in the absence of those rulings, the unambiguous provisions of the statute should have impelled the Commission to direct the Chicago Junction to supply the deficiency in switching engines to take care of all the industrial placement of cars, a deficiency which that carrier's Superintendent frankly admitted (R. 524, 525-526).

Moreover, since the Chicago Junction is under lease to the New York Central, so that, by virtue of Section 1(3)(a) of the Act, defining "railroad" as "all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease," the Chicago Junction is as a matter of law a part of the New York Central. To rest its decision as the Commission did (R. 68), on the circumstance that "The present motive power of the Junction is being operated to capacity," not only ignores the plain command of Sections 1(10) and 1(11), but likewise ignores the relation of parent and subsidiary, and the circumstance that the amount of motive power available to the Chicago Junction rests in the discretion and control of the New York Central. Thus Section 1(3)(a) of the Act is also brushed aside by the Commission, although that very section was but recently enforced against the same parent carrier by this Court in *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169—sustaining the Commission's ruling in *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55.

On its face, the steady decrease in the Junction's motive power since its lease by the New York Central would seem to reflect the stock pattern of a subsidiary being milked by its parent. The facts are not in dispute; the figures are in writing (Ex. 58, R. 1963-1965), and were produced by counsel for the Central (R. 1036-1037). Yet the Commission

does not mention that decrease at any point in its report, although one of the grounds for approving the New York Central's lease of the Chicago Junction was that it would "insure to the shippers of the Junction * * * the assistance of an interested trunk line in times of car shortage * * *." *Chicago Junction Case*, 71 I. C. C. at 638. The Commission's devotion to the dogma of Railroad Statics, and its apparent blindness to everything but the existing *status quo* of rail operations, is perhaps nowhere more clearly demonstrated.

(ii) *Labor agreement which impairs efficiency.* Similarly, the Commission's report refers to the restrictive labor agreement (R. 61), and stops there.

It is of course true that the Commission as such has no jurisdiction over labor disputes or rail wages or conditions of labor. If a carrier chooses to sign a feather-bedding agreement with a union with consequent impairment of operating efficiency, that concerns primarily the parties and the agencies created by the Railway Labor Act. But if a carrier relies on such an agreement to justify even in part a discrimination otherwise forbidden by the Interstate Commerce Act, then the Commission is directly concerned.[21] It is settled that a business concern can not rely on its agreements with a labor union when charged with a violation of the Sherman Antitrust Law. *Allen Bradley Co.* v. *Union*, 325 U. S. 797. We think that the rationale of that case is broad enough to condemn reliance by a carrier on an agreement with its labor force when charged with a violation of the Interstate Commerce Act. And we submit, therefore, that the Commission should have held that the existence or non-existence of labor agreements did not

[21] The line-haul carriers have contended that the labor agreement now in question is violative of Condition No. 3 imposed by the Commission, and on that ground sued to enjoin the carrying out of the labor agreement. See *Baltimore & O. R. Co.* v. *Chicago Junction Ry. Co.*, 156 F. 2d 357 (C. C. A. 7); *Railroad Trainmen* v. *Baltimore & O. R. Co.*, 331 U. S. 519; *Baltimore & O. R. Co.* v. *Chicago River & Indiana R. Co.*, 170 F. 2d 654 (C. A. 7).

qualify in the slightest degree the carrier's statutory obligation not to discriminate against a particular commodity or against a particular consignee.

The Commission's treatment of the labor agreement emphasizes, from still another aspect, its disinclination to strike down any discrimination when such action would involve the slightest disturbance of existing arrangements.

(iii) *Obstructive rules of the Union Stock Yards.* The rule of the Union Stock Yards, which prevents even a single car of dead freight from resting on its tracks, is obviously designed to facilitate shipment of livestock to its own chutes and to burden such shipments destined elsewhere—and the rule functions according to plan. The record shows how it impedes rail operation—and the record shows that the Commission, here again, neither noticed nor remedied the obstruction.

Yet there are ample precedents which condemn such practices, and which hold that a portion of track used by a common carrier can not be closed to a particular class of merchandise. Just as the rails can not be closed to livestock (*Louisville & Nashville R. Co.* v. *United States*, 238 U. S. 1; *Louisville & Nashville R. Co.* v. *United States*, 242 U. S. 60, 74; *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169), so by a parity of reasoning they can not be closed to non-livestock. And the same rule applies regardless of the ownership of the track segment in question, as this Court held but recently in *United States* v. *Baltimore & O. R. Co., supra.*

But, here again, however, the Commission accepted the existing regulation as inevitable and immutable—and took no step either to strike down the consequent obstruction or to alleviate the resultant congestion.

(iv) *Refusal of Chicago Junction to grant trackage rights.* The refusal of the Chicago Junction to grant trackage rights to the line-haul carriers to deliver livestock to Swift's sidetrack (R. 840), while granting them such rights

to deliver livestock to the chutes of the Union Stock Yards (R. 62) would seem to be a discrimination too obvious for discussion. In the past the Commission has repeatedly ruled that carriers may not, under the cover of trackage arrangements, work unjust discriminations against shippers or localities. *Huerfano Coal Co.* v. *Colorado & S. E. R. R. Co.*, 41 I. C. C. 657, 659, and rulings there cited; *Benton Coal Mining Co.* v. *Chicago, B. & Q. R. R. Co.*, 63 I. C. C. 396, 399. And this Court has specifically characterized as "unsound" the contention "that a preference granted certain shippers served by a carrier by virtue of the ownership of tracks or trackage rights over other shippers not reached by the carrier, because it does not own tracks or trackage rights which would enable it to reach them, cannot warrant a finding of undue discrimination * * *." *United States* v. *Pennsylvania R. Co.*, 266 U. S. 191, 198-199.

Today the Commission has the same legal power to halt discrimination which is rested on an absence of trackage rights that it had then. But in the present case the Commission did not even notice this obvious discrimination, much less strike it down.

(y) *Virtual anarchy on the Chicago Junction tracks.* Of course it is not the function of this Court to run a railroad or to tell a railroad how it should be run. But it is the function of this Court to direct the Commission to observe and comply with the rules of law enacted by Congress to eliminate discrimination. And it is plain that the policy of Congress "to promote safe, adequate, economical, and efficient service" (National Transportation Policy, *infra*, p. 142) has been implemented by adequate grants of power to enable the Commission to correct the chaotic mode of operation which congests the tracks of the Chicago Junction, and under cover of which it practices the discrimination spread at large upon the present record.

The Commission not only has ample power to bring a semblance of order out of the existing chaos, it has in fact taken a whole series of essentially similar corrective actions in the past. We quote some of the instances catalogued by one of the most sympathetic observers of the Commission's work (III-A Sharfman, *The Interstate Commerce Commission* (1935) 57, 59, 60-62, 66):

> The Commission's authority over service is now essentially coextensive with its rate-making power even under normal conditions; and in emergency situations it exercises a jurisdiction so sweeping, in the interest of general transportation needs, as virtually to dominate the movement of property by rail and the utilization of its instrumentalities. Nominally, aside from authority to require the joint use of terminals when deemed practicable and in the public interest, the duties of the carriers and the powers of the Commission are restricted to "car service"; but since the term "car service", as employed in the statute, embraces the use, control, supply, movement, distribution, exchange, interchange, and return of all vehicles—including cars, locomotives, and special equipment—and the supply of trains, it is obvious that all physical instrumentalities as well as all important service relationships, between carriers and shippers and amongst the carriers themselves, are thereby subjected to the Commission's jurisdiction. The initiative in furnishing safe and adequate service and in maintaining just and reasonable arrangements rests in the roads; but on complaint or on its own motion, the Commission may, after hearing, prescribe the rules, regulations, and practices that shall govern. In performing this normal regulatory task, however, the Commission has avoided formal proceedings as far as possible. From the beginning, it has achieved its ends very largely through coöperation with the carriers. * * * (p. 57.)
>
> * * * * *
>
> The Commission, in coöperation with the carriers and shippers and their representatives, seeks continuously not only to stimulate improvement in operating efficiency, but "to eliminate misunderstandings and se-

> cure the best possible distribution of cars and the freest practicable movement of traffic" [citing *Annual Report*, 1923, p. 54]. (p. 59.)
>
> * * * * *
>
> Merely by way of illustration, among numerous other service difficulties adjusted by the Commission in various parts of the country and with respect to various types of traffic, reference may be made to the relief of the freight congestion in Florida, to the development of a car-distribution plan for the movement of grapes from California, to the removal of congestion of the Belt Railway of Chicago [citing *Annual Report*, 1927, p. 38] and at the ports of Houston, to the adjustment of differences with regard to the handling of livestock [citing, *inter alia*, *Annual Report*, 1929, pp. 47-48], the weighing of vegetables, and demurrage and storage. Through such activity in matters of car service, the Commission is removing maladjustments and promoting movement of traffic, composing service differences and facilitating efficiency and economy of operation. (pp. 60-62.)
>
> * * * * *
>
> In sum, then, the Commission is asserting a large measure of affirmative control over railroad facilities and transportation service, both under normal conditions and in emergencies, not only by maintaining equitable relationships between carriers and shippers and as amongst the carriers themselves, but by promoting efficiency of operation and the free movement of traffic. (p. 66.)

No adequate legal reason is apparent on the face of the Commission's report—or elsewhere—why the Commission could not have taken like action in the present case "to promote * * * efficient service" (see National Transportation Policy), in the crowded yards of the Chicago Junction, with a view to alleviating the congestion there.

In fact, however, not only has the Commission not instituted corrective action, it has relied on the anarchic conditions obtaining on the rails of the Chicago Junction to justify the continuation of the discrimination involved in

this case. For, in differentiating the switching service now accorded Swift in respect of its direct shipments of live-stock at the Omaha location, which is rendered at the flat line-haul rate, from the switching service at Swift's plant sidetrack, which now carries the high additional charge of $39.24 per car, the Commission says (R. 78):

> The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those connected with the delivery here sought. There, the unloading chutes are on the rails of a line-haul carrier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington.

Thus inequality is defended and perpetuated by invoking and exalting anarchy. Devotion to the dogma of Railroad Statics could hardly be carried further.

V. BOTH THE HIGH ADDITIONAL SWITCHING CHARGE ASSESSED ONLY AGAINST LIVESTOCK DELIVERED TO SIDETRACKS, AND THE CONGESTION ON WHICH THE COMMISSION RELIES TO JUSTIFY THAT CHARGE, REST ON AND ARE PERPETUATED BY A DISCRIMINATORY AND ILLEGAL COVENANT, STILL IN FORCE AND STILL GIVEN EFFECT BY THE PARTIES THERETO, WHEREBY THE NEW YORK CENTRAL AGREES TO OPERATE THE CHICAGO JUNCTION FOR "THE BENEFIT, ADVANTAGE, AND BEHOOF OF THE BUSINESS AND AFFAIRS" OF THE UNION STOCK YARDS.

We come now to the heart of the case, to the covenant whereby the New York Central agrees to operate the Chicago Junction for "the benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards, which the latter company invoked to require the appellee New York Central to defend Swift's complaint before the Commission, upon pain of terminating that carrier's lease of the Chicago Junction (Ex. 57, R. 1961-1962). We propose to demonstrate, first, that this covenant is illegal on its face, and, next, that, as the present record shows, that covenant still enables the Union Stock Yards to exercise a substantial measure of control over the operations of the Chicago Junction. We next go on to show that, by reason of this covenant, the Chicago Junction and its parent carrier, the New York Central, not only have no incentive to correct the operating practices which contribute to the congestion, but on the contrary are necessarily forced to continue the existing congestion—which, as this record shows, operates in favor of the Union Stock Yards and against shippers who desire to receive livestock at their own sidings. Thus the covenant is not simply an agreement *in vacuo*, it is an undertaking fully implemented which operates as an effective combination in restraint of trade. Therefore the Commission is in fact, despite its protestations to the con-

trary, enforcing a discriminatory covenant which perpetuates the congestion on which alone rests the justification for the switching charge herein assailed. And of course neither the covenant, nor the congestion, nor the discrimination attain to legitimacy simply because the present practices have been long continued.

A. The covenant in the lease of the Chicago Junction, which requires the appellee New York Central to operate the Chicago Junction for "the benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards, is illegal on its face.

We turn for the text of the covenant in question to the communication of the party invoking it (Ex. 57, R. 1961-1962), *viz.*:

> In Article VI of the lease from the Yard Company to Chicago Junction Railway Company dated December 1, 1913, the Junction agreed "to conduct, manage, and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards." In the lease of May 19, 1922, by the Junction to the River Road (see Art. III, Sec. 2, and Art. IX), the River Road and the New York Central undertook to perform the above-quoted covenant of the Junction in the earlier lease.

This is, on its face, a covenant to favor a particular patron of the leased road. It is, therefore, a covenant to discriminate, and as such it is illegal on its face. It is condemned by Sections 1(5), 1(9), 2 and 3(~~1~~) of the Interstate Commerce Act. It is also condemned—to cite only a single instance—by *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, which likewise dealt with a carrier's discrimination against a shipper which, as here, was rested on a covenant to discriminate, made between the carrier and the owner of a portion of its track. In that case, the

New York Central agreed with the Cleveland Stock Yards to make a separate charge for "competitive traffic" passing over Track 1619; here the New York Central has agreed with the Union Stock Yard and Transit Company of Chicago to operate the Chicago Junction for "the benefit, advantage, and behoof of the business and affairs of the Yards." In the Cleveland case, the "competitive traffic" at which the covenant was directed was admitted to be livestock; here "the benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards requires that all direct shipments of livestock be discouraged, because—and we quote from the letter written by counsel for the Union Stock Yards (Ex. 57, R. 1961)—

> If the request of Swift is granted, and the other packers demand and are accorded similar treatment (which may be anticipated), the effect will be substantially to destroy the business of the Yard Company.

That is to say, if Swift and the other packers succeed in obtaining livestock delivered at their own sidetracks on the Junction rails, so that they are no longer required, in respect of their direct shipments, to pay yardage fees to the Union Stock Yards for non-transportation services, the Union Stock Yards' business will be substantially destroyed. If Swift alone succeeds, the Union Stock Yards' business will not be impaired, because Swift's direct shipments are now consigned, not to the Union Stock Yards, but to Swift's Omaha Packing Co. plant on the Burlington. None the less, to the extent that the Chicago Junction and its lessee succeed in preventing sidetrack delivery of direct shipments of livestock to any consignee, they will in most instances be funnelling such traffic into the chutes of the Union Stock Yards, subjecting it to yardage fees, exacted for services inappropriate to and unnecessary for direct shipments, see pp. 12-13 *supra*, and consequently not desired —and such conduct will comport squarely with the New

York Central's covenant "to conduct, manage, and operate" the Chicago Junction "in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards."

Right there is the focal point—and the source—of the discrimination which infects this entire controversy.

It was argued in the District Court, on behalf of the Commission and the United States, that the clause in the covenant, "in so far as possible", must be construed to mean "in so far as it is legally possible", on the principle that, where two constructions of a written contract are possible, preference will be given to the one which does not result in a violation of law, citing *Great Northern Ry. Co.* v. *Delmar Co.*, 283 U. S. 686, 691.

Several answers to this too facile approach come readily to mind. One is that made by Commissioner Alldredge below (R. 85):

> The illegality of this covenant is not, as was contended on oral argument, self-corrective through the operation of the qualifying phrase "insofar as possible." The daily conduct of a common carrier's business cannot be supervised by governmental authority so as to safeguard the public interest against the observance of such a covenant, whether qualified as indicated or left entirely unqualified. Its effects may be subtle and indirect and their impact may be felt by shippers located hundreds of miles from the locale of the carrier's operations and who could not, for this reason, be expected to trace the source of their difficulties. A covenant of this character is so diametrically opposed to the public duties and obligations of a common carrier that no vestige of it should be allowed to remain. It is unlawful per se.

Another answer is that, if the covenant is construed in the manner suggested by the Government and the Commission below, it would be meaningless. An agreement to effect a preference to the extent that a preference is legally possible, as applied to matter and activities subject to the

Interstate Commerce Act, is a contradiction in terms; there are no lawful preferences, there are no lawful discriminations, within that field. The covenant in question is either illegal or nugatory—and this record is replete with proof that the parties thereto did not regard it as being without meaning or effect.

B. The present record proves indisputably that, by virtue of the covenant in the lease of the Chicago Junction property, the Union Stock Yards still exercise a substantial measure of control over the operations by the New York Central of the Chicago Junction.

In its report, the Commission asserted that the Union Stock Yards were completely divested of all control over the terminal railroad once it was leased, saying (R. 80),

> The effect of the leases was to completely divest the Union Stock Yards of operation and control of the terminal railroad, the Court saying [in *Union Stock Yard Co.* v. *United States*, 308 U. S. 213, 216-217] that by ceasing to operate or control its railroad directly or indirectly, the Union Stock Yards restricted its transportation service to the loading or unloading of livestock as specified in its tariff.

And the Commission in this Court (I. C. C. Motion to Affirm, pp. 17-18) repeats the assertion of complete divestiture of control.

The record, however, completely undermines the Commission's position on this point; and, as the evidence is in documentary form, it is not subject to dispute.[22] The letter

---

[22] On behalf of The Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange, intervening appellees, there was offered a deposition by Guy L. Gladson, Esq., a member of the firm of Winston, Strawn & Shaw, and one of the writers of Exhibit 57 (R. 1961-1962). This deposition, not having been before the Commission, was excluded by the District Court (R. 149).

(a) Such exclusion was plainly right; a long line of cases holds that, when administrative orders are attacked in the courts, evidence which was not before the administrative agency may not be received. *National Broadcasting Co.* v. *United States*, 319 U. S. 190; *Shields* v. *Utah Idaho R. Co.*, 305 U. S.

already referred to (Ex. 57, R. 1961-1962), which invoked the covenant to induce action on the part of the New York Central contrary to that which that carrier had originally contemplated, did not restrict itself to abstract expression of opinion. It was not a mere suggestion. It was a threat, clearly, unequivocally, and precisely phrased in lawyers' language. Counsel for the Union Stock Yards wrote (Ex. 57 at R. 1962),

> It is our considered opinion that the River Road and the Central are obligated under the terms of the foregoing provision of the lease of 1913 to defend this case and to take every other step appropriate to prevent irreparable injury to the Yard Company, and that any failure to do so will be a breach of this covenant of the lease.

This was intended to mean, and meant, "If the New York Central will not act for the benefit, advantage, and behoof of the business and affairs of the Stock Yards by defending Swift's complaint before the Commission, their lease of the Chicago Junction, approval of which entailed so much litigation,[23] will be terminated, and we will thereupon

---

177; *Acker* v. *United States*, 298 U. S. 426; *Tagg Bros.* v. *United States*, 280 U. S. 420; *United States* v. *Louisville & N. R. Co.*, 235 U. S. 314. The only exceptions—instances of alleged confiscation (*Baltimore & O. R. Co.* v. *United States*, 298 U. S. 349), and situations where the jurisdiction of the administrative agency is challenged (*United States* v. *Idaho*, 298 U. S. 105)—are not involved in the present case on any footing.

(b) Moreover, Mr. Gladson did not deny writing the letter, but only sought to explain the circumstances that led to its being written (R. 141-144); his deposition, even if admissible, would therefore amount to no more than confession without avoidance.

(c) And finally, counsel for the appellant was prepared, had the deposition been admitted, to rebut Mr. Gladson's testimony. See the following excerpts from pp. 27 and 40 of the proceedings of February 27, 1951 (Designated (R. 221, item 6) but not printed, R. 226, see item II D): Mr. Rynder: "* * * * we are prepared at this session this morning, to rebut the testimony offered by Mr. Gladson in that deposition." * * * "I don't want to conclude without again reminding you that we would desire to rebut this evidence, if it is admitted."

[23] See note 9, page 23, *supra*.

lease this valuable property to one of the New York Central's competitors."

Whereupon the New York Central proceeded to defend Swift's complaint before the Commission (R. 250), and, thereafter, to defend Swift's complaint against the Commission in the District Court (R. 97-124). Nor was this the only step that the New York Central took lest it be considered to have broken its covenant to operate and manage the Chicago Junction for the "benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards.

After the date of the letter in question, the Chicago Junction filed a new tariff, under which it proposed "to specifically exempt livestock from the traffic which it will transport and to cancel the application on livestock of all switching charges published by it, except to and from chutes and sidings at the Union Stock Yards" (R. 59). The earlier arrangement had long been in effect, but, obviously, if it were cancelled, so that livestock could not be delivered at all at the sidetrack of Swift or any other packer on the Junction tracks, even with the high additional switching charge, then the business and affairs of the Union Stock Yards would be correspondingly benefited and advantaged. Whatever else the New York Central might be charged with, whatever provisions of the Interstate Commerce Act it might be violating, it was determined not to breach its covenant to manage and operate the Chicago Junction for the "benefit, advantage, and behoof" of the Union Stock Yards.

For the Commission to assert, therefore, in the face of this uncontroverted—and incontrovertible—evidence, that the Union Stock Yards have been completely divested of control over the Chicago Junction, is on a par with asserting that black is white, war is peace, and slavery is freedom.

Actually, of course, the vice of the covenant goes far deeper than the two instances of patent control just dissected. Neither of those involved a continuing wrong. In

the first instance noted, as it happened, the new tariff was cancelled (R. 81); and of the second it is doubtless sufficient to say that the litigation in question has not yet finally terminated in the Union Stock Yards' favor. The truly dangerous feature of the covenant, the feature which makes it a continuing wrong, is that it can always be invoked whenever the Union Stock Yards feel that their business is falling off, upon pain of cancellation of the lease, and that it thus is a means of insuring inefficiency whenever inefficiency is necessary to protect that business. And, in fact, as we shall now show, that is precisely what has happened in the past and what is happening right now.

As we showed at length in Point IV, *supra*, pp. 105-109, the congestion on which the Commission relied to justify the discrimination here practiced is in substantial measure the result, not of mere volume of traffic, but of the several appellees' own acts. And, in view of the covenant, of the undertaking which the Union Stock Yards does not hesitate to seek to enforce, there is not only no incentive for the Chicago Junction and the New York Central to improve matters, but, on the contrary, these carriers have every inducement to continue the present inefficient and wasteful practices so that the congestion continues—with the consequence that sidetrack delivery (which produces no revenue for the Union Stock Yards) is denied, and with the further and ultimate consequence that the business of the Union Stock Yards will be benefited and advantaged rather than substantially destroyed.

C. The present record demonstrates that the illegal covenant continues and perpetuates the existing congestion, which is the sole factor relied upon by the Commission to justify the discriminatory switching charge.

The New York Central's covenant "to operate and manage" the Chicago Junction "for the benefit, advantage, and behoof of the business and affairs of the Yards," shown here to be invoked under pain of cancellation of its valuable

lease, and the actual management and operation of the Chicago Junction, as disclosed in the present record, shed mutual illumination upon each other. When the covenant and the operating practices are viewed together, as they must be, the covenant is seen for what it is, not simply an abstract generalization, but the linchpin of an effective combination in restraint of trade; and the operating practices are revealed, not as fortuitous, Topsy-like developments, but as a closely knit, interlocking arrangement which effectively precludes any deliveries of livestock other than deliveries funnelled into the chutes of the Union Stock Yards (in respect of which the Yards can and does assess yardage fees, whether or not the shipments in fact require the services for which those fees are exacted).

It is clear that the New York Central, lessee of the Chicago Junction, is under no incentive either to dissipate the congestion or to improve operating conditions; and that assertion rests, not on conjecture, but on the present record.

The Chicago Junction's superintendent testified that his road's track layout at the time of the hearing before the examiner was the same as in 1909, that no new tracks had been added in the intervening nearly 40 years (R. 461, 523). And the Commission found (R. 60) that "There is no land available for the expansion of those [Ashland Avenue] yards or the building of additional facilities nearby for interchange and classification of traffic."

Yet in 1922, when the Commission was passing on the propriety of the New York Central's proposed lease of the Chicago Junction, one of the grounds underlying its approval was the possibility of linking the Chicago Junction's facilities with those of the New York Central's wholly-owned subsidiary, the Indiana Harbor Belt Railroad. At that time the Commission said (*Chicago Junction Case*, 71 I. C. C. 631, 634-635, 638):

> The Junction properties are incapable of expansion so as to afford adequate facilities for interchange and

classification, since the district in which they lie is highly developed and intensively used, whereas the Harbor Belt has or can acquire additional space for the building of yards. The inner and outer properties are therefore complementary and in no sense competitive, but can only be operated to the best advantage by bringing them under common control. This expansion at outlying points would permit the inner group to extend further its team-track facilities and enable a more expeditious use of the less-than-carload facilities of the stockyards group. The gain to shippers on the Junction would be found in the greater accessibility of the outer-belt facilities of the Harbor Belt and the expansion of inner facilities made possible by the removal of outer-belt facilities from the inner district. Inbound traffic, for example, would be brought first to outer classification yards on the Harbor Belt and there made up into trains for the 12 districts served by the inner lines. Other services now performed by the Junction in the congested area would be performed on the outer belt, to the great relief of the present Junction facilities.

* * * * *

* * * The Central's terminal facilities are relatively inadequate as compared with competitor eastern trunk lines, but the Central controls extensive facilities for classification and interchange which are complementary to the Junction properties. The stronger competition and the connection between the Junction properties and the Harbor Belt facilities which would thus be brought about, would not only insure to the shippers of the Junction the necessary expansion and elasticity of facilities, together with the assistance of an interested trunk line in times of car shortage, and other emergencies, but would also remove congestion from the closely hemmed-in district served by the Junction and thus open facilities for expedition in the handling of traffic in and out, and also for handling traffic from one part of the city to another.

It is clear from the record in this case that the New York Central did not avail itself of the advantages pointed out by the Commission in 1922; and the answer why it did not

do so is to be found in the covenant. For, bound as it is under threat of losing the Junction lease to operate the Junction "for the benefit, advantage, and behoof of the business and affairs of the Yards," the Central has every incentive to leave matters just where they are, to continue the existing slapdash methods of operation, and to perpetuate the existing congestion. Because, to the extent that the yards of the Chicago Junction remain congested, there exists under the ruling of the Commission justification for the discriminatory switching charge on livestock, and for denying Swift's request; and we have it from the Union Stock Yards' counsel (Ex. 57, R. 1961) that "If the request of Swift is granted, and the other packers demand and are accorded similar treatment * * * the effect will be substantially to destroy the business of the Yard Company."

Here, in a nutshell, is the Q. E. D. for the proposition that the covenant is illegal; here is the fully spelled-out chain of reasoning supporting Commissioner Alldredge's acute observation (R. 83):

> It is difficult to escape the conclusion that the pecuniary interest of the owners of the stockyards in these terminal facilities has been permitted to work itself out in such manner as to deprive Swift of a service to which it would ordinarily be entitled. The conduct, management, and operation of these facilities so as to assure a direct and uninterrupted movement of livestock, under trackage contracts, to and from the stockyards and to exact a substantial switching charge for the transportation of livestock to any industry not using the services of the stockyards seems to me to comport squarely with the covenant of the lease to "conduct, manage, and operate the line of railroad * * * in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the yards." This, however, is clearly inconsistent with the responsibility of a common carrier to serve all patrons indiscriminately within the limits of its capacity.

It is not necessary at this juncture to analyze the anti-trust precedents relating to railroads in order to ascertain

the full extent to which they fit the present facts. For it is clear that, since the present combination touches matters under the jurisdiction of the Interstate Commerce Commission, Section 16 of the Clayton Act (15 U. S. C. 26) prohibits an immediate action under the antitrust laws by the appellant against any of the present appellees. *Central Transfer Co.* v. *Terminal R. R.*, 288 U. S. 469. Indeed, even after relief should be had in the present proceeding, a treble-damage action under the antitrust laws would lie only if the "Discriminatory privileges and payments given by a carrier to a consignor or consignee" are "the symptoms or incidents of an enveloping conspiracy with its own illegal ends." *Terminal Warehouse Co.* v. *Pennsylvania R. Co.*, 297 U. S. 500, 511; *id.* at 515-516. We need not explore these intriguing by-ways further at this time; sufficient to each case is the discrimination thereof. It is enough for present purposes that the covenant in question, and the combination which it links together, result in a violation of the Interstate Commerce Act.

D. Despite its protestations to the contrary, the Commission in its ruling is, in fact, enforcing the illegal covenant between the Union Stock Yards and the New York Central to the detriment of the present appellant.

In its report, as has been indicated, the Commission asserted (R. 80) that "The effect of the leases was to completely divest the Union Stock Yards of operation and control of the terminal railroad," and further—

> The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the *Chicago Junction Case* [71 I. C. C. 631]. Those conditions were particularly intended to insure that the Chicago Junction and the Chicago River & Indiana should be operated as neutral terminal carriers, without special advantage favoring the New York Central but the conditions were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards.

In this Court, the Commission repeated the substance of the foregoing (I. C. C. Motion to Affirm, pp. 17-18), and also specifically said (*id.*, p. 17) that "Neither the Commission's order nor the decision of the [District] Court was based in any respect on the questioned covenant, and while it was in effect refusing to recognize by failing to give any effect to the covenant, the Commission expressly held that the operation of the Junction was subject to the conditions imposed by the Commission itself and the Interstate Commerce Act."

The intervening appellees, after referring to the portions of the Commission's report above noted, say of the covenant (Motion to Affirm, p. 9), that "It has no relation to the reasonableness or lawfulness of the published charges."

In view of what the present record reveals it is of course apparent that the quoted comments reflect either an almost incredible naivete, or else a complete disregard of facts.

We have already, *supra*, pp. 121-124, pointed out the demonstrable fallacy of the Commission's view that, after their lease of the Chicago Junction, the Union Stock Yards were completely divested of all further control of that road. The Yards' threatening letter to the lessee New York Central, the action taken by the New York Central in consequence thereof with respect to defending the present proceeding, and the further action taken by the Chicago Junction to cancel its switching tariff on livestock destined anywhere than to the Union Stock Yards, combine to establish conclusively the control which the Union Stock Yards can and does exercise whenever its business is threatened. It speaks volumes for the Commission's attitude towards and perception of the facts that the Union Stock Yards' letter, the authenticity of which is unquestioned,[24] is not even mentioned in its report, and that the Commission accordingly

[24] The accuracy of the exhibit was conceded at the hearing (R. 1038) and is admitted by the pleadings (Par. VIII of railroad interveners' answer, R. 102-103; Par. 9 of Union Stock Yards' answer, R. 128; amended answer of Chicago Live Stock Exch. et al., R. 133).

did not perceive the obvious connection between that letter and the subsequent cancellation of the switching charge, which became the subject of the I. & S. proceeding.

The clause in the Commission's report which says of the conditions imposed in the *Chicago Junction Case* (71 I. C. C. at 639-641) that they (R. 80)—

> were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards—

can only have reference, among all of the 17 conditions imposed, to No. 9, as follows (71 I. C. C. at 640):

> 9. Shippers served by the Junction and River Road shall be entitled to the same basis of switching charges as prevails in the Chicago switching district generally, and no attempt shall be made to establish any different basis of local or connecting-line switching charges than that which prevails in the Chicago switching district generally for the same or similar service under substantially similar conditions.

We are not prepared to disagree with the Commission's conclusion (R. 80) that the quoted condition was and is "broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards." But on the basis of the present record we do assert with confidence that the quoted condition, far from being enforced, is wholly nullified by the Commission's action in the present case. For, under the ruling now being reviewed, the Chicago Junction is, with the sanction of the Commission and of the court below, managed and operated so as to assure a direct and uninterrupted movement of livestock to and from the Union Stock Yards under trackage contracts, with consequent benefit and advantage to the business and affairs of the Yards by reason of the yardage fees assessed on livestock so delivered, while at the same time the Chicago Junction is permitted to exact a high additional switching charge for the transportation

of livestock to any consignee on its rails not using the services of the Union Stock Yards.

No other conclusion is fairly possible when it is remembered that trackage rights are granted the line-haul carriers for delivery of livestock to the Union Stock Yards and denied the line-haul carriers for delivery of livestock to private sidetracks; that the rules of the Union Stock Yards forbidding cars with dead freight on its tracks combine with the labor agreement consented to by the Chicago Junction to render more difficult the ultimate delivery of all freight to private sidetracks on the Chicago Junction's rails; that the dwindling motive power of the Junction has impaired that carrier's ability to make prompt industrial deliveries; that the anarchic passage of foreign crews over the Chicago Junction's rails contributes its part to the congestion and blockage there; and that the congestion resulting from all of these factors is relied upon by the Commission to justify the high additional switching charge on livestock consigned to private sidetracks.

The consequence of the Commission's ruling is that it forces delivery of livestock into the Union Stock Yards, which are thereupon free to assess yardage fees for stockyards services to direct shipments, for which shipments such services are neither appropriate nor necessary nor desired; and, since those services are performed after transportation has ended, the Commission is without power to regulate them. *Swift & Co.* v. *United States*, 316 U. S. 216. This funnelling the Commission cloaks under the euphemism of the supposed interest in "expeditious centralized delivery" (R. 71). Apart from the point that the Act recognizes no such interest, but on the contrary protects the consignees' right to expeditious *decentralized* delivery, Section 1(9); see p. 83, *supra*, the Commission's concern for the business of the Union Stock Yards is such that where one consignee of livestock—the present appellant—has succeeded in acquiring a sidetrack on the rails of a line-haul carrier, where it can receive its direct shipments

free from the imposition of yardage fees for unwanted services, the Commission characterizes that circumstance as a "preference" (I. C. C. Motion to Affirm, p. 13).

It will not be necessary to repeat here what has already been said above, pp. 109-116, as to the Commission's failure to deal with, or indeed even to recognize, the factors attributable to the appellees which contribute to the congestion, nor to reiterate, what is indeed implicit in the Commission's report, that in its view the discriminatory switching charge is justified and legalized by the congestion.

The sum of the present arguments, without repeating those factors, is that, however much the Commission may have minimized the covenant in its report, its ruling in fact enforces it, perpetuates the congestion, and in consequence perpetuates the discriminatory switching charge which that congestion was held to justify. It is no answer for the Commission now to say (I. C. C. Motion to Affirm, p. 17) that the Commission's order was not "based in any respect on the questioned covenant", or that the Commission refused to recognize the covenant by failing to give any effect to it; such a contention only underscores that body's utter failure to perceive the operation and effect and essential vice of that agreement. Indeed, it is a striking commentary on the insensitivity of the Commission to such an obvious discriminatory restraint that only one out of the eight Commissioners who considered the present case had sufficient perception to appreciate the true relationship of the covenant here in question to the discrimination of which this appellant complained.

It is undisputed and indisputable that the covenant whereby the New York Central agrees to operate and manage the Chicago Junction for "the advantage, benefit, and behoof of the business and affairs" of the Union Stock Yards is still in existence; that this covenant was invoked by the Union Stock Yards after Swift filed its present complaint with the Commission, under threat of cancelling the New York Central's lease of the Chicago Junction; and that the New York Central and its subsidiary thereupon

took steps which they would not otherwise have taken, and which operated to the detriment of this appellant and to the benefit and advantage of the business and affairs of the Union Stock Yards.

It can not fairly be disputed that this same covenant will be similarly invoked in the future, and that under the Commission's ruling below, which finds nothing improper therein, the New York Central will be under strong compulsion to comply with its terms in order to preserve its own valuable interest in the Chicago Junction property. Nor can it fairly be disputed that, while the covenant remains in force with the Commission's approval, it removes every incentive which might otherwise impel the New York Central to improve operating conditions on the Chicago Junction tracks. For to the extent that such improvements are effected and congestion is lessened, sidetrack delivery of livestock will be facilitated; but when that happy upland of optimum efficiency is attained, then, according to the Union Stock Yards, their own business will be substantially destroyed. They would thereupon, necessarily, once more invoke the covenant, and the vicious circle would thereby start on still another round. Actually, however, not only is there no incentive to improvement, but our analysis of the factors contributing to the congestion shows how the covenant is in fact the common and vitalizing element of an effective combination to restrain trade with the appellant at its sidetrack, to its detriment, but for the benefit, advantage, and behoof of the Union Stock Yard and Transit Co. at the latter's yards a few city blocks distant. For to the extent that sidetrack delivery of livestock is prevented, or rendered difficult, or made more expensive, the livestock is inevitably diverted to the chutes of the Union Stock Yards, where it is subjected to yardage fees which the Commission can not regulate and which are exacted for services wholly inappropriate to and unnecessary for direct shipments and in consequence not desired by the consignee.

The consequence is that the covenant perpetuates the existing congestion, which in turn is the foundation on

which the legality of the otherwise discriminatory switching charge is bottomed. As long as that charge remains in effect, livestock is forced into the Union Stock Yards, to the benefit, advantage, and behoof of that company's business, and can not be delivered at private sidetracks because of the prohibitive penalty involved in the present additional switching charge of $39.24 per car.

That is why appellant asserts that the Commission's ruling has the effect of enforcing the covenant in question.

E. Neither the fact that the present system of delivering livestock at Chicago has long been in effect nor the circumstance that appellant had a financial interest in the Union Stock Yards prior to 1920 precludes it from obtaining appropriate relief in this proceeding.

The Commission's report throughout places heavy emphasis on the circumstance that delivery of livestock at Chicago to the chutes of the Union Stock Yards has long been in effect, and that the railway network in the Packingtown portion of that city has developed around that method of delivery. See R. 72-74. But an unbroken line of decisions here establishes that the circumstance that a particular practice has been long continued does not insulate it against change if in fact or in law such a practice is later held to violate the terms of the Interstate Commerce Act. *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501; *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740; *American Express Co.* v. *United States*, 212 U. S. 522. It makes no difference whether the challenged practice is rested on contract (*Philadelphia, Baltimore & Washington R. Co. v. Schubert*, 224 U. S. 603; *Los Angeles Switching Case*, 234 U. S. 294; *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169), even on contract made for peculiarly worthy and long antecedent consideration (*Louisville & N. R. Co.* v. *Mottley*, 219 U. S. 467); or whether the practice rests on long continued and unquestioned custom (*Louisville & N. R. Co.* v. *United States*, 282 U. S. 740; *American Express Co.*

v. *United States*, 212 U. S. 522), or even on earlier and different rulings of the Commission (*Merchants Warehouse Co.* v. *United States*, 283 U. S. 501). All these are false foundations for a practice where adherence to the statute calls for its suppression. Cf. *Terminal Warehouse Co.* v. *Pennsylvania R. Co.*, 297 U. S. 500, 507. There is no estoppel against the assertion of rights under the Interstate Commerce Act. *Los Angeles Switching Case*, 234 U. S. 294, 312-313.

Thus the course of decision in this Court cuts the ground from under still another justification advanced by the Commission to support its ruling in this case, the fact of long continued practice. Nor does the circumstance that correction of the long-standing discriminatory practice may be difficult operate as a valid reason against such corrective action. *Interstate Commerce Comm.* v. *Mechling*, 330 U. S. 567. As the Court there said (330 U. S. at 579-580):

> Related to the question just discussed, is the Commission's contention here that permitting reshipping rates for ex-barge grain to remain equal to the rates for ex-rail and ex-lake grain will cause "incurable chaos" in and disrupt the national rail rate structure which reflects many interrelated conditions governing the transportation of grain from west of Chicago to eastern markets. * * * The possibility of such a disruption does not remotely justify discriminations against barge traffic which actually deprive shippers and the barge companies of the inherent advantages of water transportation guaranteed to them by Congress.

So here: The possibility of disrupting conditions of terminal operation does not remotely justify the discrimination which deprives this appellant of rights under Sections 1(9) and 2 and 3(1) of the Interstate Commerce Act which have been guaranteed by Congress.

Here again, the philosophy of Railroad Statics must yield to the primary Congressional purpose of removing inequalities and preferences. Discrimination does not attain legitimacy through prescription.

It is contended, particularly by the intervening appellees (Motion to Affirm, pp. 3-4, n.2) that it was the packers, including Swift, who contributed to the existence of the present physical arrangement, quoting a sentence from this Court's opinion in *Swift & Co.* v. *United States*, 316 U. S. 216, 230: "It was the packers themselves who suppressed the competitive yards and alternative facilities for unloading their stock."

The history of livestock deliveries in Chicago, including the development of the Union Stock Yards, has been commented on at length in at least four opinions of this Court. *United States* v. *Union Stock Yard*, 226 U. S. 286, 296-301; *Adams* v. *Mills*, 286 U. S. 397, 410-414; *Union Stock Yard Co.* v. *United States*, 308 U. S. 213, 215-216; *Swift & Co.* v. *United States*, 316 U. S. 216, 227-231. But no opinion of this Court has yet considered the significant and far-reaching change which was effected in the Chicago stockyards problem by the antitrust decree entered against, *inter alia*, this appellant, which required Swift to divest itself of all its financial interests and stock holdings in all public stockyards. See par. "Second" of Sub-Ex. 62 of Ex. 42, R. 1458, 1460.[25] By reason of this decree, which required all the packers to convey their stockyards holdings to trustees for an ultimate disposition which was necessarily long delayed (see Sub-Exs. 74-78 of Ex. 42, R. 1611-1637), the situation at Chicago and elsewhere was completely altered. Swift's interests no longer coincided with those of any stockyards. At Cleveland, for instance, the Cleveland Stock Yards began to assess yardage fees on all livestock passing over its tracks to Swift's Cleveland plant at about the time that the Stock Yards securities were sold to outsiders. *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169; see R. 34, No. 223, Oct. T. 1947. At Chicago, in the words of one witness (R. 738), Swift became "a competitor that originally was one of our partners." The result exemplifies

[25] Swift made a determined but eventually completely unsuccessful attempt to set aside certain terms of the decree in question. See *Swift & Co.* v. *United States*, 276 U. S. 311; *United States* v. *Swift & Co.*, 286 U. S. 106.

what this Court, speaking through Mr. Justice Brandeis, predicted over thirty years ago: "Transportation conditions are not static; the oppressor of today may tomorrow be the oppressed." *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, 568. And the consequence has been "a long struggle involving the meat packers, the railroads, and the Union Stock Yard and Transit Company of Chicago," see *Armour & Co.* v. *Alton R. Co.*, 312 U. S. 195, of which the present case is the latest episode.

If, therefore, the fact of Swift's pre-1920 participation in the development of livestock delivery in Chicago, and in the rise of the Union Stock Yards, is at all relevant in the present connection, it must be on some basis, not yet completely articulated in detail, of estoppel.

To the extent that the argument of any of the appellees rests upon estoppel, formal or otherwise, it is of course untenable. *Los Angeles Switching Case*, 234 U. S. 294. To the extent that the argument in favor of the *status quo* falls short of setting up an estoppel, it is if possible even less tenable. In the court below, see R. R. Brief, pp. 56-57, the railroad appellees said of the voluminous documents embraced in Exhibit 42 (R. 1174-1638) that they

> evidence a course of conduct by the packers extending over a period of many years, which was largely responsible for the physical facilities which now make Swift's demands extremely unreasonable and physically impossible.
>
> *This material is not offered to establish any technical estoppel against the packers. It is offered to show that through a long period of years, and until very recently, the packers believed that the delivery of livestock in the public yards constituted the reasonable and lawful method of delivering livestock in the stockyards area. Its primary purpose is to show that the packers not only acquiesced, but actively participated in a particular development of this industrial area and of the structure of the railroad plant which serves it, with the result that under the existing physical conditions the customary method of making delivery to the stockyards has become the only reasonable and practi-*

cal method of making delivery within the stockyards area. [Italics in original.]

This argument involves a number of obvious infirmities. For one thing, it completely (though conveniently) overlooks the many factors other than the volume of traffic which contribute to the existing congestion on the Chicago Junction's tracks. That circumstance, assuredly, renders the argument untenable. For, just so long as the Chicago Junction's motive power is inadequate and continues to dwindle, so long as that carrier disables itself by a labor agreement from rendering efficient service, so long as that carrier discriminates in its granting and withholding of trackage rights, so long as that carrier permits foreign engines and crews to roam at large on its tracks without even a pretense at regulation, and so long as the Union Stock Yards' obstructive rules add to the difficulties of making deliveries, it will take more than simple assertion to establish the truth of the railroad appellees' proposition that "under the existing physical conditions the customary method of making delivery to the stockyards has become the only reasonable and practical method of making delivery within the stockyards area."

For another, the foregoing argument completely, and again conveniently, ignores the discriminatory covenant whereby the lessee of the Chicago Junction is bound to operate that road for "the benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards. For, unless the New York Central sees to it that livestock *is* delivered to the Union Stock Yards and is not delivered to sidetracks, the Union Stock Yards derive no revenue from the operation. Thus, in order to comply with the covenant, the New York Central is bound to discourage sidetrack delivery. It does so, *inter alia*, by asserting that stockyards delivery, which subjects livestock to the payment of non-transportation charges, is the sole practical means for delivery of that commodity.

Yet, significantly enough, when Swift was still availing itself of this same allegedly "only reasonable and practical method of making delivery", by consigning its direct shipments to itself at the Union Stock Yards, it was the same railroads, represented by the same counsel, which insisted that such delivery should be subjected to yardage charges for non-transportation services, so that the consignee would in effect be obliged to ransom his own property. See Brief on behalf of appellees Alton Railroad Co. et al., in No. 595, Oct. T. 1941, *Swift & Co.* v. *United States*, 316 U. S. 216, 217, filed by Kenneth F. Burgess and Douglas F. Smith, Esqs.[26] That is to say, (a) the railroads argued in the egress case that the consignee shipping his own livestock to the Union Stock Yards should not be permitted to receive that property without paying yardage charges for unwanted non-transportation services; (b) the railroads now argue here that the delivery of livestock at the Union Stock Yards is "the only reasonable and practical method of making delivery within the stockyards area"; but (c) the railroads have yet to point out any means whereby the consignee of of direct livestock at Chicago may obtain his property at his own sidetrack at the flat line-haul rate, which is the method and rate universally applicable everywhere else in the country (Ex. 10 at R. 1063-1069; Ex. 12, R. 1083-1090). To the contrary, the railroads assert (Motion to Affirm, p. 11) that "What appellant seeks here is a basis

[26] Swift's complaint in the egress case before the Commission was brought against 23 railroads (R. 24-25, No. 595, Oct. T. 1941). Seventeen of these, plus the Chicago River and Indiana Railroad, intervened and answered in the district court (R. 62-65, 70-74, No. 595, Oct. T. 1941). Fourteen of these same intervening railroads are now parties to the present cause (R. 97-98), and the other four are represented as follows: (a) The Alton Railroad, an intervener in the egress case, was merged in 1947 with the Gulf, Mobile & Ohio R. R. Co. (see *Moody's Manual, Railroads, 1951*, p. 463), which is an appellee here. (b) The Cleveland, Cincinnati, Chicago & St. Louis Ry. Co., and the Michigan Central, both of which were interveners in the egress case, are both leased by the New York Central (*id.* pp. 1051, 1054), an appellee here. (c) The Pere Marquette, an egress case intervener, was merged in 1947 with the Chesapeake & Ohio (*id.*, p. 745), an appellee here. Thus every railroad interest represented in the egress case is represented in this case.

of rates for private track delivery that would place it in a preferred position over any other Chicago packer desiring that character of service."

The common denominator in all of these contentions made by the railroads is that they require the conclusion that direct shipments of livestock at Chicago must go to the Union Stock Yards and must there be subjected to yardage fees. This result, obviously, inures to the "benefit, advantage, and behoof of the business and affairs of the Yards." Thus the very terms of the arguments made by the railroads in the egress case and in this case constitute additional proof of the paralyzing effect on commerce of the covenant between the Union Stock Yards and the lessee of the Chicago Junction.

Finally, the quoted argument completely fails to explain how the particular development of an industrial area, or the structure of a particular railroad plant, or the part which particular consignees have played in such development or in producing such a structure, can justify or excuse, or sanction or grant dispensation from palpable discriminations in violation of a statute, here the Interstate Commerce Act, whose primary target for over two generations has been the evil of discrimination.

What the railroad appellees are saying boils down to this—and we submit it as an accurate paraphrase of the quotation from their district court brief just set out—that since Swift and the other packers, through their one-time interest in the Union Stock Yards, participated in bringing about the present situation, they are bound thereafter to accept it without complaint after they had been divested of that interest by command of the Sherman Antitrust Law, however much the continuation of that situation involves demonstrable discriminations in violation of the Interstate Commerce Act. This amounts in substance to a contention that the removal of a restraint on interstate commerce justifies the continuance of a discrimination in interstate commerce. That proposition, obviously, is not law—and

yet in substance it underlies the Commission's report, the district court's approval thereof, and the arguments now made here in support of both.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be reversed, with directions to set aside the order of the Interstate Commerce Commission, and to remand the proceeding to that body with instructions to proceed according to law, and in conformity with the opinion of this Court.

Respectfully submitted.

FREDERICK BERNAYS WIENER,
1009-1015 Tower Building,
Washington 5, D. C.,

WM. N. STRACK,
ARTHUR C. O'MEARA,
JOHN P. STALEY,
ROSS DEAN RYNDER,
4115 South Packers Avenue,
Chicago 9, Illinois,
Counsel for the Appellant.

FEBRUARY 1952.

APPENDIX A

Pertinent Statutory Provisions

1. National Transportation Policy (Act of Sept. 18, 1940, 54 Stat. 898)

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

2. Interstate Commerce Act, as Amended, Part I (49 U. S. C. 1 *et seq.*).

Sec. 1. (3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier". The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract,

agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term "person" as used in this part includes an individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes a trustee, receiver, assignee, or personal representative thereof.

* * * * *

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

* * * * *

(9) Any common carrier subject to the provisions of this part, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid,

on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad, may make complaint to the commission, as provided in section 13 of this part, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the commission may make an order, as provided in section 15 of this part, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money.

(10) The term "car service" in this part shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this part.

(11) It shall be the duty of every carrier by railroad subject to this part to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

* * * * * *

SEC. 2. If any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier

shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

SEC. 3.(1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

* * * * *

SEC. 15.(5) Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine regulations. The commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

3. SECTION 10 OF THE ADMINISTRATIVE PROCEDURE ACT (5 U. S. C. 1009).

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) RIGHT OF REVIEW.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

* * * * *

(c) REVIEWABLE ACTS.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

* * * * *

(e) SCOPE OF REVIEW.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory

right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

4. FEDERAL TWENTY-EIGHT HOUR LAW (45 U. S. C. 71-74).

Sec. 71. Transportation of animals; time of confinement; unloading for rest and feeding; unloading sheep

No railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, whose road forms any part of a line of road over which cattle, sheep, swine, or other animals shall be conveyed from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, or the owners or masters of steam, sailing, or other vessels carrying or transporting cattle, sheep, swine, or other animals from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia, shall confine the same in cars, boats, or vessels of any description for a period longer than twenty-eight consecutive hours without unloading the same in a humane manner, into properly equipped pens, for rest, water, and feeding, for a period of at least five consecutive hours, unless prevented by storm or by other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight: *Provided*, That upon the written request of the owner or person in custody of that particular shipment, which written request shall be separate and apart from any printed bill of lading, or other railroad form, the time of confinement may be extended to thirty-six hours. In estimating such confinement, the time consumed in loading and unloading shall not be considered, but the time dur-

ing which the animals have been confined without such rest or food or water on connecting roads shall be included, it being the intent of this chapter to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon the contingencies hereinbefore stated: *Provided*, That it shall not be required that sheep be unloaded in the nighttime, but where the time expires in the nighttime in case of sheep the same may continue in transit to a suitable place for unloading, subject to the aforesaid limitation of thirty-six hours.

Sec. 72. Animals unloaded to be fed and watered by or at expense of owner; lien

Animals so unloaded shall be properly fed and watered during such rest either by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, or by the owners or masters of boats or vessels transporting the same, at the reasonable expense of the owner or person in custody thereof, and such railroad, express company, car company, common carrier other than by water, receiver, trustee, or lessee of any of them, owners or masters, shall in such case have a lien upon such animals for food, care, and custody furnished, collectible at their destination in the same manner as the transportation charges are collected, and shall not be liable for any detention of such animals, when such detention is of reasonable duration, to enable compliance with section 71 of this title, but nothing in this section shall be construed to prevent the owner or shipper of animals from furnishing food therefor, if he so desires.

Sec. 73. Penalty for failure to comply with law; when provisions for unloading not to apply

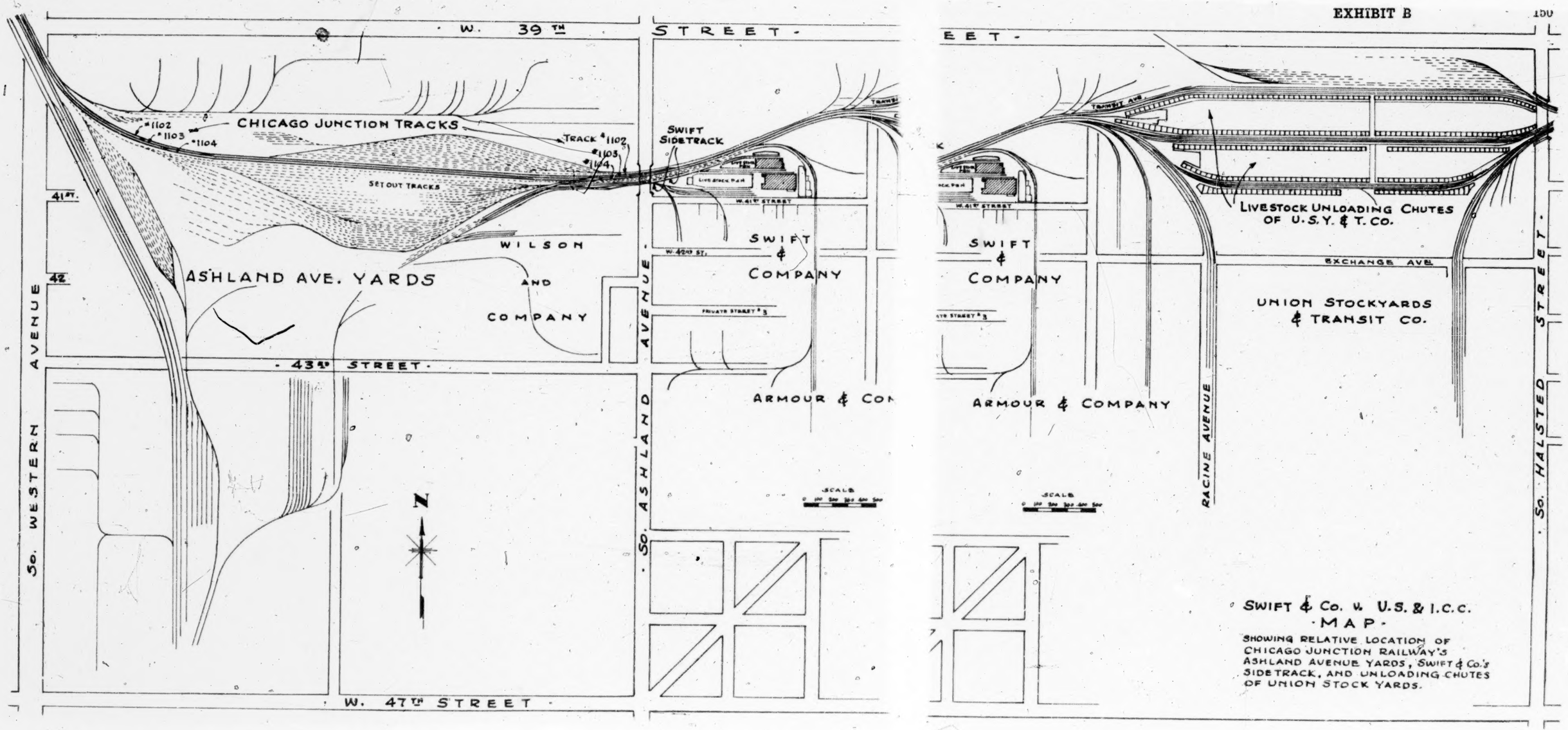
Any railroad, express company, car company, common carrier other than by water, or the receiver, trustee, or lessee of any of them, or the master or owner of any steam, sailing, or other vessel who knowingly and willfully fails

to comply with the provisions of sections 71 and 72 of this title shall for every such failure be liable for and forfeit and pay a penalty of not less than $100 nor more than $500: *Provided,* That when animals are carried in cars, boats, or other vessels in which they can and do have proper food, water, space, and opportunity to rest the provisions in regard to their being unloaded shall not apply.

Sec. 74. Penalty recoverable by civil action; duty of district attorneys to prosecute

The penalty created by section 73 of this title shall be recovered by civil action in the name of the United States in the district court holden within the district where the violation may have been committed or the person or corporation resides or carries on business; and it shall be the duty of United States attorneys to prosecute all violations of this chapter reported by the Secretary of Agriculture or which come to their notice or knowledge by other means.

EXHIBIT B



SWIFT & Co. v. U.S. & I.C.C.

·MAP·

SHOWING RELATIVE LOCATION OF CHICAGO JUNCTION RAILWAY'S ASHLAND AVENUE YARDS, SWIFT & Co.'s SIDETRACK, AND UNLOADING CHUTES OF UNION STOCK YARDS.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
MAR - 4 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 282

SWIFT & COMPANY, *Appellant*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

On Appeal from the United States District Court for the Northern District of Illinois.

APPELLANT'S REPLY BRIEF.

FREDERICK BERNAYS WIENER,
1009-1015 Tower Building,
Washington 5, D. C.,

WM. N. STRACK,
ARTHUR C. O'MEARA,
JOHN P. STALEY,
ROSS DEAN RYNDER,
4115 South Packers Avenue,
Chicago 9, Illinois,
Counsel for the Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

Page

I. The switching charge is a penalty and hence unreasonable and illegal 2

A. The switching charge is in fact assessed only against livestock delivered to sidetracks on the Chicago Junction 2

B. The Commission's refusal to establish joint rates amounted, in the circumstances of this case, to approving an existing discrimination 4

C. The switching charge is a penalty because it is directed aganst a single commodity 6

I. The switching charge violates numerous provisions of the Interstate Commerce Act 7

A. Swift amply met the burden of proof of showing that the rates assessed for delivery of livestock to its sidetrack were unreasonable, unjustly discriminatory and unduly prejudicial 7

B. The switching charge violates Section 1(9) of the Act because it is applied only to deliveries of livestock over appellant's switch and not to such deliveries over the Union Stock Yards' switch 9

C. Analysis of the appellees' arguments further demonstrates the controlling nature of the Cleveland Stock Yards case 12

I. Congestion no justification for discrimination 13

A. None of the cases cited by appellees support—or even suggest—the proposition that congestion or inadequacy of facilities or the possibility of disruption may justfy an otherwise unlawful discriminaton within the identical terminal area 13

B. The record disproves the railroad appellees' contention that the service demanded by Swift can not be performed 16

V. Bearing of appellees' acts contributing to the congestion 19

A. Analysis of congestion made to show unsoundness of Commission's reasoning 19

B. The railroads' attempt to establish the adequacy of Chicago Junction's motive power is effectively contradicted by that carrier's operating heads 20

V. The covenant to discriminate is enforced by the rulings below 21

Page

VI. The Union Stock Yards' economic accusations are disproved by the Government's impartial studies contained in this record 24

VII. There is no estoppel against the assertion of rights under the Interstate Commerce Act 28

Conclusion 30

AUTHORITIES

CASES:

Judicial Decisions:

Adams v. *Mills*, 286 U. S. 397 11
Alabama Great S. R. Co. v. *United States*, 340 U. S. 216 .. 9
Armour & Co. v. *Wantock*, 323 U. S. 126 23
Atchison, T. & S. F. Ry. Co. v. *United States*, 295 U. S. 193 29
Cohens v. *Virginia*, 6 Wheat. 264 23
Interstate Commerce Commission v. *Mechling*, 330 U. S. 567 9
Los Angeles Switching Case, 234 U. S. 294 ..... 10, 29
Mitchell v. *United States*, 313 U. S. 80 15
Swift & Co. v. *United States*, 316 U. S. 246 ..... 21, 22, 29
United States v. *Baltimore & O. R. Co.*, 333 U. S. 169 . 6, 12, 13

Interstate Commerce Commission Reports:

Associated Jobbers of Los Angeles v. *Atchison, T. & S. F. Ry. Co.*, 18 I. C. C. 310 10
Chicago Live Stock Exc. v *Atchison, T. & S. F. Ry. Co.*, 197 I. C. C. 463 11
Chicago Live Stock Exc. v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531 8
Cudahy Packing Co. v. *Atchison, T. & S. F. Ry. Co.*, 234 I. C. C. 569 11
Hygrade Food Products Corp. v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553 28
Livestock—Western District Rates, 176 I. C. C. 1 ..... 8, 11
Mississippi Valley Iron Co. v. *Chicago & N. W. Ry. Co.*, 104 I. C. C. 243 14
Omaha Live Stock Exc. v. *Chicago & N. W. Ry. Co.*, 178 I. C. C. 1 8
Omaha Packing Co. v. *Atchison, T. & S. F. Ry. Co.*, 66 I. C. C. 41 11
St. Louis Chamber of Commerce v. *Baltimore & O. R. Co.*, 57 I. C. C. 639 14
Swift & Co. v. *Baltimore & O. R. Co.*, 266 I. C. C. 55 6

STATUTES: Page

Interstate Commerce Act, as amended:
Section 1(9) 9
Section 2 ..... 8, 15
Section 3(1) 8, 12
Section 15(3) 5
Section 15(5) 11
U. S. Code, Title 18 23

MISCELLANEOUS:

Holmes, "Ideals and Doubts," in *Collected Legal Papers*, 303 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 282

SWIFT & COMPANY, *Appellant*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

On Appeal from the United States District Court for the Northern District of Illinois.

APPELLANT'S REPLY BRIEF.

The several appellees have filed five briefs, aggregating 304 pages of statement, argument, and mixed statement-cum-argument. In order to avoid burdening the Court with any repetition of what we have already said in our main brief, and in order to compress this reply brief within reasonable compass, we are restricting it to new matter presented by the appellees, concentrating attention on the issues which are essential, and pointing out those misstatements which seem most imperatively to require correction.

In general, we follow herein the outline and the roman numeral headings of our main brief, although the captions of those headings vary in phraseology from those previously employed.

I. THE SWITCHING CHARGE IS A PENALTY AND HENCE UNREASONABLE AND ILLEGAL.

A. The switching charge is in fact assessed only against livestock delivered to sidetracks on the Chicago Junction.

We pointed out in our Statement (Swift Br. 11, 15-17), that the switching charge of $39.24 per car now in issue applied only to livestock consigned to sidetracks such as Swift's located on the tracks of the Chicago Junction; that it was inapplicable to any other commodity delivered to the same sidetracks; and that it was likewise inapplicable to livestock delivered to the Union Stock Yards or to Swift's Omaha Packing Co. pens on the rails of the Burlington.

These basic and fully documented facts are not questioned by any of the intervening appellees.

The Government, however, challenges our statement, saying (Br. 54):

> But, as pointed out in the Commission report here (R. 80), the switching charge is one applying on "all carload freight." It is because the tariff provision is thus unqualified that it includes livestock, but, for the same reason, it includes and applies to any dead freight as to which joint rates have not been established, or specific charge published. Certainly, as so applying on both dead freight and livestock, it cannot be logically assumed that the switching charge is, or ever was, one made purposely high to force deliveries of livestock at the public yards instead of at the plants of the packers.

The quoted contention completely misapprehends the record in the case. The fact of the matter is that, while the switching charge *per se* is general, it is actually applied only as set forth in our original brief, so that it is payable only in respect of livestock consigned to sidetracks on the Chicago Junction. This is apparent from the undisputed testimony on the tariff and rate situation:

The line-haul carriers publish rates to Chicago in their tariffs and refer therein to a tariff of Agent R. G. Raasch

which provides for the application of such line-haul rates within the Chicago Switching District. Reference to the Raasch tariff shows that, with respect to dead freight, the flat Chicago rate includes a delivery on the sidetracks of the Junction (as well as of other lines in the switching district). The Junction is a party to the Raasch tariff under rules of tariff publication prescribed by the Commission, and its local switching tariff has no application to the delivery of such line-haul traffic. All interstate carload freight, other than livestock, destined to or forwarded from the meat packing industries in the stockyards area is so treated by tariff publications, and it is accordingly delivered, or accepted and transported, at the flat line-haul rates from or to the various destinations. (R. 285-289.) And see the list of commodities which are given delivery at all industrial locations in the Chicago Switching District at the line-haul rate, Ex. 10, at R. 1057-1060. See also R. 297-299, explaining the exhibit.

The method whereby the Junction is compensated for its delivery service was clearly explained by the publisher of the terminal tariff, Agent R. G. Raasch (R. 843-846): The Junction receives from the line-haul carrier—not from the consignee or shipper—a division of the line-haul rate to Chicago. The Junction's share of that rate, at the time of the hearing, was a minimum division of $18.90 per car, which is to be compared with the switching charge, at that time, of $28.80 per car (R. 78, 87, 846).[1] But the consignee is required to pay only the line-haul rate in respect of all deliveries other than livestock consigned to sidetracks on the Chicago Junction (R. 285-289). The defendants before the Commission—the intervening appellees here—failed to show, in all of the present voluminous record, a single instance of the assessment of the Chicago Junction's switch-

[1] If the increase in the division has kept pace with the increase in the switching rate—and this is assumption only, as the point has not been verified—then the present comparison would be, switching charge, $39.24; division, $25.74.

ing charge on "all carload freight" on any interstate shipment other than livestock to or from a Junction sidetrack. The Government's conclusion (Br. 54), quoted above, p. 2, is therefore simply not so.[2]

B. The Commission's refusal to establish joint rates amounted, in the circumstances of this case, to approving an existing discrimination.

The preceding section will have served to explain why it was that Swift, in its amended complaint before the Commission (R. 56), prayed for the establishment of joint through rates between the line-haul carriers and the Chicago Junction in respect of livestock delivered to its sidetrack. It did so because, although switching rates are generally absorbed by the line-haul carriers throughout the country, in Chicago the practice has been to compensate the terminal carrier by a division of the through rate (R. 293-295, 843-845).

It is true that, as the Chicago Live Stock Exchange says (Br. 21-22)——

> The Commission has no power by order directed against a line-haul carrier alone to require such line-haul carrier to extend the rate published by it to Chicago (as a point on its own line) to a delivery not on its line—that being the effect of an order requiring the absorption of a switching charge—in the absence of a finding of unjust discrimination and undue prejudice, that is, in the absence of proven violations of section 2 or 3(1) of the Act.

But this rule has no application to the prayer of Swift's amended complaint. If the Chicago & North Western, for example, chose to confine the application of its Chicago rate to sidetracks on its own line in Chicago, it could not be re-

[2] The journey through the mechanics of the tariffs just undertaken also demonstrates the complete factual incorrectness of the Government's further statement (Br. 31) that "The line-haul rates do not include compensation for such switching".

quired to effect a delivery, at that rate, on a New York Central sidetrack. That much follows from the rule invoked by the Chicago Live Stock Exchange. But when the Chicago & North Western extends the application of its Chicago rate by a joint-rate arrangement (as in connection with dead freight), or by a trackage arrangement (as with livestock to the stockyard sidetracks), so as to effect a delivery at its Chicago rate on the line of the New York Central (the lessee of the Junction), then, we submit, it is required to give equal and like treatment to both consignees A and B on the New York Central tracks; and it may not decide that it will serve consignee A at the flat Chicago rate and consignee B at the Chicago rate plus $39.24 for a like service.

The Commission's finding (R. 81) "that establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest", and the contentions of several appellees (C. L. S. Ex. Br. 12, 22-27; R. R. Br. 87-88) that this finding involves a determination under Section 15(3) of the Act that the granting of Swift's prayer would not be in the public interest, must be viewed against the tariff background just set out.

Where the establishment of joint rates is sought as an inducement for additional traffic, as, for example, joint rates on grain from Fargo, North Dakota, to Louisville, Kentucky, over the tracks of several connecting carriers, then the judgment of the Commission that the public interest does not require such rates is ordinarily conclusive.

If, similarly, the Commission in this case had removed the discrimination complained of by some method other than the establishment of joint rates, obviously its judgment would be unassailable. But where, as here, the Commission refuses to establish joint rates for one commodity delivered to sidetracks when similar joint rates are available for the same commodity delivered a few blocks away, and are also available for the delivery of every other commodity, then its finding amounts to a determination that

the public interest is served by continuing the resulta discrimination.

We recognize, of course, that the expression "public i terest" is an elusive variable of uncertain, flexible, a elastic content. But whatever the term may mean, it mu reflect at the very least a meaning consistent with rath than opposed to the substantive anti-discrimination pr visions of the Interstate Commerce Act. Consequentl when, as here, violations of that Act have been establishe the Commission can not be heard to say that to redre those violations "is not necessary or desirable in the pu lic interest" (R. 81). The removal of "the evil of di crimination", the principal target of the Interstate Co merce Act over the years, is of the essence of any fai minded concept of "the public interest."

C. The switching charge is a penalty because it is directe against a single commodity.

Apart from all the other considerations already ca vassed at length, the high additional switching charge he in question, assessed only against livestock delivered t sidetracks, is a penalty because it is directed at a sing commodity—and the Commission and this Court so held i the Cleveland Stock Yards case.

The Commission in that case said (*Swift & Co.* v. *Balt more & O. R. Co.*, 266 I. C. C. 55, 66):

> In fact, regardless of the amount of compensatio specified by the Stock Yards for the use of its track fo the carriage of livestock, the very singling out of live stock for the requirement of special compensation fro the railroad shows that the provision is properl classed as a penalty provision, that is, one designe to secure yardage charges on livestock billed and mov ing to complainant's siding, either from complainant or from the railroad engaged in hauling the traffic.

And this Court said, sustaining the Commission's report (*United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, 174, 175):

> After notice and hearing the Commission concluded that the railroad's refusal to carry livestock to Swift violated several provisions of the Interstate Commerce Act. It was found to violate § 3 (1) because of the discrimination against a single commodity, livestock * * *
>
> The Commission's findings of fact are not challenged. There can be no doubt that those facts found would constitute a violation of the sections referred to if Spur No. 245 were wholly owned by the railroad.

And the Court went on to hold that the railroad's non-ownership of the track in question did not vary the parties' rights under the Interstate Commerce Act.

As we point out below, pp. 12-13, these aspects of the Cleveland case have up to now escaped the notice of all appellees hereto.[3]

II. THE SWITCHING CHARGE VIOLATES NUMEROUS PROVISIONS OF THE INTERSTATE COMMERCE ACT.

A. Swift amply met the burden of proof of showing that the rates assessed for delivery of livestock to its sidetrack were unreasonable, unjustly discriminatory, and unduly prejudicial.

It is asserted in numerous of the appellees' briefs (Govt. Br. 40-41; R. R. Br. 90-92; C. L. S. Ex. Br. 28; N. L. S. P. Assn. Br. 30-31) that Swift failed to bear the burden of showing that the rates for delivery of livestock to its sidetrack (line-haul rates plus $39.24 per car) were unreasonable, unjustly discriminatory, and unduly prejudicial.

These assertions disregard undisputed facts of record.

Swift showed that the carriers charged $39.24 more to deliver a carload of livestock than to deliver a carload of

[3] The railroads say (R. R. Br. 93) that, "In characterizing the rate as a penalty, Swift is simply resorting to epithet." We wonder whether, if they had been aware of the Commission's characterization just quoted above, they would similarly have criticized the Commission's analysis.

dead freight, at the same time, and with the same engine movement, to the Swift sidetrack, thereby establishing a discrimination against livestock and a violation of Section 3(1). Swift further showed that of two cars of livestock starting at the same point of origin, moving over the same line-haul rails, in the same train, to the break-up yards in Chicago, switched over the same tracks in Chicago to the Junction connection, and then placed on Junction tracks within a few city blocks of each other, one would be delivered at the flat line-haul rate, while the other would be charged $39.24 additional. Without more, this established a violation of Section 2.

The foregoing would leave open but one question, the compensatory character of the line-haul rates on livestock which had been prescribed by the Commission in *Livestock —Western District Rates*, 176 I. C. C. 1, and which are still in effect (subject to subsequent general increases). On that question we relied on the Commission's statements that those rates were adequate to cover the line-haul carriage plus terminal service plus unloading at the stockyards. *Omaha Live Stock Exc.* v. *Chicago & N. W. Ry. Co.*, 178 I. C. C. 1, 14; *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 546. By that showing, coupled with the fact that a delivery to the Swift sidetrack would relieve the carriers of the cost of unloading, Swift had established without more that the line-haul rate plus $39.24 per car to its sidetrack was unreasonable and unlawful,[4] quite apart from the unreasonable-because-a-penalty phase discussed at Swift Br. 56-62.

Swift has therefore amply sustained its burden of proof. Indeed, we venture to assert that far less proof of discrimination was held sufficient to set aside the order considered

---

[4] If a cost study would justify higher rates *both* for the stockyard delivery and the Swift sidetrack delivery, doubtless the Commission should approve it. But in that case the stockyards and commission merchants would probably not be in the case as interveners on the side of the railroads.

in *Interstate Commerce Commission* v. *Mechling*, 330 U. S. 567. *Cf. Alabama Great S. R. Co.* v. *United States*, 340 U. S. 216, 227.

It is no answer for the several appellees now to urge that the Commission's use of the words "substantially dissimilar" (R. 78) to dispose of the foregoing indisputable discriminations has the effect of legalizing them beyond the possibility of further review (Govt. Br. 48-49; R. R. Br. 26, 91, 92-93, 102, 105; C. L. S. Ex. Br. 18, 36; N. L. S. P. Assn. Br. 19-22, 29-30, 33). "To rest upon a formula," wrote Mr. Justice Holmes,[5] "is a slumber that, prolonged, means death." To rest every case of alleged discrimination on the Commission's finding of "substantially dissimilar" is to close one's eyes to actualities, and is a practice which, if prolonged, will mean the end of any effective effort to wipe out discriminations in interstate commerce. The record in this case, and the reliance placed by the appellees on "substantially dissimilar", proves that the assertion last made is not in any sense far-fetched.

B. The switching charge violates Section 1(9) of the Act because it is applied only to deliveries of livestock over appellant's switch and not to such deliveries over the Union Stock Yards' switch.

(1) The gravamen of Swift's complaint under Section 1(9) is that, when livestock is delivered over the Switch leading to Swift's sidetrack, such delivery costs $39.24 per car more than the line-haul rate, while when livestock is delivered over the switch leading to the unloading chutes of the Union Stock Yards, a few city blocks distant, the delivery is effected at the flat line-haul rate. Obviously, this condition violates the command of the statute that the switch connection shall be operated "without discrimination in favor of or against any such shipper." We are therefore at a loss to understand the assertion of the Chi-

[5] "Ideals and Doubts", in *Collected Legal Papers*, 303, 306.

cago Live Stock Exchange (Br. 40) that "The instant pr ceeding involves no question of discriminatory service. For, even on the most conceptualistically nice distinctio between "service" and "rates", it is plain that to switc a car over one sidetrack for $39.24 more than to switch a identical car to another sidetrack nearby involves a di crimination in service.

(2) The Government's argument under this provisio although not based on the rates vs. service distinctio seems to rest on the verbal fascination inherent in the wo "terminal". The Government says (Br. 27): "The Unio Stock Yards * * * has been held by this Court to be terminal, and terminal delivery cannot be equated wit private sidetrack delivery." And again (Br. 48): "Thi Court has said that a carrier cannot exact an extra charg for the use of a terminal [citing *Covington Stock Yard Co.* v. *Keith*, 139 U. S. 128, 135-136]. It hardly follows tha a carrier may not exact an extra charge from one wh chooses not to use the terminal and who desires and re ceives private sidetrack delivery."

It is really amazing that the Government should b unaware that a private sidetrack is equally a terminal, a this Court, sustaining the Commission, long since held. Se *Associated Jobbers of Los Angeles* v. *Atchison, T. & S. F Ry. Co.*, 18 I. C. C. 310, sustained in *Los Angeles Switchin Case*, 234 U. S. 294. This Court said, speaking through Hughes, J. (as he then was), 234 U. S. at 307:

> The Commission found that these spur tracks were portions of the terminal facilities of the carriers with whose lines they connected, being distinguished from mere plant facilities * * *. Each of the spurs here considered, said the Commission, is, in a real sense, a railroad terminal at which the carrier receives and delivers freight.

The Commission in that case had found—and we sum marize to shorten the discussion—that delivery of carload traffic upon private sidetracks had largely supplanted de-

livery through carriers' freight houses or team tracks; that each of these sidetracks had, in effect, become a railroad terminal at which the carrier receives and delivers freight; that there were then (in 1910) literally hundreds of thousands of such tracks in this country, and that it would be difficult to conceive any system for conducting the vast volume of our heavy traffic without the spur track; that it would be manifestly unfair to treat the industrial spur as a plant facility for shippers' convenience; and that it had become a necessity to both the carrier and shipper under modern conditions of business and transportation.

To the extent, therefore, that there is magic in the word "terminal", it sheds its aura not only over the unloading chutes of the Union Stock Yards, but, equally, upon every private switchtrack and over the railroads' team tracks (Ex. 17, R. 1101-1102) as well. The Government's contention to the contrary is plainly unsound.

Moreover, if the last sentence in Section 15(5) of the Act—"Nothing in this paragraph shall be construed to affect * * * the duty of performing service as to shipments other than those to or from public stockyards"—means anything at all, it means, at the very least, that carriers may not treat a sidetrack consignee as *caput lupinum*, outlawed from the normal protections against discrimination.[6]

---

[6] The Government is of course clearly in error in saying (Br. 47) that "By Section 15(5) of the Interstate Commerce Act, Congress has stipulated for stockyards delivery at the line-haul rate * * *." That provision required carriers to absorb the expenses of *unloading* at public stockyards, see *Omaha Packing Co.* v. *Atchison, T. & S. F. Ry. Co.*, 66 I. C. C. 44; *Cudahy Packing Co.* v. *Atchison, T. & S. F. Ry. Co.*, 234 I. C. C. 569; *cf. Adams* v. *Mills*, 286 U. S. 397, *passim*, but it has nothing whatsoever to do with the line-haul rate. Indeed, the Commission for many years sanctioned a terminal charge in addition to the line-haul rate for all deliveries of livestock made to the Union Stock Yards. *Livestock—Western District Rates*, 176 I. C. C. 1, 122-124; *Chicago Live Stock Exc.* v. *Atchison, T. & S. F. Ry. Co.*, 197 I. C. C. 463.

C. Analysis is of the appellees' arguments further demonstrates the controlling nature of the Cleveland Stock Yards case.

In response to our argument (Swift Br. 83, 86-89) that the Cleveland Stock Yards case, *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, is controlling, and condemns the high additional switching charge here in question, which is assessed only against livestock delivered to sidetracks, each of the five briefs filed by appellees attempts to distinguish the cited case (Govt. Br. 28, 44-47; R. R. Br. 107-109; N. S. Y. Br. 41; C. L. S. Ex. Br. 15, 35, 40-45; N. L. S. P. Assn. Br. 27-29). Yet not a single one of the five briefs sees fit to mention one of the critical portions of that decision, *viz.*, the statement in the opinion that the New York Central's refusal to carry livestock was a violation of Section 3(1) of the Act. See 333 U. S. at 174, 175, quoted *supra*, p. 7.

That portion of the Cleveland case of course disposes of the contention of the Chicago Live Stock Exchange (Br. 34-35), that, on the footing that "'Livestock is not competitive with dead freight'", a practice directed solely against livestock is not violative of Section 3(1). Moreover, the Chicago Live Stock Exchange (Br. 35) ignores the portion of the Commission's report in the Cleveland case quoted above, p. 6, 266 I. C. C. at 66, which held that the singling out of livestock as the subject of special compensation branded the charge as a penalty provision. Similarly, that appellee's argument (C. L. S. Ex. Br. 15, 41) that the Cleveland case related only to rates and not to services misapprehends the issues there; the Cleveland Stock Yards wanted yardage fees, and were perfectly content to let livestock pass over Track 1619, so long as those fees were paid; and indeed the railroad in that case paid those fees for a number of years. See 266 I. C. C. at 61.

But the prevailing distinction attempted to be made of the Cleveland case by the appellees is that it somehow involved a restoration of a long-standing practice of de-

livery, that the gravamen of Swift's complaint there was the disturbance of customary method, and that the Commission and this Court restored the *status quo*. See Govt. Br. 46; R. R. Br. 107-109; C. L. S. Ex. Br. 45; N. L. S. P. Assn. Br. 27-29.

The short answer to this bizarre suggestion is that it finds support neither in the record of the Cleveland case (No 223, Oct. T. 1947) nor in the Commission's report, nor in this Court's opinion. And no such contention was put forth either in the several appellants' briefs in that case, or in the oral argument made by counsel for the prevailing side. The basic issues were, first, whether there was present discrimination, and, second, whether the non-ownership of the track segment excused the railroad's failure to comply with the provisions of the Interstate Commerce Act. The notion that the rationale of *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, reflects a rudimentary recognition of the beatitudes of Railway Statics is, however viewed, wholly fanciful.

III. CONGESTION NO JUSTIFICATION FOR DISCRIMINATION.

A. None of the cases cited by appellees support—or even suggest—the proposition that congestion or inadequacy of facilities or the possibility of disruption may justify an otherwise unlawful discrimination within the identical terminal area.

We argued (Swift Br. 90-91, 103-104, 134-135) that neither present nor future congestion, nor inadequacy of facilities, nor long-continued practice, could justify a course of conduct otherwise discriminatory. We pointed out that no judicial or administrative authorities, other than the rulings under review, supported the ground advanced by the Commission to justify the discrimination here complained of.

That vacuum of authority is certainly not filled by anything in the 300-odd pages of briefs filed by the appellees.

That mountainous mass of argumentative matter yields up, on the point now in question, only one tiny forensic mouse, *viz.*, a statement by the railroads (R. R. Br. 110) that—

> Congestion and other like factors affecting the character of the service and the measure of the rates necessary to compensate therefor have been considered in countless cases. *St. Louis Chamber of Commerce* v. *B. & O. R. R. Co.*, 57 I. C. C. 639 at 646; *Illinois Brick Co.* v. *Director General*, 73 I. C. C. 215 at 217; *Illinois Brick Co.* v. *Director General*, 102 I. C. C. 64 at 66; *Mississippi Valley Iron Co.* v. *C. & N. W. Ry. Co.*, 104 I. C. C. 243 at 245-246; *Carload Traffic in Chicago District*, 174 I. C. C. 111 at 116; *Sonken-Galamba Corp.* v. *Chicago & A. R. Co.*, 181 I. C. C. 229 at 247; *Switching Fruits and Vegetables at Baltimore, Md.*, 201 I. C. C. 689 at 695 and 697.

None of the cases cited supports the quoted proposition. Thus, in *St. Louis Chamber of Commerce* v. *Baltimore & O. R. Co.*, 57 I. C. C. 639, the Commission approved a rate on coal from nearby Illinois mines to St. Louis, Missouri, 20 cents per ton higher than the rate from the same mines to East St. Louis, Illinois. To reach the former point the coal had to be transported a greater distance than to East St. Louis, across a Mississippi River bridge, and be delivered on the line of another carrier in St. Louis, Missouri. There is no suggestion in the report that a higher rate might be charged from the Illinois mines to another delivery in East St. Louis, on the same terminal tracks. Yet that factor would be necessary for the decision to be in point here.

The other six cases all have the same infirmity with respect to the proposition now urged by the appellees. For example, *Mississippi Valley Iron Co.* v. *Chicago & N. W. Ry. Co.*, 104 I. C. C. 243, involved a difference in rates on iron ore from Ironwood, Michigan, to Carondelet, Missouri, compared with the rate to Granite City, Illinois. The latter point is in the East St. Louis, Illinois, switching district, the former in the St. Louis, Missouri, switching district. The haul to the former point was longer, involved crossing

the Mississippi River, and delivery in another industrial area. The Commission held there was no violation of Section 2 of the Interstate Commerce Act. Obviously this was true, because the two hauls were to two different industrial areas, separated by the greatest river in the United States. There is in the decision no suggestion that a higher rate could be charged to consignee A, in Granite City, Illinois, on a sidetrack of the Pennsylvania Railroad, than to consignee B, in the same city, and likewise on a nearby sidetrack of the Pennsylvania. Only such a holding, which the Commission has never made except in the present case, would render apposite the decisions now cited by the railroads.

In short, those authorities amount only to this, that congestion is a factor properly to be considered in determining the reasonableness of given rates to different points in different terminal districts. That is very different from relying on congestion to justify a difference in rates to points within a few city blocks of each other in the same terminal district.

Similarly, the Government's first point (Br. 29) is that "In determining the issues raised in the proceedings, it was essential that the Commission consider the lay-out of yards and tracks of the Junction; the Junction's present operations in handling dead freight; the method by which livestock had for many years been handled by the line-haul carriers to the stockyards; and the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock". Of course it was necessary for the Commission to consider these factors. But it was illegal for the Commission to go on to decide that any of these factors, singly or collectively, could legalize what would otherwise constitute violations of the Act. And moreover, since "the discrimination shown was palpably unjust and forbidden by the Act", "there is no room * * * for administrative or expert judgment with respect to practical difficulties." *Mitchell* v. *United States*, 313 U. S. 80, 97.

B. The record disproves the railroad appellees' contention that the service demanded by Swift can not be performed.

The railroad appellees repeatedly refer to the delivery sought by Swift as "an extremely difficult and impractical operation" (R. R. Br. 10, 32, 57; *cf.* R. R. Br. 31, 50, 74). They then speak of "operating difficulties of an insuperable character" (Br. 31); next, warming to their task, they say that "the evidence * * * proves the Swift proposal to be a physical and practical impossibility" (R. R. Br. 65; *cf.* R. R. Br. 49); and finally, apparently on the theory that overstatement is the best defense, they speak of "the undisputed evidence which shows that the proposed operation cannot be performed" (R. R. Br. 119).

While the statement last quoted can not fairly be criticized for reflecting any lack of exuberance, it is demonstrably inaccurate.

First. The Commission, far from finding that the delivery sought was impossible, specifically cancelled the proposal of the Chicago Junction to eliminate such delivery altogether (R. 81), and further specifically found that such delivery was physically possible (R. 72).

Second. While the Commission found that even the delivery of Swift's direct shipments alone, averaging 18 cars of livestock daily, "would considerably delay and burden defendants' operations" (R. 75), we pointed out that this finding lacked the support of substantial evidence (Swift Br. 99-102).

Third. We could—and doubtless should—have added that the Examiner had specifically found, in great detail, not only that sidetrack delivery of Swift's direct shipments was physically feasible, but also that the Junction's protestations of difficulty were not well founded. The Examiner said (R. 238-239)—and we set forth this excerpt in full because of its importance——

> The Junction contends that it has no classification tracks available for assignment to livestock or any

space in its yards where such tracks could be constructed. It asserts that it would have to maintain a standby service so that a switching engine could immediately pick up a set out car or cars on the running track and make a special trip to the private side track of complainant. However, as hereinbefore shown, livestock can be and is handled in consolidated trains with other freight and there is no apparent reason why direct shipments consigned to complainant could not be placed on an interchange track for subsequent removal to complainant's plant. The Junction contends that if it has to make delivery of livestock to complainant, the cars would have to be grouped by the line-haul carriers in a convenient place in the train with other freight intended for set out in the South Yard and thereafter an engine and crew would segregate the livestock from the dead freight and make a special run to reach the private tracks of complainant. It asserts that as livestock arrives at all hours over many trunk-line carriers this would entail a difficult and expensive operation. This assertion is not borne out by the facts of record. Dead freight for delivery to complainant is set out by the Junction on track 19 in the South Yard, which track is assigned for the classification of loaded cars consigned to complainant. Subsequently, those cars are switched by Junction power to the Damen Avenue Yard, which adjoins the South Yard and is just west of complainant's present and proposed plants. The Damen Avenue Yard has 15 tracks with a capacity of 550 cars. After arrival in that yard complainant issues instructions to spot the cars for unloading at designated locations in its plant area. No reason appears why livestock could not also be placed on an assigned track in that yard and the run made, at carrier's ordinary operating convenience, to complainant's plant without undue difficulty or delay. The switching operation that would be necessary to reach the proposed unloading chutes after leaving Damen Avenue Yard would be as follows: The engine would pull the cars over auxiliary track 1105 to the clearance point of the entrance switch to the facility east of Ashland Avenue. At that point the engine would uncouple and proceed around the train. While so engaged the cut of cars would have

to be controlled by air, as there is a descending grade east from Ashland Avenue to the proposed plant. The engine would then recouple and shove the cars downgrade and around a curve to the unloading chutes. This operation would differ from the present method of switching dead freight or empty cars into this district only in that for the latter operation no air is used although the danger is always present of cars breaking off on the descending grade and rolling freely for a short distance before striking standing cars. Manifestly, that contingency would have to be avoided in handling cars of livestock. Cars made empty could be returned to the Loomis Yard when for eastern or southern connecting lines or to the North Yard when for western connections, which procedure is presently followed by the Junction in handling empty cars other than livestock cars.

The foregoing findings proposed by the Examiner are of particular significance, not simply because of his normal opportunity to "hear and observe the witnesses", but because of what the present record reflects as to the nature of that opportunity. It is clear that most of the railroad operating witnesses on their direct examination were reading from prepared statements;[7] and all may have been.[8] Thus only the Examiner was in a position fully to appreciate the weight to be accorded these witnesses' opinion evidence as to future possibilities, and to judge whether and to what extent their testimony reflected simply a written conclusion prepared in advance by the particular wit-

---

[7] Starbuck of the Burlington (R. 609); Stein of the Chicago & North Western (R. 646); Heide of the Rock Island (R. 649, 652); Kiesele of the Milwaukee (R. 683); and Clousing of the Santa Fe (R. 691, 698).

[8] It is not clear whether Sorensen or Kinsella of the Chicago Junction similarly testified from a prepared statement, although the reporter's repeated references to "(Continuing)" throughout the testimony (R. 438, 440, 442, 446, 450) would seem to indicate that the latter witness at least was doing so.

ness or by a third party. Moreover, the Examiner, accompanied by counsel for all the parties, made an inspection of the actual operations of the Chicago Junction. See R. 503. The Examiner's conclusions quoted above are therefore not only fully entitled to the great respect normally given such determinations, they deserve in this case to be treated as well-nigh conclusive.

It follows, therefore, that the railroads' reference (R. R. Br. 119) to "the undisputed evidence which shows that the proposed operation cannot be performed" is simply not based on the present record, however much it may exemplify the zeal and hyperbole of resourceful advocacy.

IV. BEARING OF APPELLEES' ACTS CONTRIBUTING TO THE CONGESTION.

A. Analysis of congestion made to show unsoundness of Commission's reasoning.

Chicago Live Stock Exchange argues (Br. 45) that "The Swift complaint did not pray for relief with respect to the adequacy of facilities and service on the Junction and the fact the Commission issued no order to require additional facilities or services does not invalidate its order of dismissal of Swift's rate complaint"; and further (Br. 45-46) that "appellant argues that the Commission's order of dismissal of Swift's rate complaint should be set aside because the Commission failed to require such added facilities and service by the Junction as might be necessary to handle livestock in switching service to private siding."

These contentions completely misapprehend the direction of the arguments under our Point IV (Swift Br. 105-116). It was this:

The Commission justified its refusal to strike down the discrimination proved on this record because of the congestion on the tracks of the Chicago Junction, and in its report noted some of the factors which contributed to that congestion, *viz.*, the capacity operation of the Junction's motive power (R. 68), a restrictive labor agreement which im-

paired that road's efficiency (R. 61), and the unregulated operation of foreign train crews on the Junction's tracks (R. 64).

Our argument was that these factors were within the Commission's power to correct, but that the Commission failed to exercise its power to alleviate the congestion; and we also called attention to two other factors contributing to the congestion, also within the Commission's corrective power, but here unnoticed by it, *viz.*, the discriminatory granting and withholding of trackage rights, and the unlawful rule of the Union Stock Yards directed against dead freight. In other words, our contentions were not in the nature of prayers for independent affirmative relief, they served to establish the unsoundness of the Commission's justification for continuing the discrimination.

Our contentions also showed, of course, a whole series of overt acts implementing the combination in restraint of trade reflected by the covenant between the Union Stock Yards and the lessee of the Chicago Junction (Ex. 57, R. 1961-1962).

B. The railroads' attempt to establish the adequacy of Chicago Junction's motive power is effectively contradicted by that carrier's operating heads.

The railroad appellees (R. R. Br. 115-117) attempt to rationalize the decline in the Chicago Junction's motive power by arguing, *inter alia*, that a similar decline has taken place on all roads. But, in their endeavor to disprove our assertion that the Junction's supply of engines was insufficient to take care of all industrial placement (Swift Br. 24, 107), they quote only a portion of the relevant testimony. Since it is not extensive, we set forth all of it here.

Superintendent Kinsella (R. 524, 525-526):

> Q. And you think the Diesel is more efficient in the industrial places?
>
> A. I think so, yes. I think it has better lateral activity and it can get around shorter turns and side clearances.

Q. Have you sufficient Diesels to take care of all of the industrial placements of cars?

A. No, sir, no, sir, we have not.

* * * *

Q. Have you additional motive power on order at the present time?*

A. I can not answer on whether or not it is on order, but I know we have been trying to get some additional Diesel equipment. We want at least five of them if we can get them.*

Q. Five additional Diesels?*

A. Yes.*

Assistant Superintendent Sorensen (R. 555):

Q. Your assumption is, I take it, that the railroads have been able to obtain their normal requirements of freight cars, locomotives, steel for rail, etc., during the war and since?*

A. In so far as the Chicago Junction is concerned we have had sufficient cars. Our locomotive supply has been from time to time inadequate.*

The questions and answers marked with asterisks, which of course prove our original contentions as to the inadequacy of the Junction's motive power, are neither printed nor referred to in the railroad appellees' brief.

V. THE COVENANT TO DISCRIMINATE IS ENFORCED BY THE RULINGS BELOW.

The Government argues (Br. 35-36) that appellant's contentions that the discriminatory covenant forces "packers, like Swift, to use the Union Stock Yards and pay them for unwanted and unnecessary services" are "grievances" that "have no place in this case". In support of that argument it cites the portion of the Egress Case opinion (*Swift & Co. v. United States*, 316 U. S. 216, 232-233) which says that neither the Commission nor the Court "can assume that the charges or practices of [the Union Stock Yards] are unfair or unreasonable, that it is charging for services that

are not performed or facilities not used, or that it is imposing on consignees unnecessary services"; and which goes on to point out that the Secretary of Agriculture is the regulatory forum to hear and determine grievances arising in public stockyards. The Government accordingly concludes (Br. 36) that "the charges imposed by Union Stock Yards have no bearing whatever on this case."

This attempt to make cavalier disposition of one of the gravest issues in the case, however convenient it would be for the Government's purposes, does not withstand examination of the issues considered in the Egress Case. There, as the Court specifically pointed out (*Swift & Co.* v. *United States,* 316 U. S. 216, 227) "the shipments involved are consigned to the packers at the Union Stock Yards by their own choice. It does not appear that they are demanding an increase of other facilities, and the case has not been considered in that light."

Moreover, the discriminatory covenant whereby the New York Central agrees to operate the Chicago Junction for the "benefit, advantage, and behoof of the business and affairs" of the Union Stock Yards (Ex. 57, R. 1961-1962) had not come to light when the Egress Case was under consideration. That covenant had not then, so far as this appellant was aware, been invoked to force the Central and the Junction to take action which they would not otherwise have taken. Nor had the operations of the Junction been analyzed to show how they implemented the terms of the covenant. Consequently, while the Court in the Egress Case could not assume that the Union Stock Yards were "imposing on consignees unnecessary services" (316 U. S. at 233), here that allegation does not rest on assumption, but is proved to the hilt.

Moreover, the circumstance that the Secretary of Agriculture has regulatory powers over rates for stockyards services, an obviously pertinent factor when "the shipments involved are consigned to the packers at the Union Stock Yards by their own choice" (316 U. S. at 227), is completely irrelevant when shipments are consigned elsewhere, and

when their consignment to the Union Stock Yards is sought to be avoided. The Union Stock Yards are described by one witness (R. 919) as "a magnificent hotel for livestock." Swift happens not to desire hotel accommodations for its animals, being prepared and desiring to receive them at home, and it is therefore no answer to its present demand to say that there is available an agency which regulates the rates charged by hotels.

The short of the matter is that, on familiar principles, the language of the Egress Case is "to be read in the light of the facts of the case under discussion" (*Armour & Co.* v. *Wantock*, 323 U. S. 126, 132-133), and that accordingly this language is not in any sense dispositive of the present controversy, where different relief is sought, and where the purposes and practices of the Union Stock Yards and of those covenanting with it have been laid bare and established by proof.[9]

The Government's only other references to the discriminatory covenant (Br. 51), "that the Commission's decision is not in any respect whatsoever based on the contract clause in question," and (*id.*) that "The Commission not only gave it no weight at all in reaching its conclusion, but on the contrary rejected the suggestion that it had any significance," serve only to emphasize our strictures (Swift Br. 132) concerning the Commission's "utter failure to perceive the operation and effect and essential vice of that agreement."

We do not propose to restate—or repeat—our argument under this heading, which assuredly is not met by anything in any of the intervening appellees' briefs. But we venture the observation that the Government, which in cases under the Sherman Law and in cases involving the conspiracy provisions of Title 18 of the U. S. Code is astute to per-

---

[9] The several appellees' repeated and voluminous quotations from the opinion in the Egress Case would seem to indicate that the admonition in *Armour & Co.* v. *Wantock, supra*, which indeed simply restated what Chief Justice Marshall first expressed in *Cohens* v. *Virginia*, 6 Wheat. 264, 399, still bears repetition.

ceive and point out the interrelationship, the effect, and the evil consequences of concerted action, seems singularly unconcerned over the revelations contained in the present record. We have spoken of the covenant (Swift Br. 133) as "the common and vitalizing element of an effective combination to restrain trade with the appellant at its sidetrack, to its detriment, but for the benefit, advantage, and behoof of the Union Stock Yard and Transit Co. at the latter's yards a few city blocks distant"; and we employed that language advisedly. The Government does not undertake specifically to deny that the record reveals the existence of such a combination, yet its position in the case appears to be that the public interest is better served by its endeavor to support a single and obviously ill-advised ruling of a regulatory body than by the slightest attempt on its part to deal with or even recognize the "effective combination in restraint of trade" (Swift Br. 46, 117, 125, 133) whose operations we analyzed at length and in detail.

The result is that the Government's argument in this case is andabatarian, recalling the hoodwinked gladiator of old, who, forced to fight in a helmet without eye-holes, struggled blindfold in ignorance of the location or even of the identity of his true enemy.

VI. THE UNION STOCK YARDS' ECONOMIC ACCUSATIONS ARE DISPROVED BY THE GOVERNMENT'S IMPARTIAL STUDIES CONTAINED IN THIS RECORD.

The Union Stock Yards level an apparently grave accusation at Swift, saying (Br. 21),

> The ultimate purpose of Swift's effort to obtain an advantage over market stock is the destruction of the public market at Chicago as the price-determining market of this country.

This allegation is further documented as follows (U. S. Y. Br. 22, 23, 24):

> The handling of livestock by the Junction to packing plants on its line, as Swift well knows, would seriously disrupt and delay the handling of market stock to the Union Stock Yards; and the deterioration in transportation service to the Yards, as Swift also well knows, would inevitably result in the destruction of the market.
>
> * * * * *
>
> The destruction of the Chicago market as the price-determining market of the country would put Swift in a more advantageous position in dealing directly with the livestock producers * * *.
>
> * * * * *
>
> If Swift can destroy the Chicago market as the price-determining market, it will also be able to improve its competitive position over many of the smaller packers in Chicago, which do not have, and probably could not afford to establish, buying stations and organizations in the country.

We recognize, of course, that the economic conflicts implicit in the present controversy are not for judicial resolution. But we think it may be of interest to set forth the true facts, if only as an index to the accuracy of the allegations hurled against us. The fact of the matter is that every economic premise relied on by the Union Stock Yards is directly contrary to the conclusions reached, not by hired "experts," but by the U. S. Department of Agriculture in "The Direct Marketing of Hogs", a publication prepared in its Bureau of Agricultural Economics, and included in this record (Ex. 55, R. 1897-1960).[10]

First. This official study specifically states (R. 1935) that "Chicago is not a basic market in the sense that hog values for the country are determined there. * * * The fact that Chicago is the most important registering point of hog prices does not make it the determinant of the level of hog prices." And the same is true of other points, mostly pub-

[10] Only a small portion of the cited exhibit was actually printed. See R. 223, item D(2)(b).

lic markets, where price quotations are published. "These points are not price-determining points but only price-registering points, and there is no one basic price-determining point" (R. 1921; see also R. 1926). Prices are determined by the competition of the packer for the available supply offered (R. 1946), and the basic price-determinating factors are the same everywhere (R. 1951). The public market at Chicago no more determines prices than the rooster crowing in the barnyard determines the time of sunrise.

Second. The public market at Chicago—*i. e.*, salable livestock consigned to the Union Stock Yards—has declined from 17,469,160 head in 1923 to 4,811,918 head in 1947 (Ex. 43 at R. 1646-1649); this is a decrease of 72.5%.[11] To the extent that this tremendous decline involves a "destruction" of what is still the largest public livestock market in the country, see Ex. 26, not printed and Swift Br. 105, it is simply a reflection of the economic factors summarized in Swift Br. 7-11 and analyzed in detail in Ex. 55. The fact of the matter is that, as the mounting percentage of direct sales shows, sale of livestock on consignment to a public market is an obsolescent means of marketing under present-day conditions (*cf.* R. 1939).

Third. The statement last made is based on the demonstrable fact that direct selling is more desirable for the producer:

(1) The producer gets a larger return from direct as opposed to commission selling (R. 1908, 1913, 1915).

(2) Direct selling reduces marketing costs (R. 1921).

---

[11] This is more than the 64% decline in the Union Stock Yards' total receipts over the same period (Swift Br. 9), because while direct shipments were only 5.5% of the total receipts at that market in 1923, they amounted to 27.7% of the total in 1947 (Ex. 43 at R. 1646-1649, 1679; Ex. 46 at R. 1848). The 1947 percentage of direct shipments by rail was of course higher than the percentage of total direct shipments, see Ex. 28, R. 1117, for obvious reasons.

(3) The competition at interior points is more favorable to the seller than at public markets. "At public markets the competition is for a supply of hogs that is physically present, largely out of the control of the producers, and under the necessity of early sale. At interior buying points it is a competition to draw hogs, that are still under the control of the producer, to different points. * * * [T]o the producer at home, with hogs for sale, the latter competition [*i. e.*, posted prices and telephone or personal requests for bids] is more useful since he is in a stronger position opposite the buyer with his hogs still at home than he would be if they were at a public market and had to be sold" (R. 1921-1922; see also R. 1947, 1951).

(4) Bearing on the foregoing is a little realized but undoubted fact, *viz.*, that the commission men on the public market "are paid a commission for their services which is unrelated to the price at which hogs are sold. Hence they have no actual interest, as salesmen, in the price level of hogs. Their chief concern is to sell the hogs consigned to them in line with the market so that their customers will be satisfied. * * * Hence, commission salesmen, having no ownership interest in the product, usually will not risk having to carry hogs over from day to day in an effort to raise the level of hog prices." (R. 1945, 1946.)

Fourth. The producer, being more than ever free to select his own method of marketing (R. 1952), will of course employ the means most favorable to his own interest. That direct selling continues to be that means is shown in the increases in that method *after* 1933, the last year shown in the study from which the foregoing analysis has been taken.[12]

12

	Percentage of Direct Sales to Total Sales	
	1933 (R. 1899)	1946 (R. 1011, 1026)
Hogs	44%	64.4%
Sheep	21%	41.8%
Calves	26%	40.7%
Cattle	17%	25.5%

Fifth. Apart from the above, the Union Stock Yards' new-found solicitude for the public market and for the small packer is not, on this record, particularly convincing.

For one thing, the Yards' revenues depend, not upon a sale made on its premises, but on an egress therefrom. *E. g.*, R. 428. Whether the animal has been bought by the packer from a producer in Iowa, or from a commission man in Chicago, makes not a penny of difference to the Union Stock Yards' revenues.

Next, even the smaller packers are in fact able to purchase direct shipments in the country for consignment to themselves at the Union Stock Yards. See Ex. 29, R. 1118-1121.

And, finally, it is only when the Union Stock Yards apprehends losing all direct shipments—from the larger packers—shipments that have no connection with the public market in Chicago, that it considers its business threatened with destruction. Ex. 57, R. 1961.

In short, the Union Stock Yards' concern is what one would normally expect it to be, *viz.*, a solicitude single to itself and its own business.

We repeat, we recognize that this Court is not a tribunal to resolve the competitions of the market. But if economic accusations are to be bandied about, they should be based on fact, rather than fly in the teeth of impartial and objective studies. We have, therefore, thought it worth while to set forth the facts so that the accusations quoted at the beginning of this section could be recognized and evaluated for what they actually are.

VII. THERE IS NO ESTOPPEL AGAINST THE ASSERTION OF RIGHTS UNDER THE INTERSTATE COMMERCE ACT.

Appended to the railroad appellees' brief is a facsimile copy of the cover and all 64 pages of a brief filed with the Interstate Commerce Commission on behalf of the Omaha Packing Company, in the case of *Hygrade Food Products*

Corp. v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553, and signed by two of this appellant's present counsel. It was written in March 1932, three years before the *Hygrade* case was argued in this Court, *sub nom. Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193; ten years before this Court heard argument in the Egress Case, *Swift & Co.* v. *United States*, 316 U. S. 216; and just twenty years before the hearing in the case at bar.

Moreover, when that brief was written, early in 1932, transportation conditions in the stockyards area were vastly different. In 1931, the last full year then available, 196,443 cars of livestock had been shipped by rail to the Union Stock Yards (Ex. 46 at R. 1845), whereas in 1947, the last year shown on the present record, such shipments had fallen to 53,561 cars (Ex. 28, R. 1117). Otherwise stated, rail shipments of livestock to the Union Stock Yards at the time of the earlier brief were 366% of similar shipments for the latest available year now reflected in evidence.[13]

We are at a loss to understand what legitimate purpose is now sought to be served by the reproduction of this twenty-year old document, or by the repeated references thereto and quotations therefrom which interlard the railroad appellees' brief in this case.

If the intended purpose is the setting up of an estoppel, obviously that attempt is foredoomed to failure; there is no estoppel against the assertion of rights under the Interstate Commerce Act. *Los Angeles Switching Case*, 234 U. S. 294, 312-313.

If the railroads' purpose is to score debating points on the basis of what, read in a different context twenty years

---

[13] The railroads (R. R. Br. 14, 37) speak of the rail shipments of livestock to the Union Stock Yards as "averaging 76,920 cars per year for the five years preceding the hearing before the Commission." If the average for the five years preceding the filing of the *Hygrade* brief were similarly used, the figure for that period would be 220,155 carloads per year (Ex. 46 at R. 1845). This is 286% of the shipments relied on by the railroads now.

later, may be apparently inconsistent with later arguments in other litigation involving vastly changed conditions, then the answer is that appellant does not propose to waste its time—nor, preeminently, the time of the Court—by indulging in such trivia.

We assume, of course, that the brief in question has not been exhumed simply to furnish material for an extended argument *ad hominem*.

CONCLUSION.

For the foregoing additional reasons, the judgment of the court below should be reversed, with directions to set aside the order of the Interstate Commerce Commission, and to remand the proceeding to that body with instructions to proceed according to law, and in conformity with the opinion of this Court.

Respectfully submitted.

FREDERICK BERNAYS WIENER,
1009-1015 Tower Building,
Washington 5, D. C.

WM. N. STRACK,
ARTHUR C. O'MEARA,
JOHN P. STALEY,
ROSS DEAN RYNDER,
4115 South Packers Avenue,
Chicago 9, Illinois,
Counsel for the Appellant.

MARCH 1952.

LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.
FILED
AUG 27 1951
CHARLES ELMORE CROPLEY
CLERK

No. 282

In the Supreme Court of the United States

OCTOBER TERM, 1951

SWIFT AND COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION OF THE INTERSTATE COMMERCE COMMISSION TO AFFIRM

In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 50–C–1017

SWIFT AND COMPANY, APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

MOTION TO AFFIRM

Appellee, Interstate Commerce Commission, pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, moves that the final judgment and decree of the District Court be affirmed.

This is a direct appeal from the final order and decree entered on June 21, 1951, by a district court of three judges specially constituted pursuant to Sections 2284 and 2325, Title 28 of the United States Code, dismissing appellant's complaint which sought to set aside an order made by the Interstate Commerce Commission on July 6, 1949. Appeal was allowed on July 26, 1951, and appeal papers were served on July 30, 1951.

967327—51——1

Appellant (hereinafter referred to as Swift), by complaint filed before the Commission, alleged in substance that the rates, charges and practices in connection with direct shipments[1] of livestock in carloads from points outside Illinois for delivery to its plant in Chicago are unreasonable; and unduly prejudicial to livestock as a commodity, and also to appellant, and preferential of its competitors in Illinois and in several western states; in violation of Sections 1 and 3 of the Interstate Commerce Act.[2] Swift asked the Commission to

[1] Shipments consigned directly to packers and not offered for sale in the public market.

[2] Section 1 (4) provides: "It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; * * *."

Section 1 (5) makes unlawful every unjust and unreasonable charge.

Section 3 (1) provides: "It shall be unlafful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; *Provided, however*, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description."

prescribe reasonable rates and charges, including joint through rates between line-haul railroads, serving Chicago, and Chicago Junction Railway [3] (hereinafter called Junction). Such would require railroads to deliver carload shipments of livestock upon Swift's proposed private side track (served by Junction through its Ashland Avenue yards and located in close proximity to the Union Stock Yards) at rates and charges that would not exceed those for delivery at the unloading pens of the Union Stock Yards which were assessed on the bases of the line-haul rate without the payment of any charge for switching.[4]

The principal issue in proceedings before the Commission, as well as in the District Court, was therefore, whether Swift was entitled to have direct shipments of livestock delivered by the Junction, on a private siding at a plant which Swift proposed to build, without any charge in addition to the line-haul rates.

Swift's proposed plant is to be located on the tracks of the Junction which has, and for many years has had, on file with the Commission a tariff providing for a switching charge for the delivery of a carload of livestock to private plants in the area of the Union Stock Yards (herein-

[3] This is the railroad receiving cars from line-haul carriers at Chicago for delivery to consignees in the switching district.

[4] The Union Stock Yards is a public livestock terminal at Chicago which receives shipments of livestock for any and all consignees, including Swift, if it so desires.

after called Stockyards). The line-haul carriers perform no switching service in the stockyards area and have never delivered any livestock at any place in the area other than at the Stockyards.[5] They have running rights thereto over the tracks of the Junction, the only railroad serving the yards. The Junction has never, except in an emergency, handled livestock in switching service, but its tariff covering switching of livestock provides a rate in the event the service is furnished.[6]

In deciding that the appellant is not entitled to private plant delivery without the payment of the switching charge published by Junction and that the published charge was and is not unreasonable the Commission made the following finding (pp. 575–6 of its report), which is clearly supported by substantial evidence as hereinafter shown:

> The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of services that would be required for the desired deliveries and the effect upon terminal operations generally

[5] Except Swift's shipments received via Burlington at the Omaha plant.

[6] The Commission also denied the petition of Junction to be allowed to discontinue the availability of this service by the cancellation of pertinent tariffs.

> of performing such delivery services to the proposed plant.

This subsidiary finding is followed by the ultimate finding:

> We find (1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for the transportation of livestock for delivery on the private sidetracks to be constructed by complainant, * * *.[7]

As indicated above, Junction does not handle livestock, except in an emergency, and all such stock destined to packing houses within the stockyard area, is delivered to the Stockyards by the

---

[7] These and the other findings of the Commission are based upon evidence adduced at the Commission hearing which shows that Swift's proposed plant will be located in the small compact area of Chicago, known as "Packingtown" (Tr. 39), which includes the plants of 13 or more other packers (Tr. 122). It is probably one of the most congested industrial areas in the world. The flow of the raw materials and supplies necessary to the operation of the industries in the stockyard area, and the outbound movements therefrom, depend on the ability of the railroads to furnish efficient service (Tr. 333–35; 693). The Junction Railway, the switching line providing the sole connection between some 22 line-haul carriers and approximately 500 industries located in the stockyards area and vicinity, is the funnel through which a tremendous volume of tonnage must be moved, consisting of hundreds of thousands of cars of dead freight, perishables, and empties. These include cars of dead freight consigned to packing houses and the empties and carloads of packing house products shipped from the packers' plants within the areas (Tr. 297).

line-haul carriers. After unloading, the stock is delivered to the packers in the area by means of an extensive system of overhead viaducts, runways and tunnels owned, operated and maintained by the Stockyards. The evidence is uncontradicted that Junction's Ashland Avenue Yard, the only yard available for receipt and interchange of all freight consigned for private plant delivery, is scarcely able to accommodate any increase of cars over those already being handled and that there is no space available for expansion of the yard.[8]

[8] The line-haul railroads are able to serve only the Stockyards and have no access to any other industry in the area (Tr. 297–98; 443); while all livestock is delivered exclusively by the line-haul carriers, all other freight moving to or from the stockyards area is handled by Junction, being interchanged by it with the trunk lines.

All freight destined to industries on the Junction must be interchanged between the line-haul carriers and Junction at the Ashland Avenue Yard (Tr. 297–8). Also all livestock going to the stockyards must pass through this yard. This is accomplished by the means of three main running tracks (Tr. 365) over which trains may pass through and move to and from the Ashland Avenue Yard. One of these tracks provides the sole means of ingress for the line-haul carriers to reach the Stockyards, and is available and used only for all eastbound traffic (Tr. 590). These three main running tracks form the line dividing the Ashland Avenue yard into two parts known as the North Yard and the South Yard, each serving a particular function. The 24 tracks of the North Yard are used exclusively for traffic outbound from industries on the Junction. The South Yard, consisting of 33 tracks, receives, classifies and handles all freight destined to industries on the tracks of Junction. Of these only 9 are available as receiving tracks and all freight destined to

The average annual movement of livestock to the Stockyards is approximately 77,000 cars.[9] This means a total of 154,000 livestock cars, loaded and empty, are handled over Junction's tracks by the line-haul carriers.[10] None of that number is attributable to Swift; it receives all of its directs, averaging about 6,500 cars annually, at the facilities of its subsidiary, the Omaha Packing Co., located on the Burlington Railroad, about 2½ miles from the stockyards and outside the stockyards area, from whence the stock is transported to its plant in the stockyards area by truck.[11] Swift is the only large packer having a plant located on the rails of a line-haul carrier in Chicago.

Many trains carrying livestock to Chicago also carry some dead freight and perishables. At the line-haul carriers' base yards the livestock and dead freight are separated and livestock is consolidated, by awaiting the arrival of other trains for additional cars, so as to avoid making more than one run to the stockyards if one would

---

industries on the Junction must funnel through these nine tracks (Tr. 320–21; 327; 443). Both the North and South Yards are used to capacity (Tr. 455). The Ashland Avenue Yard serves the busiest and most crowded rail operation in the Chicago area (Tr. 693; 33–35). It is hemmed in on all sides and there is no room for expansion (Tr. 301; 478–9).

[9] Of this number approximately 31,000 were direct shipments.

[10] (Tr. 18–20).

[11] (Tr. 557–62).

suffice.[12] This method of handling is usually employed unless it is necessary to make a rush delivery of a car or some cars in order to avoid violating the 28-hour law.[13]

This present method of delivery of livestock and handling of dead freight has been developed through many years of experience with the result that a high degree of efficiency has been attained through coordination and synchronization of movements of the various types of freight, and any change in delivery practice, such as is proposed by Swift would prove injurious of that efficiency and result in congestion and delay. The tremendous growth of industry in the stockyards area has resulted in rail operations being conducted to their full capacity with only a narrow margin between the present efficient operation and a condition which would render difficult the

---

[12] (Tr. 459; 593; 652–53).

[13] 45 U. S. C. Sec. 71 prohibits confinement of cattle, etc., for more than 28 hours without unloading for resting, watering, and feeding.

About 63 percent of the trains going to the stockyards handle livestock exclusively and do not have to stop on the main running eastbound track to make setouts of dead or perishable freight at Ashland Avenue Yard. The other 37 percent stops to make such setouts (Tr. 363), and while so engaged other trains seeking entrance to the stockyards must await the completion of the setting out operations as the line-haul train, engaged in doing this leaves its livestock cars on the main running track of the Junction while the dead freight cars are set off (Tr. 366–69).

orderly flow of freight through the Ashland Avenue Yard.[14]

In the event Swift or any other packer is accorded private plant delivery of its livestock at the line-haul rate, without the addition of a switching charge, the line-haul carriers would be required to absorb the switching charge of Junction. This charge, now said to be prohibitive and assessed as a penalty, is the identical charge, subjected to certain general increases, which the Commission held to be reasonable in *Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553 (1933). The holding as to the reasonableness of the rate was not questioned or disturbed by the Supreme Court on appeal in

[14] If Swift's 6,500 cars or 13,000 cars per annum (loaded and empty, averaging 18 cars per day loaded or 36 loaded and empty) are to be added to the volume of traffic and interchanged with Junction and worked through the Ashland Yard (and they would have to be interchanged and worked), there would be required a quantum of service in making private side track delivery of livestock, which would entail additional and a different type of switching as well as modification of existing services to alleviate at least in part the resulting congestion and delays to all deliveries (Tr. 445, 455, 478–79, 590, 614–17). Working these cars would involve their careful placement, for such livestock cars cannot be handled ("kicked" or shoved to rest) like dead freight (Tr. 452). Later, these cars would have to be "dug out" of the yard from between cars of dead and perishable freight (Tr. 626–27) so delivery may be made to Swift's private plant.

Atchison, T. & S. F. Ry. Co. v. *United States*, 295 U. S. 193 (1935).[15]

It is submitted that it would be unlawful for the packers or any one else to be accorded a service for which they do not pay, and the record reveals (Exhibits 50–52) that the carriers receive no revenue on the basis of the line-haul rates that would allow them to pay the switching charge.[16]

---

[15] The court reversed the Commission's order respecting the imposition of yardage charges for lack of proper finding of fact.

[16] In speaking of the switching charge the Commission stated (p. 574 of its report) that:

"The line-haul rates on livestock to Chicago apply only to deliveries served by the line-haul carriers. The Junction participates in certain joint rates on perishable and other dead freight out of which it receives for switching, a division of 3.15 cents per 100 pounds, minimum 60,000 pounds, which generally differs from and is lower than its local switching charge. In those instances in which the Junction does not participate in joint rates on dead freight, it collects its local switching charge. It does not appear that there are any joint rates on livestock from points in western trunk-line or southwestern territories in which the Junction is shown as a participating carrier.*

"The line-haul rates on livestock to Chicago are Commission-prescribed rates. In *Chicago Livestock Exch.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 545, 546, we said that 'the line-haul carriers operate over the tracks of the Chicago Junction to the Union Stock Yards and make delivery there thereby making these yards their own terminals.' We pointed out that in prescribing the rates on livestock to Chicago, among other markets, there was specifically taken into consideration as an element 'the rendition of terminal service in connection with the transportation of live stock,' and there was included what was considered 'sufficient to cover such terminal services under

The Supreme Court has held in numerous cases that the lawfulness of a rate is a matter for the determination of the Commission, whose judgment thereon will not be disturbed if supported by substantial evidence. *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541; *Western Paper Makers' Chemical Company* v. *United States*, 271 U. S. 268; *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282; *Swift & Co.* v. *United States*, 316 U. S. 216; *Ayrshire Corp.* v. *United States*, 335 U. S. 573. In view of the foregoing it is submitted that there is no substantial question involved with respect to the issue of the reasonableness of the switching charge here challenged, which is the fundamental issue of the case.

Swift contends that livestock as a commodity is subjected to undue prejudice and disadvantage because dead freight and perishables are interchanged by the line-haul carriers with Junction for delivery on the private tracks of the consignees at the line-haul rate without the payment of the switching charge, while such a

---

a normal operation as well as to cover the unloading and loading of livestock at public stockyards,' but we did not there consider what the services would be in connection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services."

*The Commission found (p. 576) that the establishment of joint rates on livestock as requested by Swift was not necessary or desirable in the public interest.

charge is or will be made when livestock is switched. As hereinbefore pointed out, the evidence adduced at the Commission hearing is convincing that livestock cannot be handled as easily as dead freight. It cannot be "kicked" onto a side track as other freight because of injury to the stock and livestock is subject to the Federal 28-hour law and must receive special handling often in order to prevent a violation of that law.[17] It is obvious that the transportation characteristics of livestock are quite different from those of dead freight. In *Swift and Company* v. *United States, supra,* p. 227, the court recognized this fact where it stated:

> This transportation is of a special kind of property on the hoof, which calls for special handling in the interest of economy, safety, sanitation, and health.

It seems clear, therefore, that there is no basis for Swift's charge that livestock, as a commodity, is subjected to undue prejudice and disadvantage. In view of the foregoing it is insisted that this is not a substantial issue, as the law is well settled that it is the Commission's function to determine the reasonableness of a rate and its orders will not be set aside if they are within the Commission's powers and are supported by substantial evidence. *Interstate Commerce Commission* v. *Union Pac. R. Co.*, 222 U. S. 541.

[17] (Tr. 600–601).

Swift further contends that the switching charge, in addition to the line-haul rate, applied on livestock for private plant delivery, is unduly prejudicial to Swift and preferential of its competitors in midwestern states, including Illinois and Chicago, which is said to be in violation of Section 3 of the Act.

Swift now has and has had the right to have its direct shipments of livestock consigned to it at the public stockyards in Chicago without the payment of any transportation charge other than the line-haul charge. No railroad delivers livestock at any other place, except to Swift itself at its Omaha plant, and perhaps occasional deliveries of shipments to small shippers at team tracks where they perform their own unloading. The record shows Swift does receive all of its direct shipments at its Omaha plant, located on the Burlington Railroad, without payment of any transportation charge other than that made for the line-haul carriage to Chicago. In view of this situation it is difficult to see how Swift is discriminated against or that its competitors are preferred at Chicago. On the contrary it would appear that Swift has the preference in Chicago.[18]

[18] In respect of the delivery of livestock at the Omaha plant as well as at the Stockyards as compared with the delivery sought by Swift, the Commission found that:

"The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those connected with the delivery here sought. There, the unloading chutes are on the rails of

In regard to Swift's claim that the rates and charges assessed on the transportation of livestock to its private siding in Chicago are unduly prejudicial to Swift and preferential of its competitors in midwestern states, the evidence of record shows, with but a single exception,[19] that no packer at any place named in states alleged to be preferred receives any greater service than does Swift at its Omaha Packing Company plant at Chicago. Each of the packers, which receives livestock at its plant, is located, like Swift's Omaha plant, on the rails of a line-haul carrier. At least at 25 of the 37 points named as preferred, and tabulated on Swift's Exhibit No. 12, there is no public stockyard which can serve, as does the Union Stockyards in Chicago, as a proper and adequate terminal for livestock.[20]

---

a line-haul carrier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington. The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought." Commission's report, p. 574.

[19] Sioux City, Iowa. Even there the operations are not comparable to those in Chicago. Swift's Exhibit No. 12.

[20] Even at Sioux City, the only place where a competitor of Swift's receives livestock at a plant located in the immediate area of the public stockyards, Cudahy receives only a few

Based upon the evidence the Commission found no Section 3 violation and said with reference to the cases relied upon by Swift to prove undue prejudice and preference (pages 574–75 of the report) that:

> As support for the delivery of livestock to private industrial tracks without charges in addition to line-haul rates, complainant refers to *Baltimore Butchers Abbattoir & Live Stock Co.* v. *Philadelphia B. & W. R. Co.*, 20 I. C. C. 124, by the Commission, *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55, by the Commission, and *Neuhoff Packing Co.* v. *Louisville & N. R. Co.*, 268 I. C. C. 271, by division 3, in which the refusal to make such deliveries at Baltimore, Md., Cleveland, Ohio, and Nashville, Tenn., respectively, was found unlawful. Deliveries to private industrial tracks at those points did not require substantial modification of terminal operations and

---

shipments of sheep at its plant, which is located on the rails of the Sioux City Terminal Railroad.

In referring to the points named as preferred, in violation of Section 3, Swift's principal witness, Tally, testified that he did not know the detailed facts as to the physical operations at any of the places alleged to be preferred (Tr. 152) and stated, "I can't recall any place where the situation is identical (with Chicago)." (Tr. 154.) As against this evidence Witness Heinemann, Executive Vice President of the National Independent Meat Packers Association, testified that at no point in any state named is there a situation which is comparable to the conditions which would be created at Chicago by the delivery of direct shipments at plants of the packers located in the stockyards area (Tr. 1066).

> interferences with established operations in a manner required at Chicago for such deliveries, and did not involve, as at Chicago, serious disruption of operations. There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred.

It is seen, therefore, that the published switching charge of Junction for delivery of direct shipments of livestock to the private plants of packers does not result in undue prejudice to Swift and preference to its competitors at any place said to be preferred. It is submitted that the finding of the Commission that there was no showing of undue preference and prejudice is supported by substantial evidence and is in accord with the legal standards which must be applied in determining the lawfulness of transportation rates and charges. (*Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457, 481; *United States* v. *Wabash R. Co.*, 321 U. S. 403, 410–13.) Such issue presents no substantial question.

There is no merit to Swift's contention, as revealed in its jurisdictional statement, that the Commission erred in treating Junction as an independent carrier rather than as a part of the New York Central. It is difficult to see how Swift could be serious in contending that these are substantial issues. Junction's status in this regard does not and could not have any bearing on

the reasonableness and lawfulness of its switching charge.

Likewise, there is no merit with respect to the contention that Union Stock Yards has a pecuniary interest in Junction, protected by a covenant, which Swift apparently contends the rulings of the Commission and the District Court have enforced, resulting in Swift being deprived of a service to which it would otherwise be entitled.

Neither the Commission's order nor the decision of the Court was based in any respect on the questioned covenant, and while it was in effect refusing to recognize by failing to give any effect to the covenant, the Commission expressly held that the operation of the Junction was subject to the conditions imposed by the Commission itself and the Interstate Commerce Act. By the covenant referred to, contained in a lease, dated December 1, 1913, between Union, lessor, and Junction, lessee, Junction agreed "to conduct, manage, and operate the line of railroad by this instrument demised, and insofar as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the yards." This same clause was incorporated in a later lease executed May 19, 1922, when Junction subleased its line to the Chicago River & Indiana R. Co. (a subsidiary of N. Y. C. R. R.) for 99 years with option to renew in perpetuity. In connection with this contention

the Commission found that the lease of Junction to the River Road completely divested the stockyards of operations and control of the terminal railroad.[21] This finding was approved and adopted by the court below. See *Neuhoff Packing Co.* v. *L. & N. R. Co.*, 268 I. C. C. 271; *Great Northern Ry. Co.* v. *Delmar Co.*, 283 U. S. 686, 691. Cf. *United States* v. *Baltimore & Ohio R. Co.*, 333 U. S. 169.

Swift asserts that another substantial question presented on this appeal is whether the Commission may lawfully deny service at the line-haul rate to a single shipper at its own side-track in respect of a single commodity, on the ground that

[21] The Commission's report states (p. 575):

"The effect of the leases was to completely divest the Union Stock Yards of operation and control of the terminal railroad, the Court saying that by ceasing to operate or control its railroad directly or indirectly, the Union Stock Yards restricted its transportation service to the loading or unloading of livestock as specified in its tariff. The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the *Chicago Junction Case*, *supra* [71 I. C. C. 631]. Those conditions were particularly intended to insure that the Chicago Junction and the Chicago River & Indiana should be operated as neutral terminal carriers, without special advantage favoring the New York Central but the conditions were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards."

The Commission retained jurisdiction in the *Chicago Junction Case* for the purpose of making any additional requirements or conditions as may be necessary for the protection of the public.

the furnishing of the service would interfere with and disrupt terminal operations while still permitting the identical service at a high additional charge (Junction's switching charge). This insistence assumes that the Commission should proceed to deal with practical problems blindfolded. Swift's main contention and prayer was that line-haul rates include the switching service. That meant that all of Swift's shipments of livestock would have to be delivered through the already crowded and congested terminal facilities of Junction. In fixing the rate for switching of livestock, it is now and always has been necessary to have such a rate as emergency shipments were always possible. The great difference the service involves between livestock and dead freight, not only because of the very nature of the delivery but because the yards had been adapted to dead freight delivery, would make the higher rate reasonable for livestock.

The Commission will not, and should not be required to resort to legalistic thinking as a substitute for the application of reason to practical problems. While the charge was entirely reasonable for the service the Commission knew that it would be availed of when Swift had special need to have livestock moved in that way.

Appellee submits, for the reasons heretofore stated, that this appeal involves no substantial questions. Appellant's argument as revealed by

its Statement as to Jurisdiction is simply reiterations of arguments previously rejected by the Commission and the District Court. The determination of the reasonableness of a rate, or whether it is discriminatory is a question, as previously stated, on which the finding of the Commission is conclusive if supported by substantial evidence unless there was some irregularity in the proceedings or some error in the application of the rules of law. *Western Paper Makers' Chemical Co.* v. *United States,* 271 U. S. 268, 271; *Virginian Ry. Co.* v. *United States,* 272 U. S. 658, 665; *Mississippi Valley Barge Line Co.* v. *United States,* 292 U. S. 282, 286; *Board of Trade of Kansas City* v. *United States,* 314 U. S. 534, 546. The issues involved in this appeal are the same as were before the Court in *Atchison, T. & S. F. Ry.* v. *United States,* 295 U. S. 193, in which the Court only reversed the Commission insofar as it failed to make adequate findings in support of its order with respect to the yardage charges assessed by Union. Since the Supreme Court has affirmed the principles involved in this appeal time and again, it is submitted that no substantial question requiring oral argument is raised here.

In respect of the further contention of Swift (Jurisdictional Statement, p. 12) that the Commission's decision is wrong because it excused Junction's discriminatory service on the ground of inadequate motive power (found to be using

only 47 engines at the time of the hearing as against 86 engines in 1925) the fallacy of this contention is readily apparent when consideration is taken of the fact, as revealed by the evidence of record, that Junction is operating in an efficient manner and that any additional side-track delivery is not dependent upon the increase in the number of switching engines but upon the ability of Junction to obtain the maximum use of the 47 it now operates over the congested yards and tracks in the stockyard area. The assumption that the use of any number of engines over 47 would slow down deliveries is much more logical it would seem, than that an additional number would facilitate switching and relieve congestion. This is true because of the scarcity of tracks and yards available for switching.

In connection with the contention of Swift that the Commission erred in failing to find a violation of Section 1 (9) of the Act (Jurisdictional Statement, pp. 12–13), it is submitted that there is no basis for such an allegation. The facts are, as shown by the record, that under the Commission's order Swift can receive its shipments of livestock on its private side track by the payment of the switching charge, which charge has been found to be reasonable and otherwise lawful. Section 1 (9) does not impose any other requirement.

In the light of the facts in the case at bar, the District Court's holding is amply sustained by the authorities cited herein. It is submitted that the findings and conclusions of the District Court are sound and that this appeal presents no substantial question.

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court should be affirmed.

DANIEL W. KNOWLTON,
Chief Counsel,

SAMUEL R. HOWELL,
Assistant Chief Counsel,
Interstate Commerce Commission.

U. S. GOVERNMENT PRINTING OFFICE: 1951

AUG 27 1951
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO AFFIRM ON BEHALF OF INTERVENERS

KENNETH F. BURGESS,
DOUGLAS F. SMITH,
MARTIN M. LUCENTE,
GUY A. GLADSON,
BRYCE L. HAMILTON,
ROBERT N. BURCHMORE,
JOHN S. BURCHMORE,
NUEL D. BELNAP,
LEE J. QUASEY,
Counsel for Interveners.

INDEX

Subject Index

	Page
Motion to affirm on behalf of interveners	1

Table of Cases Cited

Atchison, T. & S. F. Ry. Co. v. *U. S.*, 295 U. S. 193	4, 7
Ayrshire Corp. v. *U. S.*, 335 U. S. 573	5, 6
Chicago Junction Case, 71 I.C.C. 631	9
Chicago Livestock Exchange v. *A., T. & S. F. Ry. Co.*, 219 I.C.C. 531	3
Hygrade Food Products Corp. v. *A., T. & S. F. Ry. Co.*, 195 I.C.C. 553	4, 7
Interstate Commerce Commission v. *Jersey City*, 322 U. S. 503	5
Interstate Commerce Commission v. *Union Pacific R. Co.*, 222 U. S. 541	5, 6
Livestock-Western District Rates, 176 I.C.C. 1	3
L. T. Barringer & Co. v. *U. S.*, 319 U. S. 1	6
Manufacturers Ry. Co. v. *U. S.* 246 U. S. 457	6
Oregon R. & N. Co. v. *Fairchild*, 224 U. S. 510	7
Skinner & E. Corp. v. *U. S.*, 249 U. S. 557	5
Swift Case, 238 I. C. C. 179	4
Swift & Co. v. *Atchison, T. & S. F. Ry. Co.*, 274 I.C.C. 557	3
Swift & Co. v. *Baltimore & Ohio R. Co.*, 266 I.C.C. 55, 333 U. S. 169	10, 11
Swift & Co. v. *U. S.*, 316 U. S. 216	4, 5
United States v. *Baltimore & O. R. Co.*, 333 U. S. 169	10
United States v. *Baltimore & O. R. Co.*, 231 U. S. 274	7
United States v. *Capital Transit Co.*, 338 U. S. 286	7
United States v. *Wabash R. Co.*, 321 U. S. 403	6, 7

Statutes Cited

Interstate Commerce Act, Sections 1, 2 and 3 (49 U.S.C. 1, 2 and 3)	2
United States Code, Title 28:	
Section 2284	2
Section 2325	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No.

SWIFT & COMPANY,

Appellant,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees

MOTION TO AFFIRM ON BEHALF OF INTERVENERS

Pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, the railroad appellees,[1] The Union Stock Yard and Transit Company

[1] The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Chicago Terminal Railroad Company, The Baltimore and Ohio Railroad Company, The Belt Railway Company of Chicago, The Chesapeake and Ohio Railway Company, Chicago & Eastern Illinois Railroad Company, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railway Company, Chicago, Indianapolis and Louisville Railway Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago River and Indiana Railroad Company, Chicago, Rock Island and Pacific Railroad Company, Chicago South Shore and South Bend Railroad, Erie Railroad, Grand Trunk Western Railroad Company, Gulf, Mobile and Ohio Railroad Company, Illinois Central Railroad Company, Indiana Harbor Belt Railroad Company, Minneapolis, St. Paul & Sault Ste. Marie Railroad Com-

of Chicago, The Chicago Live Stock Exchange, Chicago Traders Live Stock Exchange, National Live Stock Producers Association, and Chicago Producers Commission Association, interveners in the District Court and appellees herein, move that the final order and decree of the District Court be affirmed.

This is a direct appeal from a final order and decree entered on June 21, 1951, by a three-judge District Court, specially constituted pursuant to 28 U.S.C. §§ 2284 and 2325, dismissing appellant's complaint which sought to enjoin, set aside and annul a report and order of the Interstate Commerce Commission.

On July 29, 1947, appellant, Swift & Company, filed a complaint with the Interstate Commerce Commission which, as subsequently amended, alleged, in substance, that the charges on direct shipments of livestock in carloads from points in states other than Illinois, for delivery to appellant's plant at Chicago, were unreasonable, unduly prejudicial to livestock as a commodity, and preferential of appellant's competitors at points in Illinois, Iowa, Nebraska, Missouri, Kansas, Minnesota, Wisconsin, and Indiana, all in violation of Sections 1 and 3 of the Interstate Commerce Act, 49 U.S.C. §§ 1 and 3. Appellant asked the Commission to prescribe rates, charges, rules, regulations or practices, including joint through rates, under which appellant's direct shipments of livestock would be delivered at its private track at the line-haul rates to Chicago. (Appellant's Complaint before the Commission, Exhibit A to Appellant's Complaint in the District Court.)

There were numerous interventions in opposition to the complaint on behalf of the Union Stock Yards, producers, buyers and sellers of livestock. After a full hear-

---

pany, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and Wabash Railroad Company.

ing, including oral argument and an extended presentation on brief, the Commission, by order and report, dismissed the complaint. (*Swift & Co.* v. *Atchison, T. & S.F. Ry. Co.*, 274 I.C.C. 557.)

As the basis for its dismissal of appellant's complaint, the Commission found that the line-haul rates on carload shipments of livestock to Chicago, previously prescribed by it (*Livestock-Western District Rates*, 176 I.C.C. 1; *Chicago Livestock Exchange* v. *A.T. & S.F. Ry. Co.*, 219 I.C.C. 531), were not designed nor intended to compensate the carriers for the livestock delivery service sought by appellant, and that, considering the transportation service required for such delivery and all of the attending facts and circumstances, the published switching charge of the Chicago Junction Railway in addition to the line-haul rates was not unreasonable nor otherwise unlawful for deliveries of livestock to appellant's private tracks. (274 I.C.C. 557 at 574-76.) The Commission also found that the establishment of joint rates for this traffic, as requested by appellant, would not be necessary or desirable in the public interest. (274 I.C.C. 557 at 576.)

In response to appellant's allegation of prejudice to livestock as a commodity, the Commission found that "the measure of transportation services rendered shipments of live animals is substantially greater than that accorded dead freight." (274 I.C.C. 557, at 563.) Appellant's claim that the published charges were prejudicial to it and preferential of its competitors at certain points was similarly disposed of by findings that the transportation services, conditions, and circumstances at each of the allegedly preferred points were substantially dissimilar from those attending delivery of livestock at appellant's private track.[2]

---

[2] This dissimilarity is due primarily to the long-established practice of delivering livestock within this greatly congested area of Chicago only at the public Stock Yards. The evidence (Exhibit 42) proves that for many

(274 I.C.C. 557, at 574-75.) The Commission also referred to its decision in a previous case entitled *Hygrade Food Products Corp.* v. *A.T. & S.F. Ry. Co.*, 195 I.C.C. 553, where it had found the identical switching charge here assailed not unreasonable or otherwise unlawful for performance of the same service now demanded by appellant.[3]

In the proceedings before the District Court, comprehensive briefs were filed, and an entire day was consumed in oral argument. Appellant then presented each and every issue which it raises here. After a full hearing, the District Court found that the Commission's findings were adequately supported by the evidence of record and were in accordance with the applicable statutory standards and

---

years Swift and the other Chicago packers insisted upon receiving their direct shipments of livestock at the Union Stock Yards. In return for a substantial proprietary interest in the Stock Yards, Swift and other Chicago packers in 1892 abandoned their private facilities for the receipt of livestock, such as Swift would again construct, and agreed that "they would not interest themselves in any other stock yards for the receipt and use of their own livestock." (*Swift & Co.* v. *United States*, 316 U. S. 216, at 229; Exhibit 42) The unique physical development of the stock yards area in Chicago and the unusual, and onerous transportation services required to deliver livestock at Swift's proposed private stock yards, stem directly from this action by the packers. Commenting upon the history of the delivery practice in Chicago in the prior *Swift case* (238 I.C.C. 179, 188) the Commission said with reference to the same evidence now embraced in Exhibit 42:

> "For many years, the packers including the complainant, made the practice of which they now complain their own practice. They gave up their own terminal facilities at the Central Stockyards for a substantial consideration and by their covenants with the Yards Company, made the Union Stock Yards their own terminal facilities at Chicago."

On appeal this Court addressing itself to the same point declared:

> "It was the packers themselves who suppressed the competitive yards and alternative facilities for unloading their stock." (*Swift & Co.* v. *United States*, 316 U. S. 216 at 230)

[3] On appeal to this Court, the Commission's findings as to certain other unrelated issues were held to be inadequate, but its determination of the issue here was not challenged. (*Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193)

principles of law. (Conclusions of Law, 1-4, Exhibit A to Appellant's Statement As To Jurisdiction) An order dismissing appellant's complaint was thereafter entered by the Court. It is plain that the Commission's report and order and the District Court's decision affirming the Commission's action involve nothing more than the application of well-settled principles of law to undisputed facts within the field in which the Commission has long been recognized by this Court to be an expert body.

As noted above, appellant's primary purpose in the proceeding before the Commission was to secure a ruling that the published charges for the delivery service which it desires at its proposed private stock yard were, and are, unreasonable, and otherwise unlawful. The measure of the rate was the principal matter in issue before the Commission, and the validity of the Commission's action with respect thereto is necessarily the principal issue raised by appellant here. Appellant contends, therefore, that an appeal from a determination by the Commission, affirmed by the District Court, that a particular rate, applying to a single commodity, is not unreasonable or otherwise unlawful, presents substantial questions for this Court to decide.

With respect to the Commission's findings that the charge in question is not unreasonable or otherwise unlawful, it would seem indisputable that no substantial question is involved. This Court has repeatedly held that the lawfulness of a particular rate or rates is a matter for the informed judgment of the Commission, and the determination of that expert body will not be disturbed if supported by substantial evidence of record. (*Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U.S. 541; *Skinner & E. Corp.* v. *United States*, 249 U.S. 557; *Swift & Co.* v. *United States*, 316 U.S. 216; *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503; *Ayrshire Corp.* v. *United*

States, 335 U.S. 573.) The District Court found that the Commission's findings had the requisite support and that the Commission's action conformed to the governing principles of law. (Conclusions of Law, 1-4, Exhibit A to appellant's Statement As To Jurisdiction) Cursory reference to the Commission's report will demonstrate the correctness of that determination by the District Court.

In its exhaustive consideration of the issues raised by appellant's complaint, the Commission discussed at length the detailed evidence introduced by the defendants (appellees here) designed to show the operating conditions involved in and the transportation services required to effect delivery of livestock at appellant's private yards. It considered and weighed the conditions and circumstances involved in making delivery at the points alleged to be preferred and in regard to the commodities supposedly receiving preferred treatment from the carriers. The Commission found that the services required, and all other relevant conditions and circumstances, justified the measure of the charge. (274 I.C.C. 557, at 575-76) It also found that there was no showing of similar conditions and circumstances with respect to transportation services at points allegedly preferred (274 I.C.C. 557, at 575), that a substantial dissimilarity was shown as to certain allegedly preferred points (274 I.C.C. 557, at 574), and that allegedly preferred commodities required substantially less transportation service than that accorded livestock. (274 I.C.C. 557, at 563) These findings are in accord with the legal standards which must be applied in determining the lawfulness of transportation charges, and the District Court so found. (*Interstate Commerce Commission* v. *Union Pacific R.R.*, 222 U.S. 541, at 549-50; *Manufacturers Ry. Co.* v. *United States*, 246 U.S. 457, at 481-82; *L. T. Barringer & Co.* v. *United States*, 319 U.S. 1, at 6-7; *United States* v. *Wabash*

R. Co., 321 U.S. 403, at 410-13; Conclusions of Law, 1-4, Exhibit A to appellant's Statement As To Jurisdiction.) [4]

The issues presented by this appeal thus arise in an area where the applicable legal principles are well settled, and as shown above, the Commission's findings conformed with those principles in every respect. Furthermore, this Court has repeatedly recognized the Commission's expert competence in its special field, and has consequently restricted the matters which it will consider on appeal. Because of these elementary and well-settled rules, the issues open for review in this case do not present any substantial questions not previously determined by this Court.

Moreover, this appeal involves the same questions before the Court in *Atchison, Topeka & Santa Fe Railway Co.* v *United States*, 295 U.S. 193. As shown by the Commission's report in that case (*Hygrade Food Products Corp.* v. *Atchison, T. & S.F. Ry. Co.*, 195 I.C.C. 553) the Hygrade Company, a Chicago packer with a plant located in the same area as appellant's packinghouse, filed a complaint with the Commission alleging, among other things, that the published switching charge in addition to the line-haul rates for delivery of livestock at its private track, was unreasonable, discriminatory, prejudicial and preferential. (195 I.C.C. at 553) The switching charge attacked in that case was the identical charge assailed by appellant in this proceeding, subject only to authorized general rate increases since that time, and the Commission so found. (274 I.C.C. 557 at

---

[4] Appellant contends that the Commission erred in failing to find violations of §§ 1(9) and 2 of the Interstate Commerce Act. (Statement As To Jurisdiction, p. 3) In its complaint before the Commission appellant did not raise those issues, and they cannot, therefore, be raised here. *United States* v. *Capital Transit Co.*, 338 U. S. 286, at 291; *United States* v. *Baltimore & Ohio R. Co.*, 231 U. S. 274, at 297-98; *Oregon R. & N. Co.* v. *Fairchild*, 224 U. S. 510, at 526. In any event, the Commission's findings noted above dispose of any contention that there is any unlawful discrimination or any other violation of §§ 1(9) and 2.

573) The Commission found in that case, as it has in this proceeding, that "the assailed switching charge on carloads of livestock placed for delivery at complainant's plant is not shown to be unreasonable or otherwise unlawful." (195 I.C.C. 553 at 558) On appeal to this Court, the Commission's finding as to the lawfulness of the switching charge was specifically noted in language that leaves no doubt as to the similarity between that proceeding and this. The Court stated:

> "Consignee sought free delivery in cars switched into its plants, but the Commission found the switching charge not unreasonable" (295 U. S. 193 at 200).

In addition to its attack on the switching charge, the Hygrade Company sought free use of certain Yard Company facilities in connection with deliveries at the Union Stock Yards (295 U. S. 193 at 200). This second issue was determined in favor of the Hygrade Company, but was reversed on appeal because the Commission failed to make adequate findings in support of that aspect of its order (295 U. S. 193 at 201-202). This reversal, however, did not relate to the determination that the switching charge was not unreasonable or otherwise unlawful, and it is that aspect of the case which is again presented to this Court by the appellant in this proceeding.

In the argument by which it attempts to show—that the questions raised are substantial, appellant pretends to find an unwarranted discrimination in the fact that the published charges for private track delivery of its livestock exceed the charges applicable to certain other traffic. (Appellant's Statement As To Jurisdiction, p. 10) There is not the slightest reference in this argument to the Commission's findings in regard to the dissimilarity between the transportation services, circumstances and conditions attending delivery of livestock to appellant's private track and delivery of the shipments supposedly receiving preferred

treatment. It is obvious, of course, that the Commission's findings, noted above, disprove any discrimination.

In view of these findings and the evidence of record which sustains them, appellant then attempts to divert attention from the issues presented by its complaint before the Commission by an extended discussion—of extraneous and irrelevant matters. The agreement referred to in paragraph 2 (Appellant's Statement As To Jurisdiction, p. 11) was introduced in the hearings before the Commission by the appellant. It has no relation to the reasonableness or lawfulness of the published charges. The sole issue raised by appellant's complaint before the Commission, and neither the defendant carriers nor any of the other appellees have at any time sought to justify such charges by reference to that covenant. In its report, the Commission found that the asserted contractual relationship between the Chicago Junction Railway and the Union Stock Yards was subject to the conditions imposed in *Chicago Junction* case, 71 I. C. C. 631,[5] and that those conditions were effective to prevent the operation of the Chicago Junction Railway for the special advantage of the Union Stock Yards (274 I. C. C. 557, at 575).

The second attempt to divert the Court's attention from the issues involved in this proceeding may be found in the extended discussion of the Chicago Junction's legal status and the assertion that the Commission's decision was based on an inadequacy of the Chicago Junction's motive power (Appellant's Statement As To Jurisdiction, pp. 11-12). Appellant does not explain how the Chicago Junction's status, whether it be regarded as an independent carrier (*Chicago Junction* Case, 71 I. C. C. 631, at 639-41) or part

[5] The Commission retained jurisdiction of that proceeding for the purpose of making such amendments or modifications of its conditions as might become necessary or desirable in the public interest. (71 I.C.C. 631 at 641)

of the New York Central, impinges in any manner upon the findings made by the Commission in determining the reasonableness and lawfulness of the assailed switching charge. The truly significant facts as to the transportation, conditions and circumstances in the Chicago Stock Yards area would not vary with a variation in the Chicago Junction's legal status, and the argument which assumes, but does not explain, why that status is important here is, therefore, irrelevant. So far as the claimed inadequacy of motive power is concerned, the Commission's decision dispels any assumption that any such factor was used to support its findings. There is a single passing reference to motive power in the Commission's report (274 I. C. C. 557 at 566), and the matter is not thereafter alluded to, nor does it enter into the Commission's findings.

The contention that the Commission erred in failing to find a violation of § 1(9) is equally without merit (Appellant's Statement As To Jurisdiction, pp. 12-13). Under the commission's order in this case, appellant can receive its direct shipments of livestock over its private track upon payment of the charge found to be not unreasonable, discriminatory or otherwise unlawful, and Section 1(9) does not require more. In support of its argument on this particular aspect of the case, and at numerous other points throughout its Statement As To Jurisdiction, appellant cites *United States* v. *Baltimore & Ohio R. Co.*, 333 U. S. 169. In that case, the carriers serving appellant's plant at Cleveland had for many years delivered livestock to appellant's plant without any charge in addition to the line-haul rates and the performance of that service at the line-haul rates was expressly authorized by the published tariffs. The defendant carriers continued to perform that service for appellant's competitors while refusing it to appellant (*Swift & Co.* v. *Baltimore & Ohio R. Co.*, 266 I. C. C. 55, at 60, 333 U. S. 169, at 174, Footnote No. 3)

Here, however, private track delivery of livestock to any of the packers in the stockyards area has never been performed at the line-haul rates, and the Commission expressly found that the line-haul rates do not cover livestock deliveries at appellant's private track (274 I. C. C. 557 at 559 and 574-75). *United States* v. *Baltimore & Ohio R. Co.*, 333 U. S. 169 did not involve any controversy as to the measure of the charge for the delivery sought by appellant. As stated by this Court:

> "Ownership of Track 1619 by Stock Yards and its objection to livestock deliveries is, in fact, the only reason suggested for the railroad's failure to deliver shipments of livestock to Swift as they do to neighboring packers . . ." (333 U. S. 169 at 175).

The carriers here make no such defense. The published charges for private track delivery of livestock at appellant's plant are the same as those available to the other Chicago packers for that same type of delivery. What appellant seeks here is a basis of rates for private track delivery that would place it in a preferred position over any other Chicago packer desiring that character of service.

In its report herein, the Commission considered appellant's argument that the *Cleveland* case supported its demands in this proceeding, and found:

> "There is no showing of a similarity in any respect of the services required and circumstances affecting services" (274 I. C. C. 557 at 575).

Appellant's reliance upon *United States* v. *Baltimore & Ohio R. Co.*, 333 U. S. 169, thus utterly disregards the fact that dissimilar situations produce different results.

We respectfully submit, therefore, that appellant presents no substantial question for the decision of this Court,

and that the order and decree of the District Court should be affirmed.

KENNETH F. BURGESS,
DOUGLAS F. SMITH,
MARTIN M. LUCENTE,
11 South LaSalle Street;
Chicago, Illinois,
Counsel for Railroad Appellees.
GUY A. GLADSON,
BRYCE L. HAMILTON,
38 South Dearborn Street,
Chicago, Illinois,
Counsel for The Union Stock Yard and Transit Company of Chicago.
ROBERT N. BURCHMORE,
JOHN S. BURCHMORE,
NUEL D. BELNAP,
135 South LaSalle Street,
Chicago, Illinois,
Counsel for Chicago Live Stock Exchange and Chicago Traders Live Stock Exchange.
LEE J. QUASEY,
139 North Clark Street,
Chicago, Illinois,
Counsel for National Live Stock Producers Association and Chicago Producers Commission Association.

LIBRARY
SUPREME COURT, U.S.

FILED
FEB 26 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 282

SWIFT & COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF ON BEHALF OF THE NATIONAL LIVE STOCK PRODUCERS ASSOCIATION AND CHICAGO PRODUCERS COMMISSION ASSOCIATION, INTERVENERS.

LEE J. QUASEY,
139 No. Clark St.,
Chicago 2, Illinois,
Commerce Counsel for Interveners.

February 26, 1952.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

	PAGE
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS AND STATUTES INVOLVED	2
POSITION OF PRODUCER INTERVENERS	3
SCOPE OF THE BRIEF	4
SUMMARY OF ARGUMENT	5
BRIEF AND ARGUMENT	10
I. The Union Stock Yard Is the Only Public Live Stock Market in Chicago. It Is the Terminal of All the Railroads and With One Exception the Only Suitable Place for the Delivery of Live Stock	5, 10
Testimony of Producers	10
Testimony of Operating Witnesses	12
II. The Services Rendered in Delivering Live Stock to the Union Stock Yard and to the Plant of the Appellant's Subsidiary, the Omaha Packing Company, Are Not More Onerous Than Terminal Services Contemplated Under the Scale of Rates Prescribed in the Western Live Stock Case (176 I. C. C. 1)	6, 16
The Chicago Terminal Case	16
III. There Is Great Dissimilarity Between Delivery of Live Stock at the Union Stock Yard, the Only Public Stock Yard in Chicago, and the Delivery of Live Stock at the Appellant's Proposed Private Stock Yard	7, 19
The Present Case	19
Delay Would Lengthen Time in Transit and Would Otherwise Be Detrimental to Producers and Others Shipping Live Stock to Chicago	22

Complainant Has Available Use of Facilities at Union Stock Yard Same as Other Packers in the Stock Yard Area 24
A Granting of Appellant's Demand Would Seriously Deteriorate Live Stock Service at Chicago 25
A Centralized Place of Delivery at Chicago Serves All Interests to Best Advantage... 26
The Decision in Cleveland Case Not Applicable Here 27
Appellant Failed to Sustain Burden of Proof in Support of the Allegations in Its Complaint 30
CONCLUSION 33

Table of Cases.

Citations.

A. T. & S. F. Ry. Co. v. United States of America, 295 U. S. 193 32

Baltimore Butchers Abattoir & Live Stock Co. v. Philadelphia B. & W. R. Co., 20 I. C. C. 124 29

Chicago Live Stock Exchange v. Atchison, T. & S. Fe Ry. Co., 219 I. C. C. 531 ..... 4, 5, 6, 8, 16, 18, 19

Hygrade Food Products Corporation v. A. T. & S. Fe Ry. Co., 195 I. C. C. 553 ..... 31, 32

Illinois C. R. Co. v. Interstate Commerce Commission, 206 U. S. 441, 51 L. ed. 1128, 27 Sup. Ct. Rep. 700 34

Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541, 56 L. ed. 308, 32 Sup. Ct. Rep. 108 33

Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 470, 54 L. ed. 287, 30 Sup. Ct. Rep. 155 33

Interstate Commerce Commission v. Northern P. R. Co., 216 U. S. 554, 54 L. ed. 609, 30 Sup. Ct. Rep. 417 34

Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. S. 146, 174, 42 L. ed. 414, 425, 18 Sup. Ct. Rep. 45 34

Livestock—Western District Rates, 176 I. C. C. 1 .. 4, 7, 8, 18

Neuhoff Packing Co. v. Louisville & N. R. Co., 268 I. C. C. 271 29

Southern P. Co. v. Interstate Commerce Commission, 219 U. S. 433, 55 L. ed. 283, 31 Sup. Ct. Rep. 288 33

Swift & Co. v. Atchison, T. & S. Fe Ry. Co., 274 I. C. C. 557 ..... 1, 2, 6, 7, 9, 19, 22, 23, 24, 25, 26, 27

Swift & Co. v. Alton Railroad Company, et al., 238 I. C. C. 179 7

Swift & Company v. Baltimore & Ohio R. R. Co. et al., 266 I. C. C. 55 ..... 27, 28, 29

United States of America, Interstate Commerce Commission and Swift & Company, appellants v. Baltimore & Ohio R. R. Co., et al., 333 U. S. 169, 92 L. ed. 618 (1948) 27

Statutes.

Interstate Commerce Act:

Sec. 1 30

Sec. 3 31

Federal Twenty-eight Hour Law 34 Stat. 607; 45 U. S. C. 71-74 ..... 9, 14, 15, 22, 23

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 282

SWIFT & COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF ON BEHALF OF THE NATIONAL LIVE STOCK PRODUCERS ASSOCIATION AND CHICAGO PRODUCERS COMMISSION ASSOCIATION, INTERVENERS.

PRELIMINARY STATEMENT.

This case involves a direct appeal from an order and decree of the District Court, that dismissed appellant's complaint seeking to enjoin, set aside, and annul a report and order of the Interstate Commerce Commission (*Swift & Co.* v. *Atchison, T. & S. Fe Ry. Co.*, 274 I. C. C. 557).

In that case appellant sought to have its direct shipments of live stock delivered at its private side track at a

proposed private stock yard at the line-haul rates applicable to centralized delivery of shipments at the public stock yard at Chicago.

The principal findings of the Commission in the case on appeal here are:

> "(1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for the transportation of live stock for delivery on the private sidetracks to be constructed by complainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference, and
>
> (2) that establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest" (274 I. C. C. 557, 576).

STATEMENT OF FACTS AND STATUTES INVOLVED.

For the purpose of this brief, interveners herein adopt the statements found in the brief for the United States and that of the defendant railroads for a more complete statement of facts and statutes involved with respect to the opinion of the District Court below and the decision of the Interstate Commerce Commission.

POSITION OF PRODUCER INTERVENERS.

In the interest of its live stock producer members and in the general public interest, the intervener live stock associations seek to preserve the efficiency and economy and all other advantages incident to the centralized delivery of all shipments of live stock at the public stock yards at Chicago, whether consigned for sale on the public market or shipped direct to packers in the Chicago stock yards area, and contend that the decision and order of the Interstate Commerce Commission under attack here are supported by substantial evidence, are otherwise lawful and are within the proper exercise of the powers conferred on it by the Congress under provisions of the Interstate Commerce Act.

The Chicago Producers Commission Association and the National Live Stock Producers Association intervened in opposition to the complaint of the appellant before the Commission, and, consequently, have so intervened in the action before this Court.

The Chicago Producers Commission Association is a cooperative association of approximately 40,000 live stock producers. It is incorporated under the laws of the State of Illinois, and its principal office is located at the Union Stock Yards in Chicago. In 1947, it received, handled and sold an equivalent of 14,821 carloads of all species of edible live stock.

The National Live Stock Producers Association is a cooperative association, composed of nineteen cooperative live stock associations (including the Chicago Producers Commission Association) that are engaged in receiving, shipping, selling and buying live stock on over forty public live stock markets and other points and places throughout

the country. The total annual volume of live stock handled is equivalent to about 150,000 carloads and originates in about thirty-four States.

Through its nineteen member associations, the National represents approximately 350,000 live stock producers in the United States.

The officers and directors of the National and its member associations are live stock producers elected from their various districts of the country in which they reside.

These associations of producers, interveners, here were interveners in the proceedings before the Interstate Commerce Commission and the District Court.

These producer interveners also took an active part in the reopening of *Chicago Live Stock Exchange* v. *Atchison T. & S. F. Ry Co.*, 219 I. C. C. 531, decided in 1936, in which the terminal charge, in addition to the line-haul rates on shipments of live stock to the Union Stock Yards, that had been the subject of complaints and extensive litigation for over forty years, was finally eliminated, and as a result of the decision in that case the line-haul rates prescribed by the Interstate Commerce Commission in *Livestock—Western District Rates*, 176 I. C. C. 1, were applied on shipments of live stock to the Union Stock Yards without an additional charge.

SCOPE OF THE BRIEF.

It is our purpose to direct our remarks to matters of particular interest and concern to live stock producers and their marketing associations and we rely on a more comprehensive treatment of other pertinent points by counsel for the Government and the defendant railroads.

SUMMARY OF ARGUMENT.

I.

The Union Stock Yard Is the Only Public Live Stock Market in Chicago, It Is the Terminal of All the Railroads and With One Exception the Only Suitable Place for the Delivery of Live Stock.

A concise statement of the early history and development of the present public stock yard appears in *Chicago Live Stock Exchange* case, *supra* (1936), where beginning at p. 533 the Commission said:

> "Prior to 1865 there were four different points in Chicago at which live stock was delivered and marketed. The different roads transporting such traffic to Chicago delivered it at any of these points without charge in addition to the Chicago rate. The maintenance of four different markets was found burdensome by the carriers, and in 1865 for the purpose of concentrating these markets at one point, the Union Stock Yards & Transit Company was organized, stockholders in this company being the carriers transporting live stock to Chicago. This company acquired real estate, constructed the Union Stock Yards and railroad tracks connecting the trunk lines entering Chicago with the pens at the yards. Other markets in Chicago were abandoned. Slaughterhouses were located in the vicinity of the Union Stock Yards, and these yards became the sole place in Chicago where live stock was marketed for slaughter" (p. 533).

The Union Stock Yards are the only public live stock yards in Chicago and, with the exception of the plant of the intervener Omaha Packing Company, the only suitable place for the delivery of live stock (541).

II.

The Services Rendered in Delivering Live Stock to the Union Stock Yard and to the Plant of the Appellant's Subsidiary, the Omaha Packing Company, Are Not More Onerous Than Terminal Services Contemplated Under the Scale of Rates Prescribed in the Western Live Stock Case (176 I. C. C. 1).

Appellant's present plant like those of other packers, located adjacent to the Union Stock Yard, is connected with overhead runways, tunnels, and viaducts, that are owned and maintained by the Union Stock Yard and are used to drive live stock from the yards to the slaughtering plants of the various packers, including that of appellant. (*Swift & Co.* v. *Atchison, T. & S. Fe Ry. Co.*, 274 I. C. C. 557, 563.)

Appellant also receives shipments of live stock at its private stock yard known as the Omaha plant pens, located about two and one-half miles north of the Union Stock Yard. This yard is used only for live stock—there are no slaughtering facilities there—and the live stock received there is transported to appellant's slaughtering plant, a distance of about two and one-half miles, in appellant's trucks.

The same basis of rates applies to the Omaha plant pens of plaintiff as applies to the Union Stock Yard. This is pursuant to a decision of Commission in *Chicago Live Stock Exchange* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, where at p. 546 it said in part:

> "The services rendered in delivering live stock to the Union Stock Yard, and to the plant of intervener, Omaha Packing Company, at Chicago, as shown by the present record, are not more onerous than ter-

minal services contemplated under the scale of rates prescribed in *Livestock—Western District Rates,*" (176 I. C. C. 1, decided in 1931).

In *Swift & Company, et al. v. Alton Railroad Company, et al.*, 238 I. C. C. 179 (1938), the Commission said:

> "For many years the packers, including complainant, made the practice of which they now complain their own practice. They gave up their own terminal facilities at the Central Stock Yards for a substantial consideration, and, by their covenants with the Yard Company, made the Union Stock Yards their own terminal facilities in Chicago" (p. 188).

III.

There Is Great Dissimilarity Between Delivery of Live Stock at the Union Stock Yard, the Only Public Stock Yard in Chicago, and the Delivery of Live Stock at the Appellant's Proposed Private Stock Yard.

The following points are representative, but not all inclusive, of the differences in the facts and circumstances and conditions incident to the delivery of live stock at the Union Stock Yard as compared with the delivery of live stock shipments to the appellant's proposed private stock yard that were considered by the Commission and are based on substantial evidence of record.

Delivery of live stock shipments at the Union Stock Yard:

> For over eighty years all live stock shipments have been delivered by the engines and crews of the line-haul carriers direct to the yards. (274 I. C. C. 557, 569.)
>
> Both the yards and service were specially designed to facilitate expeditious handling of live stock shipments. (Defendant's Exhibit 42.)

Assures immediate return of empty cars.

Provides capacity and facilities to handle a large volume in the shortest possible time.

Service no more onerous than that contemplated by Commission in *Livestock—Western District Rates.* (176 I. C. C. 1.)

Western Livestock scale of rates was prescribed by Commission for delivery of live stock shipments at the Union Stock Yards.

The Union Stock Yards is the only suitable place for delivery of any appreciable volume of live stock in the Chicago area, with the exception of the Omaha Stock Yards operated by appellant. (219 I. C. C. 531.)

Delivery of live stock shipments at appellant's proposed private stock yard:

Carload shipments of live stock would have to be switched and otherwise intermingled with dead freight.

Would make expedited handling and delivery of live stock to appellant's proposed private yard extremely difficult on account of complex switching operation through a congested terminal area.

There is no room for expansion of yards or the building of additional transportation facilities.

Appellant's proposed private stock yard is served only by the Junction (a switching road) and subject to a switching charge.

Appellant's proposed private stock yard is inaccessible to line-haul carriers.

Would interrupt service to the public stock yard on account of necessity to stop consolidated trains to set out cars on a switch track for delivery to proposed private stock yard.

Would cause delay due to special handling required to place live stock shipments on set out track for subsequent movement to appellant's proposed private stock yard.

Would cause delay on account of operating difficulties encountered in moving empty stock cars from proposed private yard to the tracks of the line-haul carriers.

Would delay delivery of market live stock and the delivery of direct shipments moving to the public stock yard and require unloading of live stock for feed, water, and rest under the Federal 28-36 hour law.

Would compel lengthening of train schedules which would require earlier loading at country points, and result in extra charges incident to unloading live stock for feed, water and rest.

Would cause interference and delays to shipments of live stock consigned to the Union Stock Yards and the return of empty cars as well as the handling of dead freight for other industries in the switching district.

The following are other significant points bearing on the difference between delivery at the Union Stock Yard and delivery at appellant's private yard, namely:

Ordinary live stock is never handled in switching service, except in case of emergency and has been always subject to a switching charge.

Line-haul rates into Chicago do not include delivery to appellant's proposed private sidetrack which is located on a switching line.

Junction has no facilities for such resting, watering, and feeding live stock on its lines as may be required by Federal law.

Would require a new kind of service.

Delivery at appellant's proposed private stock yard is not adapted to the Junction's tracks and other transportation facilities because these were designed and developed for centralized delivery by the line-haul carriers at the Union Stock Yard.

Other packers would be under a competitive compulsion to make similar demands if appellant's demands were granted. *Swift & Company* v. *A. T. & S. Fe Ry. Co., et al.*, 274 I. C. C. 557-573.

BRIEF AND ARGUMENT.

I.

The Union Stock Yard is the Only Public Live Stock Market In Chicago. It Is the Terminal of All the Railroads and With One Exception the Only Suitable Place For the Delivery of Live Stock.

For over eighty years the Union Stock Yards has been the sole place in Chicago where live stock for slaughter has been handled in any appreciable volume. The only exceptions to this are the Omaha Yards (appellant's private yard before mentioned) and few isolated shipments at team tracks of some of the carriers (R. 163, 360, 888).

The consequences of appellant's proposal would seriously interfere with shipments of live stock consigned to the public market at the Union Stock Yards, and shippers of other freight would also be affected (R. 503, 1229-30).

Testimony of Producers.

Mr. David Swanson, Manager of the Chicago Producers Commission Association who has had many years of experience on the Chicago market, testified to the effect that there were four main classes of buyers, including the big packers, small local packers, order buyers and traders. He described the function of salesmen representing live stock producers, and the function of buyers for the various packers and other interests in the determination of prices. He stated that all buyers must always be forced to give all they can afford (R. 855); that it is important that live stock arrives on the market early so that there is ample time for proper resting, feeding, watering and

sorting, before the salesmen start to show them to the buyers; that the most important thing is to give the live stock producer access to all the markets, the early market, the middle market and the late market of the day (R. 859); that it is in the interest of live stock producers to have an effective live stock market at Chicago. The Chicago market must have high volume and sufficient action in order to determine fair live stock prices for those sending live stock there and also to be used as a guide throughout the entire live stock industry. The stabilizing effect of the Chicago market is a benefit to consumers, as well as producers and processors. Anything done to decrease volume to the Chicago market and slow up its action would be detrimental to the public interest (R. 859).

Mr. Theodore Funk, President of the Chicago Producers Commission Association and Vice President of the National Live Stock Producers Association, a farmer and live stock feeder in Illinois, whose ancestors brought live stock to Chicago before it was an organized market, and with the railroads and other interests played a prominent part in bringing about the establishment of one central public live stock market, and the abandonment of the other separate live stock markets in Chicago, testified that the central live stock market at the Union Stock Yards in Chicago has been in continuous operation since it was organized, that interference or disruption of the service would tend to decrease volume, and that this would have a detrimental effect on the interests of live stock producers; that a market to be effective has to have a large volume, that if volume is decreased substantially, buyers will look elsewhere for their live stock, and that the presence of more buyers results in obtaining the best price that conditions warrant, that time in transit bears directly upon the net returns that any producer will get from his live stock because the less time that it takes for the live

stock from the time it leaves the producer's feed yard until it is over the scales and sold, the greater will be his total weight and his net returns, that the sooner live stock can be unloaded after they reach their destination the better appearance they will have, the more bloom they will carry, and the less weight they will lose. Especially is this true in the summer time when it is extremely hot, or in the winter time when it is cold. As long as live stock are moving they do not suffer as much, but when they have to stand in a car on track before being unloaded, that is where your greatest loss takes place, that lengthening of time in transit would divert a tremendous amount of live stock, especially if the delay was such that they had to feed these animals enroute, that on shipments made where the cattle have to be unloaded and fed the shrink amounts to practically twice as much as when they can get through without an unloading enroute (R. 796-801).

Testimony of Operating Witnesses.

There is abundant and uncontroverted testimony of operating officials and representatives of the defendant carriers which conclusively shows that granting of the plaintiff's request would seriously disrupt and interfere with the services in connection with the handling of live stock at the Union Stock Yards. Mr. Sorenson, Superintendent of the Chicago Junction Railway, testified on this point in part as follows:

> "In my considered opinion, based on my twenty years' experience in the operating end of the railroad industry, all of which time has been spent in terminal yards, if the Chicago Junction Railway was forced to handle direct shipments of live stock for delivery to private siding of the packing companies located on our rails, the net result would be the complete breakdown of the operation of the Chicago Junction Railway" (R. 457).

Extensive similar testimony relating to the present operating practices, and the interference, delay and congestion that would result if plaintiff's request was granted, was given by operating witnesses of the line-haul carriers (R. 455, 571, 615, 617, 619, 684 and 685).

The major part of the live stock shipments coming into the Union Stock Yards by rail must pass through the Ashland Avenue Yard of the Chicago Junction Railway. The operations of this yard are complex and congested, as both inbound and outbound traffic to and from various industries in the area are handled through it and twenty-two line-haul carriers must interchange traffic within the confines of that yard and this includes all cars of dead freight and perishables consigned to and by industries on the Junction tracks. It should be observed that never before, except in isolated emergencies, has live stock traffic, consigned to the Union Stock Yards, been handled by the Chicago Junction Railway. Rail shipments of live stock have been handled into the yards by engines and crews of the line-haul carriers for over eighty years (R. 355-360).

Granting of the plaintiff's request would require the setting out of shipments consigned to its proposed private yard and subject this highly perishable class of traffic to the unavoidable delay amidst congestion and other consequential complications that would result. The operation through the Ashland Avenue Yard under present conditions is not without interference, as a substantial number of the stock trains going to the yards are held up and required to wait on the main running tracks (R. 590, 614, 617, 619, 684).

Granting of the plaintiff's request would also make it necessary for line-haul carriers to use additional engines because of the more frequent runs that would be necessary. Furthermore, its operating witnesses testified that there just are not enough engines and crews to go around now;

if we have this greatly increased number of cars to be classified, it is going to make matters much worse (R. 662).

Any additional engines and men necessary to handle the live stock to the private yards of the plaintiff's would also materially retard the handling of dead freight and perishable freight (R. 657).

Additional delays and other interference in the handling of live stock in the Ashland Avenue Yard would lead to other detrimental consequences.

Live stock shipments by rail are subject to what is known as the Federal 28-36 Hour Law. This law requires live stock to be unloaded for feed, water and rest for a minimum of five hours in the event that it cannot be delivered within the time limitations prescribed by the law.

To live stock producers the loading time in the country and the arrival time at the market are very important. Train schedules for many years have been established to meet the limitations of this Federal law. Many of them provide only a slight margin based on current operating experience and any substantial delay would jeopardize the movement of live stock and would inevitably require a readjustment of the schedules by appropriately lengthening them or otherwise compel the unloading of live stock for feed, water and rest in accordance with the law. This would seriously affect the interests of all shippers of live stock, by rail to Chicago whether they were moving to the Union Stock Yard—consigned to the public market for sale or direct to packers. On shipment consigned for sale it would result in added shrink, added expense, and deterioration in the marketable condition of the live stock, all of which would be detrimental to the interests of the producers.

As a consequence of the lengthening of the schedules and

the detriments incident to the additional delays, rail live stock traffic would be diverted to the trucks (R. 801).

To handle live stock shipments to the complainant's proposed yard adjacent to the public stock yards, it would be necessary for the line-haul carriers to make many more runs to avoid violation of the 28-hour law (R. 563, 591, 592).

The prompt return of empty stock cars is of great importance to both live stock producers and carriers. The proposed operation would not only cause serious delay in the handling of the loaded cars, but also seriously delay the return of empty stock cars. It is reliably estimated by a railroad operating witness of long experience that the return of empties would require at least a 24-hour delay and this is in sharp contrast to the prompt return of empty cars from the unloading chutes at the Union Stock Yard by engines and crews of the line-haul carriers (R. 457, 662).

Diminished receipts on the public live stock market at Chicago would tend to increase the yardage charges that would be borne by the producers and others using the facilities of the Union Stock Yards & Transit Co. (R. 499, 509).

There are thirteen or more other live stock slaughterers with plants in what is commonly called the Chicago stock yards area (Rec. 122). These and others are in competition with the appellant. Consequently, the Commission did not consider the matter as a request of only one packer, and we contend properly so.

II.

The Services Rendered In Delivering Live Stock to the Union Stock Yard and to the Plant of the Appellant's Subsidiary, the Omaha Packing Company, Are Not More Onerous Than Terminal Services Contemplated Under the Scale of Rates Prescribed in the Western Live Stock Case (176 I. C. C. 1).

The Chicago Terminal Case.

About fifteen years ago the Commission had before it the *Chicago Live Stock Exchange* case, 219 I. C. C. 531, *supra,* decided in 1936. In that proceeding the application of the line-haul rates without the imposition of a terminal charge was sought. The terminal charge then imposed in addition to the line-haul rates was the subject of bitter complaint on the part of various live stock producer interests from time to time for a period of about forty years. A very complete record of operating conditions and other facts and circumstances was presented in that case by the parties seeking the elimination of the terminal charge.

The following extracts from the Commission's decision in that case in which it condemned the terminal charge and required the application of the line-haul rates without an additional charge are rather significant in connection with the consideration of the Commission's decision under attack here.

A concise statement of the early history and development of the present public stock yard appears in *Chicago Live Stock Exchange* case, *supra* (1936), where beginning at p. 533 the Commission said:

> "Prior to 1865 there were four different points in Chicago at which live stock was delivered and marketed. The different roads transporting such traffic

to Chicago delivered it at any of these points without charge in addition to the Chicago rate. The maintenance of four different markets was found burdensome by the carriers, and in 1865 for the purpose of concentrating these markets at one point, the Union Stock Yards & Transit Company was organized, stockholders in this company being the carriers transporting live stock to Chicago. This company acquired real estate, constructed the Union Stock Yard and railroad tracks connecting the trunk lines entering Chicago with the pens at the yards. Other markets in Chicago were abandoned. Slaughterhouses were located in the vicinity of the Union Stock Yards, and these yards became the sole place in Chicago where live stock was marketed for slaughter" (p. 533).

"Most of the trunk lines entering Chicago have direct connections with the Chicago Junction, and their road engines operate into the stockyards, although the crews are frequently changed at the break-up yards as the trains pass through, in instances where the matter of overtime pay is involved. The train proceeds to an unloading platform, the engine cuts loose and, proceeding to the rear, removes the caboose and places it at what was the head of the train. Then, proceeding to the other end, it is ready to remove the empty cars. The unloading is very expeditious as the stockyards now have dock capacity for setting 283 cars of live stock for unloading at one time. Each chute has capacity for two carloads of live stock, so that the first 283 cars may be removed when empty, and 283 more carloads set immediately. The trains placed at the chutes may contain hogs, cattle, or sheep, in single-deck or double-deck cars, or short cars with long cars, yet only one spotting is necessary to take care of the whole trainload. In other words, no further "cutting" or "spotting" is necessary because of different species of live stock or types or size of cars" (p. 538).

"The services rendered in delivering live stock to the Union Stock Yard, and to the plant of intervener Omaha Packing Company, at Chicago, as shown by the present record, are not more onerous than ter-

minal services contemplated under the scale of rates prescribed in *Livestock-Western District Rates, supra.*"

"In prescribing the rates in *Livestock-Western District Rates, supra,* we specifically took into consideration as an element the rendition of terminal services in connection with the transportation of live stock, and included what we considered sufficient to cover such terminal services under a normal operation, as well as to cover the unloading and loading of live stock at public stockyards" (p. 546).

The Commission in its decision in the *Chicago Live Stock Exchange* case, *supra,* concluded with the following significant statements:

"In the case of live stock, the terminal operations are in many respects simpler and less expensive than those required by other classes of freight. The railroads do not hold themselves out to deliver at all points within the Chicago switching district, but, as the majority report shows, at practically only two points, by far the most important of which is the Union Stock Yard.

"The Union Stock Yard is, in effect, the terminal of all the railroads, and they reach it with their own rails. That is to say, they do not depend upon the Chicago Junction Railway for switching service, but have trackage rights over it, operating to and from the stockyards with their own engines and crews. They pay a charge for these trackage rights, but it is in lieu of the capital charge to which they would be subject if they owned the rails themselves. We have never had occasion to pass upon this trackage charge, and for its level the railroads are themselves responsible (p. 550).

"As shown by the majority report, the concentration of the traffic to this point of delivery, the Union Stock Yards, together with the trackage rights, makes operating conditions very favorable in important respects. In general, the trains are hauled through to the stockyards without the classification at, and switch-

ing service from, the break-up yards which is usually necessary at other cities. Unloading and removal of the empty cars can be accomplished in exceptionally quick time. All of this tends to reduction in terminal expense (p. 550).

"As a matter of fact, as above stated, the Union Stock Yards is a point of live stock delivery for all the lines and it is, through the trackage rights, in effect located on their own rails" (p. 551).

III.

There Is Great Dissimilarity Between Delivery of Live Stock At the Union Stock Yard, the Only Public Stock Yard In Chicago, and the Delivery of Live Stock at the Appellant's Proposed Private Stock Yard.

The Present Case.

It appears that there never was a case, with the exception of the *Chicago Live Stock Exchange* case, *supra,* where more evidence was presented relating to the operating conditions and transportation services in the stockyard area, and considered more carefully by the Commission than in this case.

That the facts, circumstances and conditions that generally prevailed at the time of the *Chicago Live Stock Exchange* case still exist today and the effect of appellant's request if granted, is shown by th lengthy discussion by the Commission in its report in the case on appeal here, 274 I. C. C. 557, *supra,* of which the following excerpts are representative:

"At present, approximately 63 percent of the trains of the trunk lines going to the Union Stock Yards handle live stock exclusively. Solid trains of live stock entering the stockyard area from the west are handled by the line-haul carriers over eastbound track

1103 to the unloading chutes in the Union Stock Yards. No separation is required of live stock by species to make delivery at particular pens. While the cars are being unloaded, the engine cuts off, passes around the train, and couples on to the other end. The unloading operation consume but a few minutes a carload."

Further discussion of the existing facts, circumstances and conditions and consideration of the effect that the granting of the plaintiff's request would have on the situation, appears throughout the Commission's report as indicated by the following:

"We have indicated generally the difficulties which would confront defendants if required to make delivery of livestock at complainant's plant, the basic difficulty being that such method of delivery is not adapted to defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays" (p. 569).

"Complainant does not dispute, but instead concedes, that the other packers, if providing the necessary facilities therefor, would be entitled to the same delivery service at the same rates as accorded it. What it urges is that the carriers' contention as to additional burdening and disruption of their operations because

of demands for the service from other packers rests on an untested assumption or conjecture, and would thus require us to decide the case, not upon facts, but upon prediction, opinion and prophecy.

"But the very nature of complainant's complaint, asking, as it does, that defendants be required to render for its proposed plant a delivery service of a kind new to the stockyards district, necessarily requires exercise of judgment as to future effects and results. The record contains ample facts showing that, if complainant's demand for the service without charge in addition to the line-haul rates were granted, the other packers would be under considerable, if not great, competitive compulsion to provide the necessary facilities enabling them to make like demands. We may take account of, and give effect to, such conditions without being definitely apprised as to what each and all of the other packers will do, or will find it financially profitable and otherwise advantageous to do" (p. 572).

"Interferences with the movement of livestock to the stockyards is a serious concern not only of defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is adequate for their needs. It is the position of these interests that deliveries of livestock on private industrial tracks served by the Junction should be condemned upon the ground that such disposition of livestock is contrary to the public interest.

We may, however, disapprove the inauguration of a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally" (p. 573).

"The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought" (p. 574).

"There is no showing of a similarity in any respect of the services required and circumstances affecting services. There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred" (p. 575).

"The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of services that would be required for the desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plant" (pp. 575, 576).

* * * * *

Delay Would Lengthen Time in Transit and Would Otherwise Be Detrimental to Producers and Others Shipping Live Stock to Chicago.

Loading time at country shipping points is determined by present operating schedules, including the delivery of live stock by the line-haul engines and crews direct to the unloading docks at the public stock yard, and the limitations of the Federal law relating to the time live stock may be confined in cars without unloading for feed, water and rest.

For delivery at the private side tracks additional time would have to be allowed.

Delay due to interference would compel lengthened schedules and compel live stock producers to load earlier for arrival on the intended market day and bear the burden of added shrink, depreciation in the marketability of the live stock and the added expense incident to unloading of live stock enroute for feed, water and rest.

In *Swift & Company* v. *Atchison, T. & S. F. Ry. Co.*, *supra* 274 I. C. C. 557, the Commission said:

"Under the Federal law, livestock may be confined in

cars for not more than 28 hours without unloading for watering and feeding unless the shipper requests in writing that the time be extended to 36 hours. In practically all cases, stock arriving at Chicago has only a limited time within which it must be unloaded from the cars in order to avoid violation of the 28-hour law. The outer yards of the line-haul carriers, from which runs are made to the Union Stock Yards, contain very limited feeding, watering, and rest facilities. Many stock runs are made with but one or two cars per train. Under the present practice of handling directly to the unloading chutes in the Union Stock Yards, it is unnecessary to unload the stock for water, feed, and rest at some intermediate location on the Junction. In fact, facilities for that purpose do not exist on that line. That carrier contends that if it should attempt to switch livestock to private delivery tracks an additional 1 to 8 hours would be required before cars could be set for unloading. Accordingly, it is contended that the line-haul carriers would have to allow the Junction at least 8 hours after interchange within which to effect delivery to the industry and where there was not sufficient time to make delivery within the period prescribed by law, the line-haul carriers would be compelled to unload the stock on their rails or rearrange their train schedules. In this connection, it is shown that, while livestock arrives at all hours, the bulk of the traffic is consigned so as to make the early morning market. The market period extends to 2 p. m. each day but as a practical matter trading is over about 11 a. m. Late arrivals must often be carried over, resulting in some depreciation, as well as added costs for feeding and handling'' (274 I. C. C. 562-563).

Complainant Has Available Use of Facilities at Union Stock Yard Same as Other Packers in the Stock Yard Area.

Appellant has also available facilities for receiving live stock at its plant at the Union Stock Yard same as other packers in the stock yard area, whether such live stock consists of direct shipments or of live stock that complainant may purchase out of consignments on the open public market at the yard.

The owners of the live stock pay the yardage charge and other marketing costs on live stock sold on the market and the appellant and other packers are obliged to pay charges for use of the yards and facilities provided by it for delivering the live stock to their plants.

In the decision on appeal here the Commission continued:

> "At present the Junction connects at Ashland Avenue with private tracks serving complainant's present plant which is in the northern section of an area known as "Packingtown", located just west of the Union Stock Yards. That connection would be used in reaching complainant's proposed unloading facilities for direct shipments of livestock. The Junction also serves numerous other packing plants in the packinghouse district which is bounded on the west by Ashland Avenue, on the south by Forty-seventh Street, on the east by Racine Avenue, and on the north by Thirty-ninth Street. This area is connected with the Union Stock Yards by a network of overhead runways, tunnels, and viaducts which are owned and maintained by the Union Stock Yards and used to drive livestock from those yards to the slaughtering floors of the packers, including complainant" (274 I. C. C. 563).
>
> "Complainant's counsel objected to the receipt in evidence of an exhibit containing copies of agreements and other documents relating to certain events which gave rise to the present practice of delivering live-

stock to the Union Stock Yards and showing that this practice was inaugurated in 1867 when the Union Stock Yards were constructed to displace four widely separated stockyards which had proved unsatisfactory to the railroads and to the livestock industry, and indicating that in 1892 complainant, or its predecessor, and other packers acquiesced and concurred in that development of the terminal practices and facilities for the handling of livestock at Chicago. The objection was overruled and the exhibit was received. After the hearing, complainant filed a memorandum in support of a motion to exclude the exhibit from evidence as being irrelevant to the issues. All facts relating to the existing custom and practice of making deliveries of livestock and also facts and circumstances leading up to that custom and practice, as well as the effect of the proposed practice on the interests of the carriers, the public, and other shippers, are relevant. The motion is denied" (274 I. C. C. 567-568).

A Granting of Appellant's Demand Would Seriously Deteriorate Live Stock Service at Chicago.

Present long established method of delivering all shipments of live stock at the stock yards by engines and crews of line-haul carriers, leaving the Junction to perform the switching and spotting of other freight for the packers and many other industries serves the needs of all interests best. Any change, particularly delivery of live stock to side tracks at plants of the complainant and other packers would result in interference and delay not only in the delivery of live stock at the stock yards, but also the delivery at the private side tracks of the complainant and the side tracks of any other packers in the area.

In this connection the Commission stated:

"We have indicated generally the difficulties which would confront defendants if required to make delivery of livestock at complainant's plant, the basic difficulty being that such method of delivery is not adapted to

defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to 'interference and delays'' (274 I. C. C. 569).

A Centralized Place of Delivery at Chicago Serves All Interests to Best Advantage.

Conditions and circumstances require prompt handling of live stock shipments. It was long recognized that delivery of the shipments of all live stock at one centralized place would serve all interests—live stock producers, packers, and the railroads.

As to the advantages of centralized delivery compared with the plant delivery sought by appellant, the Commission said:

"As above mentioned in practically all cases, livestock arriving at Chicago has only a limited time left before it must be unloaded to avoid violation of the law governing watering and feeding; the Junction has no facilities for watering or feeding anywhere on its lines and such facilities of the kind as are maintained by the line-haul carriers are very limited. While these conditions—all necessitating prompt handling of the

traffic—are suited to the practice, long followed, of making deliveries of all shipments of livestock at the stockyards, they are not, it is evident, at all suited to the plant delivery service sought by complainant, in the performance whereof the cars of livestock would have to be switched and otherwise intermingled with cars of dead freight which latter, it appears, may, in the case of perishable freight, require nearly a full day for movement through the yards to points of delivery, and in the case of other dead freight, nearly 32 hours" (274 I. C. C. 570-571).

"Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants' operations. Moreover, although it is shown that complainant's direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipments exceeded 18 cars. Also it appears that the number of complainant's direct shipments of livestock in proportion to the number bought at the stockyards has been steadily increasing, and the testimony of complainant's witnesses affords ground for the belief that that condition will continue" (274 I. C. C. 571).

The Decision In Cleveland Case Not Applicable Here.

Appellant's counsel is trying to make this case appear to be like the so-called Cleveland case, *Swift & Company* v. *Baltimore & Ohio Railroad Company, et al.* (266 I. C. C. 55, and *United States of America, Interstate Commerce Commission and Swift & Company, appellants* v. *Baltimore and Ohio Railroad Company, et al.*, 333 U. S. 169, 92 L. Ed. 618 (1948).

The two cases are definitely different and not comparable.

In the *Cleveland* case the fundamental point in the controversy was that the Stock Yard Company sought to

change a long established custom and practice at the plant of the complainant at Cleveland. This the Commission refused to permit and its position was sustained by the Supreme Court.

Here it is a packer that seeks to change the established practice and the Commission has found the existing practice to be reasonable and lawful exactly as it found the practice complained of at Cleveland, to be reasonable and lawful. In this case the appellant relies upon the refusal of the Commission to change the customary delivery practice at Cleveland to contradict the Commission's refusal to change the customary delivery practice at the Union Stock Yard at Chicago.

In the *Cleveland* case, the rail carriers had made plant door delivery of live stock to the packers since the turn of the century. It is very significant that at a time while the appellant and other packers in Chicago were instrumental in getting live stock delivered at the public stockyards in Chicago, because the appellant was one of the proprietors in that enterprise, live stock was being delivered at the public stock yard and at the packers' plants in Cleveland, so that operations in the Cleveland area were developed on that basis and were geared to that method of delivery just as at Chicago they were developed and geared to a different method of delivery.

Accordingly the Commission found that the linehaul live stock rates establfshed by it to Cleveland contemplated and covered that type of delivery, while the Commission found that the line-haul rates which it had established to Chicago do not contemplate or cover the delivery of live stock to the private side track at the appellants' proposed private stockyard.

In the *Cleveland* case the railroads were ready and willing to continue the customary service at Cleveland, but the Yard Company there that owned a part of the track

running to the Swift plant tried to prevent its use for delivery of live stock shipments to the plant.

That was the sole reason advanced for a change in the established practice. The Commission in *Swift & Co.* v. *B. & O. R. Co., supra,* at page 69, said in part:

> "The only reason advanced for the failure to perform such service is the question as to the New York Central's right to use its spur for the delivery of livestock because of its contract with the stockyards respecting the use of track 1619."

In the *Cleveland* case the Commission and the Supreme Court both held that private contracts could not be used to justify a change in the customary service which railroads were being paid to perform.

In this case no such defense nor contention is made by anyone. Appellant in an attempt to obtain some benefits from the *Cleveland* decision as to itself put in the record the terms of an old agreement between the Union Stock Yards & Transit Co. and the Junction. This is nothing more than an attempt to bring in an issue that does not exist in this case.

The Commission made a very clear distinction between the circumstances and conditions relating to delivery of live stock to private industrial tracks (in *Baltimore Butchers Abattoir & Live Stock Co.* v. *Philadelphia B. & W. R. Co.*, 20 I. C. C. 124, by the Commission, *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55, by the Commission, and *Neuhoff Packing Co.* v. *Louisville & N. R. Co.*, 268 I. C. C. 271), by division 3, in which refusal to make deliveries without an additional charge to the line-haul rates was found unlawful and the circumstances and conditions at the Union Stock Yard in Chicago in this case where at page 575 it stated:

> "Deliveries to private industrial tracks at those points did not require substantial modification of ter-

minal operations and interferences with established operations in a manner required at Chicago for such deliveries, and did not involve, as at Chicago, serious disruption of operations. There is no showing of a similarity in any respect of the services required and circumstances affecting services. There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred."

Furthermore, there is no contract here that prevents the Junction from delivering shipments of live stock at appellant's proposed private stock yard or on a private side track of any other packer in the Chicago area, located on switching line. The situation here is due to a difference in transportation conditions that have been in existence for over eighty years and acquiesced in by appellant.

Granting of appellant's request would completely disrupt and destroy the efficiency and other benefits of a centralized system for the delivery of live stock shipments at the Union Stock Yard, that has been maintained continuously for over eighty-seven years. Obviously, it would be against the public interest to subject all other shippers of live stock to Chicago to the disruption of service, the lengthening of train schedules, and the burden of other inconveniences and expenses, in order to grant a selfish demand.

Appellant Failed to Sustain Burden of Proof in Support of the Allegations in Its Complaint.

The appellant has not only failed to sustain the burden of proof that the switching charge in addition to the line-haul rate for delivery of live stock at its proposed private stock yard is unjust and unreasonable under Section 1 of the Interstate Commerce Act, but it also failed to prove that there is any semblance of similarity in circumstances or con-

ditions necessary to sustain the Section 3 allegation in its complaint.

The fact is that the evidence overwhelmingly shows a great dissimilarity on a substantial number of points with not a single point of similarity whatsoever.

It is appropriate to state again that since 1865 (over 87 years ago) the present stock yards and the adjacent packing plants were constructed the whole development was directed along a plan for centralized delivery of rail shipments of live stock at the Union Stock Yard and has been continuously maintained up to the present time.

Uncontroverted evidence of record clearly shows that delivery of live stock shipments to appellant's proposed private stock yard would involve many complications wholly detrimental to proper and safe handling of live stock and interfere with and seriously disrupt the delivery of shipments of live stock to the Union Stock Yard.

In view of this it is apparent that there is no substantial similarity of circumstances and conditions between the delivery of live stock shipments to the Union Stock Yard and the delivery of live stock to the appellant's proposed private stock yard.

It should be observed that in *Hygrade Food Products Corporation* v. *Atchison, Topeka and Santa Fe Railway Co.*, 195 I. C. C. 553, decided in 1933, the elimination of both yardage charges and switching charges on direct shipments was sought. The Omaha Packing Company (a wholly owned subsidiary of appellant) intervened against the complaint because of an allegation that the Omaha Packing Company, a competitor of complainant, was unduly preferred by reason of the fact that the switching charges demanded for placement of carloads of live stock at complainant's plant were inapplicable for delivery of carload shipments of live stock to the plant of the Omaha Packing Company.

The intervener (subsidiary of appellant here) strenuously opposed the complaint.

Defendants refused to provide delivery of live stock at complainant's plant at the same rates and charges that applied on live stock delivered at the Union Stock Yard or at the plant of the Omaha Packing Company.

The Commission held, among other things, that there was no indication of substantial similarity in circumstances and conditions connected with delivery at complainant's plant and the delivery at the plant of the Omaha Packing Company.

That finding was not brought before this Court on subsequent appeal. *A. T. & S. Fe Ry. Co.* v. *United States,* 295 U. S. 193.

Appellant now demands the very same thing that it so strenuously and successfully opposed in the *Hygrade* case. It wants delivery of live stock at its proposed private stock yards at the line-haul rates without additional charge, same as in deliveries to the Union Stock Yard and the Omaha Packing Company, to each of which the line-haul rates apply today.

Appellant seeks to relieve itself of the cost of trucking the live stock from its Omaha Packing Company yard, where there are no slaughtering facilities, to its slaughtering plant adjacent to the Union Stock Yard, and it also wants to relieve itself of the switching charge in addition to the line-haul rate for delivery of live stock to its proposed private stock yard.

In other words, it wants to eat its cake and have it too.

At its Omaha yard appellant has, among other things, the advantage of delivery of rail shipments at the line-haul rates without any additional charge, but it has the disadvantage of having to truck the live stock some 2½ miles to its slaughtering plant adjacent to the Union Stock Yard.

By delivery of live stock at its proposed private stock yard it would eliminate the expense of trucking from its Omaha yard, but it would have one disadvantage that it cannot overcome and that is on account of its proposed private yard being located on a switching line, and not on the rails of a line-haul carrier as it is at the Omaha yard.

In avoiding any disadvantage peculiar to one location appellant must assume any inherent disadvantage along with any advantage of another location.

Appellant has failed to prove that it is entitled to relief from the switching charge in addition to the line-haul rate in the delivery of shipments at its proposed private stock yard.

In any event, it would be most unfair and against the public interest if appellant's demand was granted to the disadvantage and detriment of others.

Proof of any substantial similarity in circumstances and conditions is lacking; on the contrary, evidence of dissimilarity is overwhelming.

CONCLUSION.

We respectfully submit that the decision of the Commission, unanimously affirmed by the District Court is supported by substantial evidence of record; that it otherwise is within the proper exercise of the powers conferred on it by the Congress, that it is in the public interest and that this Court should "ascribe" to its findings "the strength due to the judgments of a tribunal appointed by law and informed by experience". *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 56 L. Ed., decided 1912, citing: *Interstate Commerce Commission* v. *Illinois C. R. Co.*, 215 U. S. 470, 54 L. ed. 287, 30 Sup. Ct. Rep. 155; *Southern P. Co.* v. *Interstate Commerce Com-*

mission, 219 U. S. 433, 55 L. ed. 283, 31 Sup. Co. Rep. 288; *Interstate Commerce Commission* v. *Northern P. R. Co.*, 216 U. S. 554, 54 L. ed. 609, 30 Sup. Ct. Rep. 417; *Interstate Commerce Commission* v. *Alabama Midland R. Co.*, 168 U. S. 146, 174, 42 L. ed. 414, 425, 18 Sup. Ct. Rep. 45, and *Illinois C. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 51 L. ed. 1128, 27 Sup. Ct. Rep. 700.

WHEREFORE interveners urge that the final decree and order of the District Court be affirmed.

Respectfully submitted,

LEE J. QUASEY,
139 No. Clark St.,
Chicago 2, Illinois,
Commerce Counsel for Interveners.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
FEB 27 1952
CHARLES CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 282

SWIFT & COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE RAILROAD INTERVENERS.

KENNETH F. BURGESS,
DOUGLAS F. SMITH,
MARTIN M. LUCENTE,
Counsel for Railroad Interveners.

SIDLEY, AUSTIN, BURGESS & SMITH,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

TABLE OF CONTENTS.

INDEX TO SUBJECT MATTER.

	PAGE
The Opinions Below	1
Statement of the Case	2
Summary of Argument	20
Argument	22
Foreword	22
I. The Commission's Findings Are Adequately Supported by Substantial Evidence of Record	25
A. It is Established on This Record That Delivery of Livestock to Swift's Private Tracks in the Stockyards Area Would be an Impractical and Costly Operation Which Would Adversely Affect Other Interests in That Area	27
1. The Present Operation	32
a. The Ashland Avenue Yards of the Chicago Junction Railway Are the Bottleneck in Which All Freight Destined to Industries on the Junction Must be Interchanged and Through Which All Livestock Going to the Stockyards Must Pass	32
b. The Present Method of Delivering Livestock to the Union Stock Yards Has Developed Through Generations and the Custom and Practice Which Has Resulted Is an Efficient and Carefully Organized Operation	37
c. Even Under Present, Long Established Procedure the Tremendous Growth of Industry in the Stockyards Area Has Brought Rail Operations to Full Capacity With Only a Narrow Margin Between the Present Efficient Operation and Disruption of the Entire Terminal Operation	40

2. The Attempt to Effect Delivery of Livestock to the Private Sidings of the Packers by Interchange of Such Traffic in the Ashland Avenue Yards Would be a Physical and Practical Impossibility Because of the Operating Conditions Which Would Result in the Yards of the Line-Haul Carriers and the Ashland Avenue Yards 49

a. The Service Which the Line-Haul Carriers Would Have to Accord the Packers' Livestock Under the Proposed Operation Would be Extremely Difficult and Costly 50

b. The "Services and Modification of Services Which Would be Required for the Desired Deliveries" (R. 80) Would Cause a Collapse of Terminal Operations in the Junction's Ashland Avenue Yards 54

c. The Proposed Operation Will Require Greatly Increased Service With Respect to Livestock Because of Set-outs for Feed, Water and Rest Which Would be Required by Federal Statute 64

d. Direct and Immediate Injury Would Result to Shippers of Livestock to the Stockyards and to Shippers of Dead Freight in the Stockyards Area From the Difficulties Inherent in Any Attempt to Work 75,000 Cars of Added Traffic Through the Ashland Avenue Yards 66

3. The Line-Haul Rates to Chicago Were Prescribed by the Commission for Application to the Public Stockyards and Would Not Compensate the Carriers for the Service Now Requested by Swift 72

4. Swift & Co. Defaulted in the Presentation of Any Substantial Showing in Support of Its Claim 73

a. In Support of Its Section 3 Allegation Swift Offered No Proof That Conditions in Chicago Are Similar to Conditions at Points Named in Its Complaint, and the Carriers Affirmatively Proved the Complete Dissimilarity Between Conditions at Those Points and at Chicago 76

b. Swift Did Not Call Its Yardmasters to Testify as to the Operating Conditions in the Stockyards Area, But, Instead Attempted Unsuccessfully, to Qualify Its Rate Witness to Deal With That Subject 82

5. The Commission's Findings 83

II. The Commission's Findings Are in Accord With the Applicable and Governing Principles of Law and Fully Support Its Order of Dismissal 88

III. The Purported Errors Urged by Swift Are Without Merit 89

Appendix A.

Appendix B.

Table of Cases.

Adams v. Mills, 286 U. S. 397 ..... 8, 101
Alabama G. S. R. Co. v. United States, 340 U. S. 216 91
American Warehouseman's Assn. v. Inland Waterways Corp., 188 I. C. C. 13 106
Armour & Co. v. Alton R. Co., 312 U. S. 195 ..... 12, 27, 96
Ayreshire Corp. v. United States, 335 U. S. 573 20
Carload Traffic In Chicago District, 174 I. C. C. 111 .. 110
Chicago Junction Case, 71 I. C. C. 631 ..... 9, 113, 118, 121
Chicago Livestock Exchange v. A. T. & S. F. Ry. Co., 197 I. C. C. 463 97
Chicago Livestock Exchange v. A. T. & S. F. Ry. Co., 219 I. C. C. 531 ..... 4, 78
Commission v. Texas & N. O. R. Co., 284 U. S. 125 91
Florida v. United States, 282 U. S. 194 92
Georgia Comm. v. United States, 283 U. S. 765 99
Hygrade Food Products Co. v. A. T. & S. F. Ry. Co., 195 I. C. C. 553 ..... 5, 10, 18, 23
Illinois Brick Co. v. Director General, 73 I. C. C. 215 . 110
Illinois Brick Co. v. Director General, 102 I. C. C. 64 . 110
Interstate Commerce Commission v. Jersey City, 322 U. S. 503 20
Interstate Commerce Commission v. Mechling, 330 U. S. 567 92
Interstate Commerce Commission v. Union Pacific R. Co., 222 U. S. 541 ..... 20, 88
L. T. Barringer & Co. v. United States, 319 U. S. 1 .. 89
Livestock-Western District Rates, 176 I. C. C. 1 ..... 4, 80
Louisville & Nashville R. Co. v. United States, 238 U. S. 1 91

Manufacturers Ry. Co. v. United States, 246 U. S. 457 88
Millers Brothers Food Co. v. A. T. & S. F. Ry. Co., 273 I. C. C. 562 91
Mississippi Valley Iron Co. v. C. & N. W. Ry. Co., 104 I. C. C. 243 110
Moore Business Forms, Inc. v. New York Central R. Co., 274 I. C. C. 404 91
New York v. United States, 331 U. S. 305 89
New York Central R. Co. v. United States, 99 F. Supp. 394 92
Oregon R. & N. Co. v. Fairchild, 224 U. S. 510 ..... 99, 106
Palmer v. United States, 75 F. Supp. 63 92
Philadelphia Commercial Traffic Mgrs. v. B. & O. R. Co., 104 I. C. C. 173 106
Richfield Oil Corp. v. Central R. Co., 232 I. C. C. 505 106
St. Joseph Stock Yards Co. v. United States, 298 U. S. 38 99
St. Louis Chamber of Commerce v. B. & O. R. Co., 57 I. C. C. 639 110
Skinner & E. Corp. v. United States, 249 U. S. 557 .. 20
Sonken-Galamba Corp. v. Chicago & A. R. Co., 181 I. C. C. 229 110
Swift & Co. v. Alton R. Co., 238 I. C. C. 179 ..... 8, 12, 22
Swift & Co. v. Baltimore & Ohio R. Co., 266 I. C. C. 55 107
Swift & Co. v. United States, 316 U. S. 216 ..... 6, 12, 20, 22, 27, 96, 97, 100
Switching Fruits and Vegetables at Baltimore, Md., 201 I. C. C. 689 110
Tennessee Valley Authority v. United States, 96 F. Supp. 409 92

United States v. Baltimore & Ohio R. Co., 231 U. S. 274 ..... 99, 106
United States v. Baltimore & Ohio R. Co., 293 U. S. 454 92
United States v. Baltimore & Ohio R. Co., 333 U. S. 169 107-09
United States v. Capitol Transit Co., 338 U. S. 286 ..... 99, 106
United States v. Chicago, Milwaukee, St. Paul & P. R. Co., 294 U. S. 494 92
United States v. Wabash Ry. Co., 321 U. S. 403 89
Western Chemical Co. v. United States, 271 U. S. 268 98

STATUTES CITED.

45 U. S. C. § 71 64
49 U. S. C. § 15(3) 4, 87, 95

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 282

SWIFT & COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE RAILROAD INTERVENERS.

THE OPINIONS BELOW.

The report of the Interstate Commerce Commission appears in the record at pages 57 to 89. The decision is published as No. 29809, *Swift & Co.* v. *Atchison, T. & S. F. Ry. Co.*, 274 I. C. C. 557. The findings of facts, conclusions of law, and decree of the District Court dismissing the complaint appear at pages 197 to 210 of the record. No opinion was filed by the District Court. This brief is filed on behalf of the carriers who were defendants in the proceeding before the Commission and interveners in the Court below.

STATEMENT OF THE CASE.

It is necessary to supplement appellant's statement of the case. In the complaint by which it initiated this litigation before the Interstate Commerce Commission, Swift alleged that the applicable charges for delivery of livestock to receiving pens which it proposed to construct in Chicago consisted of the line-haul rate plus a switching charge, and that this charge was unjust and unreasonable in violation of Section 1(5)(a) of Part I of the Interstate Commerce Act, unduly prejudicial in violation of Section 3(1) of that Act, and also in violation of Sections 1(4) and 1(6). Swift asked that the Commission prescribe joint through rates applicable over the line-haul defendants and the Chicago Junction Railway under which its direct shipments of livestock would be delivered to its proposed facility at a charge not in excess of the line-haul rates to Chicago. (R. 50-56) By this complaint, Swift thus undertook to establish that the published switching charge for private track delivery of its livestock was unreasonable and otherwise unlawful, and that the joint through rates which it sought were "necessary or desirable in the public interest." (49 U. S. C., § 15(3))

Swift's witness testified that certain buildings which had become obsolete were being replaced by new structures and that stockyards for the receipt of livestock were to be constructed in an area adjacent to the new buildings. (R. 267) Although it was stated that work on the new facilities had been started at the time of the hearing (R. 269), subsequent testimony showed that construction work at the designated site had not, in fact, been commenced at that time. (R. 455-56, 931) Counsel for Swift now states that "needless to say, that plant could easily have

been built during the many months (July 28, 1947-February 6, 1950) that this case was before the Commission." (Memorandum for Appellant in Opposition to the Motions to Affirm, p. 4, footnote 1.) It is not apparent whether this is intended to mean that the plant has been built or that its construction was delayed to await the Commission's decision. If the first meaning is intended, the statement is contrary to the facts. The proposed plant has not been built and there is no visible evidence of any construction at the designated location. If the second meaning is intended counsel's statement is contradicted by the testimony of Swift's witness:

> "Q. And that construction, I take it, then, does not in any degree depend upon whether or not this complaint of Swift's is granted?
>
> "A. No, sir.
>
> "Q. It is entirely separate and apart. I mean the complaint or what you seek in the complaint is entirely separate and apart from the considerations which have forced you, according to your informant, to build this new building?
>
> "A. That is correct." (R. 319)

In any event, the proposed plant and facilities for receipt of livestock do not exist and the proceeding is therefore, in effect, one for a declaratory judgment.

There were numerous interventions in opposition to the complaint on behalf of producers, buyers, sellers of livestock and the Union Stock Yards. The Department of Agriculture appeared through counsel and offered evidence to show that the granting of Swift's demands would operate to increase the charges to be paid by the producers who would continue to use the public yards. (R. 567-79) After a full hearing, including oral argument to the entire Commission, and an extended presentation on brief,

the Commission, by order and report, dismissed the complaint, *Swift & Co.* v. *Atchison, T. & S. F. Ry. Co.*, 274 I. C. C. 557. The Commission found that the line-haul rates on carload shipments of livestock to Chicago previously prescribed by it (*Livestock-Western District Rates*, 176 I. C. C. 1; *Chicago Livestock Exchange* v. *A. T. & S. F. Ry. Co.*, 219 I. C. C. 531) were not designed or intended to compensate the carriers for the livestock delivery service sought by Swift, and that, considering the transportation service required for such delivery and all of the attending facts and circumstances, the published switching charge of the Chicago Junction Railway in addition to the line-haul rates was not unreasonable or otherwise unlawful for delivery of livestock to Swift's private tracks. (R. 60, 78-79, 80-81) The Commission also found that the establishment of joint rates for this traffic, as requested by Swift, would seriously disrupt and interfere with the terminal services in the stockyards area and would not be necessary or desirable in the public interest. (R. 77, 81) Swift does not assign error with respect to this finding and thus concedes that the conditions which must, by the express terms of the Interstate Commerce Act (Sec. 15(3)), precede the granting of the relief sought by it, do not exist. In fact, Swift has omitted all reference to the Commission's findings with respect to the public interest in its brief and the joint rates sought by Swift are alluded to only once and then for the purpose of advising the Court that it will be "conducive to clarity to omit all further reference to the establishment of joint rates." (Brief, footnote 15, p. 31) This is quite consistent with Swift's presentation to the Commission in which it admitted that it was not concerned with the effect of its proposal upon the producers who would continue to receive their livestock at the Union Stock Yards or upon the numerous industries in the stock-

yards area who depend upon the Junction's facilities for their rail transportation service. (R. 336-39) Swift nevertheless asks the Court to reverse the decision below and to accord to it something that has been found to be, and is in effect admitted to be, contrary to the public interest.

Following the filing of Swift's complaint, the Chicago Junction Railway, taking the position that it could not, as a practical matter, undertake to deliver livestock to the plants of the various packers in the stockyards area, amended its tariff to exempt livestock from the traffic which it would transport, although the switching rate had been in effect for many years and the Commission had found it to be applicable to livestock and not unreasonable. (*Hygrade Food Products Co.* v. *A. T. & S. F. Ry. Co.*, 195 I. C. C. 553) Upon the protests of Swift and other packers, this action was suspended, and was heard, as I. & S. No. 5543, with the proceeding on Swift's complaint. The Commission ordered a cancellation of the suspended schedules, and required the Junction to retain the switching charge on livestock for such emergency use as might exist for it. (R. 80-81) There has been no appeal from that order. In effect, therefore, the Commission left the terminal practices at Chicago undisturbed, denied the lower rate sought and held that Swift must pay the applicable and reasonable charges for the service it desires.

On appeal to the three-judge District Court, Swift raised each of the issues which it raises here. Comprehensive briefs were filed, and an entire day was devoted to oral argument. That Court affirmed the Commission's action. It found that the Commission's findings were adequately supported by the evidence of record, that those findings were adequate to support the Commission's order, and that the Commission's findings and order conformed to the applicable and governing principles of

law. (R. 209) Thereafter, an order dismissing Swift's complaint was entered and the present appeal followed.

In order to comprehend the extreme nature of Swift's complaint and the soundness of the decision below, an appreciation of the historical development of livestock delivery practices in Chicago is essential. Beginning with the Yard Company's operations in 1865 the Chicago packers utilized the public yard for the receipt of their livestock, and paid the yardage charges assessed by that concern.[1] At a time when this practice was approximately 25 years old, Swift and the other Chicago packers decided that their patronage was a thing of value and that the Yard Company should be forced to allow the packers to participate in its profits. Their strategy was simple and effective. They purchased property located near the Union Stock Yards, and constructed their own private stock pens for the purpose of receiving their direct shipments. (Ex. 42, R. 892, 1179) The packers also filed a complaint in an Illinois Court by which they sought to force the Yard Company to permit the line-haul carriers to use its track in making deliveries to their new facility which they called the "Central Stock Yards." (Ex. 42, R. 892, 1179)

The successful culmination of this strategy was described by the Court in *Swift & Co.* v *United States*, 316 U. S. 216, as follows:

> "Having put themselves in this independent position and threatened to reduce the revenues of the Yard Company, the packers negotiated a contract which, in substance, involved the abandonment by the packing companies of this threatened move to Indiana and surrender of their own facilities for receiving direct shipments in return for a participation in the

[1] The facts recited in this portion of the brief appear in greater detail in *Swift & Co.* v. *United States*, 316 U. S. 216 at 227-230 and in exhibit 42, R. 892, 1174-1638.

profits and capital of the Yard Company. In 1892, the packers conveyed to Stock Yard interests the Indiana site and the Central Stock Yards, and agreed by contract to dismiss the suit filed in the Illinois court and to refrain from filing any similar suit for a period of fifteen years; to continue their business at Packingtown, adjacent to the Union Stock Yards, for fifteen years from July 1, 1891; to have all livestock slaughtered by them on their premises or within two hundred miles of the City of Chicago, during such period, pass through and use the Union Stock Yards, and to pay the usual yardage charge therefor; and they guaranteed that the Yard Company would receive and collect from its yardage charges on packers' livestock the aggregate sum of $2,000,000 within six years, and agreed to make up any deficiency in that amount. *The packers also agreed that, as long as the Yard Company conducted its business in Chicago, they would not interest themselves in any other stockyards in Chicago for the receipt and use of their own livestock.*

"The packers received income bonds of a new corporation, the security of which was the revenues of the Stock Yards, in the amount of $3,000,000. Swift received approximately one-third. These bonds were subsequently redeemed by the issuing corporation.

"The railroad companies were not parties to this agreement, and the Commission found that the packers, at the time the agreement was entered into, did not consider the assessment of the yardage charges to be a matter of any concern to the railroads. During the existence of the agreement described, the packers paid the yardage charges, and participated in the receipts from such charges. *This agreement expired*

> *in 1907, except for the covenant by the packers not to establish or become interested in any other stockyards for the receipt of their livestock so long as the Yard Company maintained its business in Chicago.* It appears, however, that after the expiration of the contract the Yard interests were informed that the packers were still threatening to move their plant from Chicago, and it appears that Swift expected to receive a share of the Yard's earnings as late as 1918, but there is no proof that it did receive anything in addition to the bonds received under the contract of 1892. J. O. Armour, of Armour & Company, however, received substantial benefits after 1907." (pp. 228-30, italics added)

The result was that the Union Stock Yards continued as the sole public terminal for the delivery of livestock in Chicago and has retained that status to this day.[1] In the first of a series of Chicago stockyard cases, this Court stated: "That the yards are, in effect, terminals of the railroads is clear. *They are in effect used as terminals and necessarily so.*" (*Adams* v. *Mills*, 286 U. S. 397 at 409, italics added) Deliveries at the public yards are made by the line-haul carriers operating over the Junction's main running tracks. (R. 469) The Junction itself has never, except in emergencies, handled any livestock but has instead devoted its yards and other facilities to the

[1] About 1915 or shortly prior thereto, Swift began the practice of consigning some of its direct shipments to private pens maintained by it at the site of the Omaha Packing Company, a Swift subsidiary, located a distance of some 2½ miles from the stockyards area. (R. 262, 265) Swift continued to receive other shipments of its directs at the Union Stock Yards, however, and in 1929 and for several years thereafter, a substantial number of such direct shipments were received at that terminal. (*Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179 at 183.) After 1938, Swift consigned practically all of its directs to the Omaha plant pens on the rails of the Burlington. (*Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179 at 183.)

receipt and delivery of dead freight consigned to the 499 industries served solely by it. (R. 483, 520) Since the inception of the Union Stock Yards in 1865, the terminal practices in the stockyards area have thus followed a pattern which was fostered and shaped by the packers themselves. With respect to livestock, the customary and accepted usage has been for delivery to be made by the line-haul carriers at the Union Stock Yards. Dead freight on the other hand, has been handled by the Junction, that line receiving the freight from the line-haul carriers, classifying it in the yards designed for that purpose and switching the cars to the appropriate consignee. During this same period, the stockyards area has become one of the most intensively developed industrial areas in the world, and the transportation facilities in that area have developed in conformity with the customary and long standing practices of delivery with respect to livestock and dead freight.

In its report in the *Chicago Junction Case*, 71 I. C. C. 631 (1922), the Commission discussed in detail the operations of the Chicago Junction, and with respect to the handling of livestock, it stated:

> "The movement of livestock in and out of the Junction yards is essentially different from the method of handling the dead freight, in that each carrier moves its trains to the unloading chutes with its own power, and goes into the pens for outbound stock destined for its own line. *All parties concede that that is the only practical method of handling that traffic.*" (p. 633, italics added.)

As the record before the Commission in that proceeding shows, Swift intervened and was a party. (Transcript of Testimony, I. C. C. Finance Docket No. 1165, p. 2) This finding reflects Swift's recognition over a period of several generations that the physical circumstances and the result-

ing terminal practices in the stockyards area make the delivery which it now seeks an extremely difficult and impractical operation.

At a time when the terminal practices described above were approximately 65 years old, the Hygrade Packing Company, one of Swift's small competitors, filed a complaint with the Commission asking delivery of livestock at its private tracks in the stockyards area without the payment of the applicable switching charge. This is precisely what Swift is seeking here, and Swift intervened in the proceeding and vigorously opposed plant door delivery of livestock. The Hygrade Company also challenged the imposition of yardage charges on shipments of its directs to the Stock Yards. *Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553.

To support its attack upon the Junction's switching charge for plant door delivery of livestock, the Hygrade Company alleged that delivery of livestock to Swift's subsidiary in Chicago, the Omaha Packing Company, without the assessment of such a charge, constituted violations of Sections 2 and 3 of the Interstate Commerce Act. Swift's counsel (R. D. Rynder and W. N. Strack, who have also represented Swift throughout this proceeding) appeared at the hearings on behalf of its subsidiary, and Swift's Assistant to the Freight Traffic Manager testified in that proceeding. As stated in the brief filed with the Commission by Swift's subsidiary:

> "Omaha Packing Company is one of the subsidiaries of Swift and Company and all of its transportation matters are handled by Swift and Company." (Appendix A, p. 3)

Consequently, that brief, which has been reproduced as Appendix A hereto, was in reality filed by Swift in support of its militant opposition to Hygrade's request for the

plant door delivery of the livestock in this area adjacent to the public stockyards. That document, consisting of 64 pages, is in its entirety, a most forceful defense of the long-established custom of delivering livestock in the congested stockyards area only at the public yard. The Court will note, in particular the full and detailed statements made by Swift as to the difficult and impossible operating conditions which would be encountered in delivering livestock, through the Junction's Ashland Avenue Yards, to the Hygrade plant, located in the same area in which Swift now seeks that same service, and what are characterized by Swift as the demoralizing effects that would attend that practice. (Appendix A, pp. 41-52) The facts as stated by Swift in that case are the facts found by the Commission in this case on the basis of the uncontradicted testimony in the record now before the Court. We respectfully submit that the validity of Swift's present attempt to impeach the Commission's findings and order may be judged by reference to the factual representations and argument by which Swift successfully opposed the Hygrade Company's attempt to secure plant door delivery of livestock without payment of the applicable switching charge. The Commission found in that case, as it did here, that the switching charge was not unreasonable or otherwise unlawful for delivery of livestock to Hygrade's plant in the stockyards area.

A few years later, however, the big packers sought to avoid payment of the Yard Company's so-called yardage charge on all shipments received at the yard by compelling delivery of their direct shipments in the public streets adjoining the public yards. But due to their long participation in the stockyards business, both at Chicago and elsewhere, and their own vital part in the assessment of yardage charges and in the revenue thus derived, the Chicago packers have never made any direct at-

tack on the measure of the yardage charges in a proceeding before the Secretary of Agriculture, who has exclusive jurisdiction of those charges. They have preferred, instead, to ask delivery within the narrowly confined and congested stockyards area, but at points outside the public yards. In a case filed in an Illinois state court and removed to the Federal District Court, Armour proposed to evade the payment of the yardage charges by taking its livestock from the unloading pens into the public streets. The complaint was dismissed by the District Court and on appeal, this Court affirmed. *Armour & Co.* v. *Alton R. Co.*, 312 U. S. 195. In the meantime, Swift instituted a proceeding before the Commission, seeking an order which would enable it to obtain its direct shipments of livestock from the Yard Company's unloading pens and thence into the public streets without the payment of the yardage charges. The Commission found that the delivery of such livestock into the Yard Company's pens without affording free egress into the public streets was not an unreasonable practice, and dismissed the complaint. *Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179. On appeal to this Court, the Commission's decision was affirmed, and after an extended consideration of the documents now embraced in exhibit 42 (R. 892; 1174-1638), the Court stated:

> "The Commission finds that it was the attitude of the packers that their patronage was a thing of value to the Stock Yards, and they proposed to sell that patronage to the Yard Company. The Packers and Stockyards Act having made private arrangements of this kind unlawful, the packers now contend that the carriers must protect them against yardage charges on their direct shipments."
>
> "It was the packers themselves who suppressed the competitive yards, and alternative facilities for unloading their stock." (316 U. S. 216 at 230)

It is interesting to note the fidelity with which history has made full circle. The facilities which Swift now proposes to construct for the receipt of its direct shipments of livestock would be located only a short distance from the Central Stock Yards which the packers constructed and then conveyed to the Yard Company in 1892 in their campaign to acquire an interest in the public yards.

This proceeding is the most recent attempt by the packers to retrace their steps and to be restored to the position they abandoned in 1892 in return for a share in the profits of the Yards Company. This they propose to accomplish at the expense of the carriers and all other interests in the stockyards area by obtaining a rate basis which would completely ignore the transportation services required to effect private track delivery to the Chicago packers within the stockyards area and which would, as Swift asserted in the *Hygrade* case, "absolutely demoralize transportation in or about the stock yards." (Appendix A, p. 48)

Livestock consigned to points in Chicago takes one of two bases of rates. Shipments moving to the Union Stock Yards, to Swift's so-called "Omaha plant" pens, or delivered at the public team tracks, all served by the line-haul carriers, take the line-haul rate. (R. 260, 375, 836) Livestock delivered by the Junction would take the line-haul rate plus a switching charge, which at the time of the hearing before the Commission was $28.80 per car. This latter is the rate applicable to the private track delivery sought by Swift as well as such delivery to the other packers on the rails of the Junction but it is a rate basis which, except in some emergencies, has never been used. (R. 520, 838-40)

Under a trackage arrangement which has existed since 1865, and has, in effect, extended the rails of the trunk lines to the chutes and pens of the Union Stock Yards, livestock consigned to the Yards is placed at the Yards' unloading pens by the line-haul carriers which bring the stock to

Chicago. (R. 609, 635, 649-50, 839, 923) This traffic, averaging 76,920 cars per year for the five years preceding the hearing before the Commission, moves from the outer yards of the line-haul carriers directly to the public yards. (Ex. 28, R. 607, 1117, 609, 635, 677) The cars set at the unloading chutes by the line-haul crews are immediately unloaded, and the empties are then returned by the line-haul crews to their own property. (R. 609, 635, 677) The Junction does not in any manner participate in the transportation and delivery of this livestock. (R. 539) Of this total annual movement, 31,000 cars were consigned to the packers at the Union Stock Yards as so-called direct shipments. (Ex. 28, R. 607, 1117) None of that number were Swift's. For some years, Swift has been receiving all of its directs, averaging approximately 6,500 cars per year, at the facilities of its subsidiary, the Omaha Packing Company, located on the Burlington Railroad approximately 2½ miles from the public yards, and outside of the stockyards area. (R. 262, 266, Ex. 28, R. 607, 1117) Swift is the only large packer having unloading facilities located on the rails of a line-haul carrier in Chicago, and since the stock received there takes the flat Chicago rate, Swift has for many years secured delivery of its direct shipments on a basis which is not available to the other packers.

Swift's purpose here is to secure delivery of its directs within the stockyards area, in receiving pens which it proposes to construct near the public yard and within the area presently occupied by its Chicago plant. It is in this area, sometimes called "Packingtown", that the numerous buildings comprising Swift's Chicago plant, and the plants of thirteen other packers are located. (R. 272, 327, 540) These plants are served only by the Junction, and it is the Junction's applicable tariff charge for delivery of livestock to a plant facility in that area that Swift attacked in its complaint before the Commission in this

case and defended so vigorously and successfully in the *Hygrade* case. (R. 444-45, 838-40, Appendix A)

The stockyards proper and the contiguous Packingtown together constitute what is sometimes referred to as the "Mile Square." The entire area is bounded by Ashland Avenue on the west, Halsted Street on the east, Pershing Road (39th Street) on the north and 47th Street on the south. (R. 272) The public stockyards extend from Halsted Street on the east to a private way called Racine Avenue on the west, and from 39th Street on the north to 47th Street on the south. (Ex. 3, R. 1041) The stockyards and Packingtown together are sometimes referred to herein as "the stockyards area."

The flow of a great and continuous volume of raw materials and supplies essential to the operation of the industries in the stockyards area and vicinity and the outbound movement from those industries depends on the ability of the railroads serving the area to furnish efficient service. The funnel through which this tremendous tonnage must be moved is the Chicago Junction Railway.

The Chicago Junction Railway is a switching line which provides the sole connection between the lines of the line-haul carriers and 499 industries having 645 private sidings, most of which are in the stockyards area and its vicinity. (R. 443) These include Swift's present plant, the site of its proposed facilities, and the plants of 13 or more other packers. (R. 444-46, 467, 540) Within this crowded area the Junction annually handles hundreds of thousands of cars of dead freight, perishables and empties, moving to and from the hundreds of industries served by it, including all of the cars of dead freight consigned to the packing houses within the stockyards area and the empties and cars of packing house products removed therefrom. (R. 443-46, 465)

The sidings and chutes of the Union Stock Yards are the only facilities on the Junction which the line-haul carriers, by means of running rights, serve with their own crews and power. (R. 443, 839-40) Their running rights do not give them access to industry sites in Packingtown and it would be manifestly impractical for the Junction's 27 connecting roads to exercise such rights. (R. 527) It is to avoid such conflicting operations by many individual carriers that that terminal road exists.

The numerous packers in that area other than Swift receive their directs through the public yards by means of an extensive system of overhead viaducts owned and maintained by the Yard Company.[1] (R. 539, 983-84) All dead freight moving to and from the industries in the stockyards area is delivered to and received from the shippers by the Junction, and interchanged by the Junction with the line-haul carriers at the Junction's Ashland Avenue Yards. (R. 443, 462-63) This means, in short, that all livestock has been delivered and received in this area exclusively by the trunk lines without interchange, and all other freight moving to or from this area has been delivered and received by the Junction and interchanged by it with the line-haul carriers. It cannot be over-emphasized that the physical plant, and the entire operation, both of the Junction and the line-haul carriers, have been developed and geared to that method of handling from the beginning. In its extensive consideration of the transportation conditions which would attend the delivery sought by Swift and the services required to effect such delivery, the Commission stated:

> "We have indicated generally the difficulties which would confront defendants if required to make delivery of livestock at complainant's plant, the basic difficulty

[1] This method of delivery is equally available to Swift but is not presently being used by that packer.

being that such method of delivery is not adapted to defendant's service, track and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays." (R. 72)

This "basic difficulty" arises out of the physical conditions that Swift and the other Chicago packers created by their historic choice to receive all livestock at the public yards and to participate in the profits of that business. These proceedings by the large Chicago packers, of which this is the third, are the results of the packers being required to divest themselves of their interest in the stockyards business. They would now ignore the fact that by reason of their illegal participation in that business and their insistence for many years that livestock be delivered in this area only at the public yards the physical development of the area has been such as to preclude the service they now demand.

In its brief before the Commission in the *Hygrade* case,

Swift opposing what it now seeks, strongly emphasized the nature and effects of this development, as follows:

> "This is the point where probably the greatest live stock market in the world is located. Necessarily any system of transportation which has been evolved for the handling of live stock into and out of a market such as the Chicago live stock market, including the packing companies which are adjacent to and form a part of said market, must be so constructed as to furnish the type of service demanded by probably the most perishable type of traffic handled by the railroads. The record shows that the present system of receiving at the unloading docks of the Union Stock Yards & Transit Company all live stock consigned to either commission men or packers located in or adjacent to said stock yards, has been in existence since 1865 (T. 249)." (Appendix A, p. 35)
>
> "The entire transportation system in and about the stock yards and adjacent packing plants has been constructed on the basis of delivering all live stock direct to the unloading chutes of the Union Stock Yards & Transit Company. According to the testimony in this case, any other method of handling would absolutely demoralize transportation in or about the stock yards." (Appendix A, p. 48)
>
> "Another reason why the circumstances and conditions surrounding the transportation service being rendered to, or requested by, complainant, and that being rendered to intervener [are dissimilar], is because the absorption of switching charges[1] in the stock

[1] Swift asked for joint rates while the Hygrade Company sought to compel the absorption of the Junction's switching charge. Both, however, sought private track delivery without the assessment of the switching charge. This is the basis of the charges applicable to Swift's Omaha plant pens and the Union Stock Yards. In its discussion of the *Hygrade* case, the Commission stated:

> "It was there sought, as in the instant proceeding, to have certain private tracks used for the receipt of livestock without any additional charge for switching." (R. 77)

yards district on live stock would completely demoralize the present system of handling live stock. As indicated above, the present method of handling live stock in the stock yards has been in force since 1865. All of the railroad facilities in and about the stock yards have been constructed to conform with the practice of delivering all incoming live stock direct to the loading and unloading chutes of the Union Stock Yards & Transit Company." (Appendix A, pp. 48-49)

SUMMARY OF ARGUMENT.

The primary propositions upon which the railroad interveners rely are as follows:

I. The Commission's findings are adequately supported by substantial evidence of record.

II. The Commission's findings are in accord with the applicable and governing principles of law and fully support its order of dismissal.

Swift's complaint before the Commission was, in substance, an attack upon the published charges for delivery of livestock to its private track in the stockyards area. The applicable charges were said to be unreasonable and unduly prejudicial. Swift asked that the Commission prescribe joint rates and charges which would not exceed the line-haul rates on livestock to Chicago. In effect, therefore, Swift sought an order which would reduce the published rates by the total amount of the Junction's switching charge for the private track delivery of livestock to the Chicago packers. (R. 50-56) Having thus invoked the Commission's rate jurisdiction, Swift's appeal therefrom is necessarily governed by the well established rule that the Commission's informed judgment in such matters will not be disturbed except for pervading errors of law or a lack of substantial evidence to support its necessary findings. *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541; *Skinner & E. Corp.* v. *United States*, 249 U. S. 557; *Swift & Co.* v. *United States*, 316 U. S. 216; *Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503; *Ayrshire Corp.* v. *United States*, 335 U. S. 573.

In the argument which follows, we shall show that the Commission painstakingly considered each of the issues

raised by Swift's complaint, and that, in its disposition of those issues, it applied the principles of law that have been repeatedly announced and approved by this Court. We shall show that the Commission's findings conform to those governing principles, and that each of those findings is sustained and abundantly supported by the evidence of record.

ARGUMENT.

Foreword.

Although the nominal complainant is Swift & Company, the Commission recognized that there are thirteen or more other packers (R. 272, 327) whose plants are located in the same area, who are in competition with Swift and who would be entitled to the same privilege of plant delivery at the line-haul rates. The Act would not sanction granting special rates and services to Swift alone.

In a previous case[1] in which it sought delivery in the public streets within the stockyards area, Swift was nominally the sole complainant as here, but the Commission, recognizing the true scope of the issue before it, considered not merely the traffic of Swift but the volume of direct shipments of all of the Chicago packers. This Court, sustaining the conclusion of the Commission, quoted from the latter's report as follows:

> "The Commission found that the direct shipments of livestock transported by rail to the packers at Chicago have exceeded 30,000 carloads annually for several years." (316 U. S. 216 at 226)
>
> * * * * *
>
> "The Commission has found that 'the evidence fails to disclose how, as a practical matter, an annual volume of 30,000 carloads of livestock could be discharged into and handled through the public streets of Chicago.'" (316 U. S. 216 at 227)

[1] *Swift & Co. v. Alton R. R. Co.*, 238 I. C. C. 179; *Swift & Co. v. United States*, 316 U. S. 216.

Also, in *Hygrade Food Products Corporation* v. *Atchison, T. & S. F. Ry. Co.*, 195 I. C. C. 553, in which it upheld the same switching charge involved here, the Commission recognized as Swift insisted, that it must consider the total of the direct shipments received by all of the Chicago packers. Swift, in opposing plant-door delivery of livestock to its competitor, earnestly argued, on brief before the Commission, that it would be error to proceed otherwise, stating as follows:

> "In this connection the complainant [the Hygrade Company] may state that its business is so small as to make no particular effect upon the method of handling livestock into the Chicago live stock market. It is doubtful if this is true, but even if it were, that is not the question which is here before the Commission. As we shall indicate in point 6 which will follow, there are many other packers receiving live stock direct under identical circumstances applicable to complainant and if complainant finds it of advantage to receive this livestock direct at its plant, and it has stated it intends to do so in the event the carriers absorb the switching charges, there will be many other larger packers who will demand the same thing." (Appendix A, p. 36)
>
> "The Commission should not confine itself to the consideration of complainant alone but must also consider the other shippers engaged in like business and located in relatively the same position as complainant." (Appendix A, p. 49)

Point 6 of its brief in that case was then devoted by Swift to an extensive argument, designed to show that the relief asked by the Hygrade Company would "completely demoralize the present system of handling live stock". (Appendix A, pp. 48-52) The Court will note that this argument was predicated on Swift's assertion that "if receipt of livestock direct to the packing plant of complainant is of

advantage to it, it will be of advantage to every one of its competitors. They will all have to have the same service (T. 270)." (Appendix A, p. 50) It is now argued that that identical procedure by the Commission in this case constitutes one of the major issues before the Court, (Statement As To Jurisdiction, pp. 4, 14-15) and that consideration of the basis which Swift rightly insisted was so proper and necessary in the determination of the complaint of Swift's competitor creates a serious error here. (Brief, pp. 95-99) It is informative to compare the quoted statements from Swift's brief in the *Hygrade* case showing the vital interest of all packers in plant-door delivery with the reiterated statements in the brief in the case at bar, that "Swift still stands alone". (Brief, pp. 31-32, 95-99) In view of the facts so forcefully stated by Swift in opposing Hygrade's request, it is evident that "Swift stands alone" here only nominally and purely for tactical reasons. As Swift previously insisted, all the packers would demand like service on their direct shipments. They have not participated in this proceeding simply to assist Swift in making the argument that the case should be treated as though it involved a special arrangement available to Swift alone.

In response to Swift's position that the requirements of Section 3 should be disregarded in this case, and that the matter must be viewed without regard to the rights of the other packers to obtain the same advantages that might be accorded to Swift, the Commission stated:

> "Complainant does not dispute, but instead concedes, that the other packers, if providing the necessary facilities therefor, would be entitled to the same delivery service at the same rates as accorded it. What it urges is that the carriers' contention as to additional burdening and disruption of their operations because of demands for the service from other

packers rests on an untested assumption or conjecture, and would thus require us to decide the case, not upon facts, but upon prediction, opinion, and prophecy.

"But the very nature of complainant's complaint, asking as it does, that the defendants be required to render for its proposed plant a delivery service of a kind new to the stockyards district, necessarily requires exercise of judgment as to future effects and results. The record contains ample facts showing that, if complainant's demand for the service without charge in addition to the line-haul rates were granted, the other packers would be under considerable, if not great, competitive compulsion to provide the necessary facilities enabling them to make like demands. We may take account of, and give effect to such conditions without being definitely apprised as to what each and all of the other packers will do, or will find it financially profitable and otherwise advantageous to do." (R. 75-76)

The Commission thus recognized and dealt with the realities of the situation, and this is objected to by Swift only because it makes clear the true nature of its complaint and the effect of what is proposed on the carriers, the public and other shippers.

1. THE COMMISSION'S FINDINGS ARE ADEQUATELY SUPPORTED BY SUBSTANTIAL EVIDENCE OF RECORD.

The Commission's order dismissing Swift's complaint is based upon findings which dispose of every issue raised by Swift in this proceeding. In response to Swift's contention that the carriers should be required to deliver livestock to Swift's private tracks in the stockyards area at the flat line-haul rates, the Commission found that those rates, previously prescribed by it, were not designed or intended to compensate the carriers for the livestock deliv-

ery service sought by Swift, and that, considering the transportation services required for such delivery and all of the attending facts and circumstances, the published switching charge of the Junction in addition to the line-haul rates was not unreasonable or otherwise unlawful for deliveries of livestock to Swift's private tracks. (R. 78-81) The Commission found that Swift's claim of prejudice to livestock as a commodity because of the different charges applicable to delivery of livestock to Swift's private track as contrasted with deliveries of dead freight thereto was without merit because "the measure of transportation services rendered shipments of live animals is substantially greater than that accorded dead freight." (R. 65) Swift's claim that the published charges were prejudicial to it and preferential of its competitors at certain points named in the complaint was similarly disposed of by a finding that there was no showing "that services as desired will result in a situation similar to that at a point or points alleged to be preferred." (R. 79) The Commission also found that the transportation services, conditions, and circumstances required to make delivery at the Omaha plant pens and at the Union Stock Yards were substantially dissimilar from those involved in making delivery at Swift's private tracks in the stockyards area. (R. 78) In its consideration of Swift's request that joint rates, not in excess of the line-haul rates, be established for delivery of livestock to its private track the Commission determined that the establishment of such rates would not be necessary or desirable in the public interest. (R. 77, 81)

The District Court noted each of the findings referred to above and concluded that the Commission's findings were supported by substantial evidence. (Conclusion of Law No. 1, R. 209) In the discussion which follows, we shall endeavor to show that the District Court's determination is unassailable.

A. It Is Established on This Record That Delivery of Livestock to Swift's Private Tracks in the Stockyards Area Would Be an Impractical and Costly Operation Which Would Adversely Affect All Other Interests in That Area.

At the time that Swift and Armour sought to compel the carriers to effect what this Court characterized as "a readjustment of their rate schedules" on direct shipments of livestock to Chicago (*Armour & Co.* v. *Alton R. Co.*, 312 U. S. 195 at 201), the considerations which must govern the Commission's action were clearly delineated. The Court, affirming the Commission's decision in the companion case, stated that the question presented "was to be decided by the Commission upon the facts of each particular case, and not by mechanical application of a fixed rule of law as contended by appellants" (316 U. S. 216 at 225) and that "the Commission was justified in considering, as it did, all that would account for the evolution of the practice complained of as well as the effect of existing and proposed practices on the interests of the carriers, the public, and other shippers. *Adams* v. *Mills, supra*, at 409 *et seq.; Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. at 198, *et seq.; Armour and Co.* v. *Alton R. Co., supra* at 201. Neither the railroads nor the Stock Yards exist for the benefit of the packers alone. Their patronage is large and important, but neither in the regulation of the carriers nor in the regulation of the Stock Yards are they entitled to facilities or treatment that will ignore the existence of other interests." (316 U. S. 216 at 225-26)

Similarly in this proceeding, the packers seek a readjustment of the published charges applicable to livestock and, in its consideration of the present complaint, the Commission stated:

"In the determination of the issues raised in this

proceeding, it is necessary to consider the track layout of the Junction, and the present operations thereover in the handling of so-called dead freight, which term includes perishable and all other freight other than livestock; the method by which livestock has for many years been handled by the line-haul carriers to the Union Stock Yards; the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock, as sought by the complainant; and also, in order to avoid undue preference and prejudice, if it were required to make similar deliveries to complainant's competitors." (R. 60)

"All facts relating to the existing custom and practice of making deliveries of livestock and also facts and circumstances leading up to that custom and practice, as well as the effect of the proposed practice on the interests of the carriers, the public, and other shippers, are relevant." (R. 71)

It is thus obvious that the Commission's decision closely adhered to and applied the principles previously enunciated by this Court. We shall show that the evidence before the Commission, considered in the light of these principles, required its dismissal of Swift's complaint.

Before discussing the evidence in detail, it may be of convenience to the Court if a brief and concise statement is made outlining (1) the present method of delivering livestock in Chicago and, (2) in contrast, the method of delivery which would be required under Swift's proposal.

1. The evidence shows that under the present method of delivery, after trains carrying both livestock and dead freight have entered the Chicago yards of the line-haul carriers, the stock is separated from the dead freight and then moved directly to the chutes of the Union Stock

Yards by the crews and engines of the line-haul carriers.[1] To reach the chutes these carriers have trackage rights over the rails of the Chicago Junction Railway on whose line the chutes of the stock yards are located.

In a large number of instances, stock arriving at Chicago on one train is held up pending the arrival of more stock in order that a consolidated run may be made to the chutes, thereby saving extra runs and avoiding added costs and increased difficulties in the crowded stockyards area. Only about 37 per cent of the trains handling stock to the chutes also carry dead freight for industries on the Junction which must be interchanged with the Junction at its Ashland Avenue Yard *before* the stock is delivered at the chutes. Immediately upon unloading the stock at the chutes, the line-haul crew and engine returns with the empty stock cars to its own yard.

It will be shown that rail operation in the stockyards area is today heavily congested, due primarily to the enormous growth of industry in that area. As a consequence, the delivery of dead freight, and livestock has pushed the rail facilities to capacity with the result that there is only a narrow margin between efficient service and great delay and injury to all shippers served in this area. The most graphic evidence of this may be found in the fact that it now takes the Junction an average of nearly 32 hours to classify and deliver ordinary freight through the Ashland Avenue Yards now unburdened with livestock.

2. In contrast to the present method of delivering livestock the evidence shows that under the proposed method nearly one-half of the annual volume of stock now going to the public yards would have to be segregated and de-

[1] Since record references are supplied with the more complete discussion of the evidence which follows, they are omitted in this summary statement.

livered to the various packing plants on the rails of the Junction. This would require that when stock comes into the yards of the line-haul carriers two separations would have to be made, one of the stock which would still go to the public yards, one of the packers' stock consigned to the private sidings. All trains carrying stock to the chutes at the public yards would include direct shipments consigned to private sidings of packers. The livestock consigned to private sidings would have to be interchanged with the Junction at Ashland Avenue, and the Junction would have to make delivery of this stock after separating it from dead freight and classifying it in the Ashland Avenue Yards according to consignee. This operation would also require the Junction to return the empty stock cars to the Ashland Avenue Yards, classify them according to the line-haul carrier which would receive them and then interchange them with the line-haul carriers.

The evidence shows clearly that difficulties of such consequence as to cause a breakdown of terminal operations in this area would result from the attempt to carry out the proposed operation. Even under present conditions, the consolidated trains, constituting 37 per cent of those carrying livestock to the public yards, cause a piling up of as many as four trains at a time on the running track to the public stock yard while dead freight is interchanged with the Junction. When this percentage is increased to 100, as it would be under the proposed operation, use of the Junction's main running track for deliveries of livestock to the Union Stock Yards would be a practical impossibility. The attempt to interchange highly perishable livestock with the Junction in a yard that has no receiving or classification tracks available for that purpose and no room in which to expand, the impossible operation that the Junction would have to undertake in its efforts to receive and classify this livestock in a yard already saturated with dead freight,

the fact that this livestock on short time would be buried behind dead freight which now takes over 31 hours for delivery from the time of its receipt by the Junction, and the necessity of digging out the livestock for preferred treatment, at the sacrifice of all other traffic, all demonstrate the unfairness and extremely impractical nature of Swift's proposal. Swift's proposal would revolutionize the entire switching operation in those yards for another reason. The intermingling of livestock and dead freight on the same receiving and classification tracks would require that all freight, both the livestock and dead freight, be shoved to rest and not "kicked" in the customary and time-saving manner and freight would be arriving at the yards faster than it could be handled. The thousands of empty stock cars, none of which are handled at present by the Junction, would have to be collected by that carrier from the packers' private sidetracks and returned to its Ashland Avenue Yards for transfer to the line-haul carriers. In short, the evidence shows that the proposed private track delivery of livestock to the packers in the stockyards area would require services and entail operating difficulties of an insuperable character.

The evidence also shows that Swift's proposal would gravely impair the rail transportation service required by other shippers in this area. It would be practically impossible for the line-haul carriers to continue to deliver the producers' livestock to the public yards. The main running track which must be used by the line-haul carriers for that purpose would be blocked while the packers stock and the dead freight carried on consolidated trains was being interchanged with the Junction in its Ashland Avenue Yards. These trains would not be able to interchange all of that tremendously increased volume of freight with the Junction while that switching line was using its lead tracks to work the livestock through its re-

ceiving and classification facilities with the result that numerous trains would pile up on the main running track waiting for an opportunity to interchange traffic with the Junction. That main running track would also be blocked while the Junction switched the empty stock cars from the packers private tracks to its yards for return to the line-haul carriers. At a time when such cars are in especially short supply, their return for use by the shippers would be delayed at least two days. The evidence also shows that the Junction cannot maintain its present dead freight service to the 499 industries served solely by it if it must also handle livestock for the packers and that those industries would be denied their sole source of rail transportation. This, then, would be the effect of the proposed practice on the interests of "the public and other shippers".

The evidence also shows that the rate basis which Swift demands for private track delivery of livestock in the stockyards area was not constructed or designed for the difficult and impractical service which it now seeks, and that, on the basis of uncontradicted cost studies, the terminal allowance included in that rate basis would be wholly inadequate for the proposed service.

1. THE PRESENT OPERATION.

a. The Ashland Avenue Yards of the Chicago Junction Railway Are the Bottleneck in Which All Freight Destined to Industries on the Junction Must Be Interchanged and Through Which All Livestock Going to the Stockyards Must Pass.

A vital, governing factor of the rail operation in this great industrial area is the physical layout and the operation of the Ashland Avenue Yards of the Chicago Junction Railway. Into those yards each working day pour hundreds

of cars of dead freight destined to the many industries in the area. The twenty-seven trunk lines and switching carriers that connect with the Junction must interchange, within the confines of that yard, *all* cars of dead freight consigned to the hundreds of industries on the Junction. (R. 436, 443, 539) In this yard the Junction also delivers to the line-haul carriers the great bulk of the loads and empties going out of this industrial area. (R. 464-65)[1] It is in such a yard, already saturated with traffic, but which has never handled a car of livestock except in an emergency, that Swift proposed that the carriers should be required to interchange, classify and deliver all of the thousands of cars of livestock which are consigned directly to the packers. An appreciation of the operating conditions and physical layout in and around Ashland Avenue is thus essential to an understanding of the grossly extreme character of this proposal, and the soundness of the decisions below.

The Ashland Avenue Yards, which are shown on the aerial photograph attached to this brief as Appendix B (Ex. 19, R. 553, 1104), are bounded by 43rd Street on the south, Pershing Road on the north, Western Avenue on the west, and Ashland Avenue on the east. (Ex. 14, R. 472, 1092)

Although this collection of tracks might be deemed to constitute one yard, for purposes of identification and operating convenience one group of tracks is referred to as the "north yard", another as the "south yard" and a third as "The Damen Yard." (R. 460-61) All are sometimes referred to as the Ashland Avenue Yards. The so-called North Yard and South Yard are separated by the main running tracks which are indicated by arrows on the

[1] Outbound traffic to be delivered to southern and eastern carriers is interchanged by the Junction at its Loomis Street yard at 47th and Loomis. This yard has only 20 tracks available for classification. (R. 464-65)

attached photograph. (R. 458-61, Ex. 14, R. 472, 1092) There are three of these main running tracks by means of which trains may pass through and move to and from the Ashland Avenue Yards. Only one of these tracks, numbered 1103 but sometimes referred to as track 3, is available and used for all *eastbound* traffic, moving from the left hand side of the photograph through to the right hand side and beyond. (R. 459, 486-87) This track is the sole means of ingress for those line-haul carriers which enter the area served by the Chicago Junction from the west. (R. 486-87) All livestock delivered to the stockyards by the principal carriers of livestock, with the exception of the Rock Island, must move through Ashland Avenue on this one track, and it is emphasized here, in the light of the evidence to be discussed later, that any blocking of this track shuts off access to the public stockyards. (R. 487-89) Immediately north and south of this track are the two other main running tracks which are used exclusively for *westbound movements*. (R. 459) About twelve line-haul carriers use these tracks to effect deliveries of dead freight and perishables to the Junction, and nearly all the empty stock cars returning from the stockyards must use these two tracks. (R. 636, 474) These same carriers also use these tracks as a passage through the Ashland Avenue Yards to other yards west and north of this area, and the same tracks are used by the Junction in effecting return of empties from private sidings, and in bringing loads from industries on its line for interchange with line-haul carriers. (R. 478, 637)

Immediately adjacent to the most northerly of these three main running tracks, there are 24 tracks known as the Ashland Avenue North Yard. (R. 522) These tracks are used exclusively for traffic, loads and empties, outbound from industries on the Junction. (R. 464) Only the first three tracks just north of the main running tracks, however,

are available for receiving cars. (R. 459-60) On these three tracks all the loaded and empty cars moving outbound are placed by Junction crews in whatever order they may be received. These cars must then be separated by a Junction crew according to the line-haul carrier which will pick them up. This operation is performed by switch engines moving up and down the lead track and pushing the cars from one of the three receiving tracks to the 20 classification tracks at the northernmost (or top) part of the Ashland Avenue Yards. (R. 465-66)

Immediately south of the three main running tracks which bisect the area are 33 tracks known as the South Yard. (R. 458-59) Here all freight destined to industries on the tracks of the Junction must be placed by line-haul carriers, whether they enter the yards from the east or west. (R. 463) Here, again, only a few of these tracks can be used for receiving inbound freight. The first nine tracks south of the main running tracks are all the available receiving tracks. *All freight destined to the 499 industries located on the Junction must funnel through these nine tracks.* (R. 463, 527, 538-39) It is on these nine tracks that all livestock going directly to any packing plant would have to be interchanged if space were available for that purpose, as in fact it is not. (R. 539, 547, 563) As in the Ashland Avenue North Yard, a Junction switch engine works up and down a single lead track transferring cars from the nine receiving tracks to the 24 classification tracks according to the destination of the particular car. (R. 466, 539) This is the same lead track that the Junction's connecting roads must use to reach the nine receiving tracks. (R. 546, 659)

Immediately south of the southernmost track in the Ashland Avenue South Yard (track 1033 on exhibit 14, R. 472, 1092) are fifteen additional tracks. This group of

tracks, known as the Damen Avenue Yard, is used for temporary storage of cars. (R. 460)

The Ashland Avenue Yards are hemmed in by the solid growth of industry on all sides. (R. 454, 467) Immediately to the north are government and private warehouses on property owned by the Central Manufacturing District. In the southwest corner is property of Wilson & Company whose plant immediately abuts the southeastern portion of the tracks. Immediately to the northwest is municipal property. (R. 445, 541)

Traffic moving from the west out of or through this Ashland Avenue Yard, and traffic moving from the east to or through the yard must pass through the bottleneck at Ashland Avenue. (R. 450) Immediately at the viaduct over Ashland Avenue there are seven tracks. These seven converge into four a few hundred feet east of the crossing. (R. 450-51) These four consist of the three main running tracks (one eastbound, two westbound) and one auxiliary track which runs only as far east as Packers Avenue, the first north-south street east of the proposed Swift facility. (R. 450-51, 549-51)

The Ashland Avenue Yards are not only the key to efficient railroad operation in the stockyards area, but are the focal point of no less complicated operations by the Junction in the entire area served by it. (R. 467) Once cars destined to industries on the Junction have been classified in the Ashland Avenue South Yard, they must be moved to base yards in the various operating districts. (R. 465-66) Before this movement can be made the inspection and other work necessary to the effectuation of the interchange must be performed in the Ashland Avenue South Yard. (R. 465-66) At the base yards the cars are reclassified for handling to the various consignees. For example, at the Halsted Street Yard, in Zone 4, ten further sep-

arations are made. (R. 466) Traffic moving out from industries on the Junction is removed from one of the industrial sidings or one of the team tracks in the area to one of the sub-classification yards, and is then returned to the Ashland Avenue Yard or to the Loomis Street Yard. (R. 464-66) It is not disputed that these Ashland Avenue Yards and the area they serve involve the busiest, most congested rail operation in the Chicago area. (R. 467, 701, 925) Faced with tremendous difficulties the Junction Railroad must and does operate this property with maximum efficiency and a minimum of delay. But it is of utmost significance in this case that the only type of rail operation the Junction has never regularly performed, in the many years of its operation, is the switching, handling and delivery of livestock. For over eighty years this job has been done exclusively by the line-haul carriers. (R. 469, 493)

b. The Present Method of Delivering Livestock to the Union Stock Yards Has Developed Through Generations and the Custom and Practice Which Has Resulted Is an Efficient and Carefully Organized Operation.

For the five years 1943-47, the years preceding immediately the making of the record in this proceeding, the average annual movement of livestock to the Union Stock Yards was 76,920 cars. (Ex. 28, R. 607, 1117) This means that more than 150,000 cars, loaded and empty, were handled annually by the line-haul carriers over the Junction running tracks to the public yard. None of that number was Swift's. For some years Swift has been receiving all of its directs, averaging approximately 6,500 cars a year, at the facilities of its subsidiary, the Omaha Packing Company, located on the Burlington Railroad approximately two and one-half miles from the public yard and outside the stockyards area. (R. 262, 266, Ex. 28, R. 607, 1117) From its pens at that site it transports the livestock into the stock-

yards area by truck. (R. 266) Swift is the only large packer having a plant located on the rails of a line-haul carrier in Chicago and, since the stock received there takes the flat Chicago rate, Swift secures delivery of its direct shipments on a basis which is not available to the packers who must transport their stock into the stockyards area by rail. (R. 483)

With certain minor variations as between the several roads, the handling of livestock by line-haul carriers into Chicago follows a uniform custom and usage constructed out of generations of experience. Stock from outlying points moves into the outer yards of the line-haul carriers in the Chicago area on trains which also carry dead freight and perishables. There cars of livestock and dead freight are separated and the livestock is collected for delivery to the chutes of the stockyards. (R. 609, 635, 650, 677, 692) If there is sufficient time within which to make the market within the detention period permitted by the Federal statute, livestock coming into the yards of the line-haul carriers on one train is frequently held at these yards for brief periods, for consolidation with livestock arriving on another train. In this way it is possible to have one crew and one engine perform a service which otherwise would require two or more runs to the chutes of the stockyards. (R. 631, 650, 677)

In the run from the outer yards to the chutes at the stockyards most of the stock must pass over the sole eastbound running track which lies between the "North" and "South" Ashland Avenue Yards. (R. 486) Of all the western railroads, which are the principal carriers of livestock to Chicago, only the Rock Island approaches the chutes from the east. (R. 547, 649)[1]

[1] As pointed out at pages 43-44 of this brief, even the trains coming into the stockyards from the east now encounter difficulties because of crowded conditions extending two miles west at Ashland Avenue.

Under the existing practice the majority of the trains or cuts carrying livestock to the chutes do not carry freight to be interchanged with the Junction at Ashland Avenue. This is an important fact in measuring the consequences of Swift's proposal. Superintendent Kinsella of the Junction stated that during a test period from December 1 to December 7, 1947, 63 per cent of the trains carrying livestock to the chutes from the line-haul yards did not carry any other type of freight but made the run directly through to the chutes without stopping to interchange other freight with the Junction at Ashland Avenue. (R. 485, 543) This is typical as shown by the experience of the individual roads during other periods. During the month of December, 1947, the North Western ran 123 trains to the public chutes. Of these, 90 moved directly to the chutes without making setouts of dead freight into the Ashland Avenue Yards. (R. 956)

From April 16 to May 10, 1947, the Burlington ran 89 trains with livestock to the unloading chutes. Of these, 53 trains, or 59 per cent, made the run without making setouts of dead freight at Ashland Avenue. (R. 611-12) During the period April 15 to May 15, 1947, the Santa Fe made 74 trips to the chutes with livestock, of which 47 trips or approximately 60 per cent were direct runs to the stockyards without setouts at Ashland Avenue.[1] (R. 694)

When a train is made up in the outer yard consisting of livestock consigned to the stockyards and dead freight for delivery to the Junction, the dead freight is placed im-

[1] The test period from approximately the middle of April, 1947, to the middle of May, 1947, was selected because Swift's exhibit 16 (R. 534, 1095-1101) might otherwise appear to suggest that the majority of engines carrying livestock to the stockyards during this period made set-outs of dead freight at the Ashland Avenue Yard. As the record shows this Swift exhibit is a small selected list of trains and was furnished by the carriers upon the request of Swift for the consist of those specific trains only. (R. 532)

mediately behind the engine. (R. 487) Proceeding east over the east-bound running track the train pulls clear through to the east end of the Ashland Yard. (R. 486) The engine then cuts off the livestock and holding on to the dead freight backs down the lead track and kicks the dead freight and perishables into any available receiving track in the Ashland Avenue South Yard. Upon the completion of that operation it returns to the stock cars, couples onto them and proceeds to the chutes. (R. 487-88) During this entire period, while the crew is effecting the interchange of dead freight at Ashland Avenue, the cars of stock are standing on the main running track and are, of course, blocking any other movement through Ashland Avenue from the west on that sole running track. (R. 487-89)

On the other hand, the trains which contain only livestock move to the chutes without setting out loads at Ashland Avenue, and except for such interference as is encountered from trains engaged in setting out cars in the Ashland Avenue Yards, proceed straight through to the chutes. Immediately upon the unloading of the stock at the chutes the line-haul crew and engine returns with the empty cars to its own yard. (R. 469)

c. Even Under Present, Long Established Procedure the Tremendous Growth of Industry in the Stockyards Area Has Brought Rail Operations to Full Capacity With Only a Narrow Margin Between the Present Efficient Operation and Disruption of the Entire Terminal Operation.

The present method of delivery of stock directly to the chutes of the Union Stock Yards, developed through many years of experience, is a workable and reasonably efficient operation. Even under present conditions, however, the livestock encounters interference and operating difficulties

in its movement to the stockyards over the eastbound running track. This condition is greatly aggravated by the fact that the livestock as well as dead freight does not arrive in an even flow but is concentrated during the early morning hours of the first days of the week. (R. 468, 555, 561)

The very narrow margin which exists today between efficient operation and a breakdown in the terminal service in this area is attributable to the tremendous industrial growth in this district served by the Junction necessitating full capacity operation by that railroad.

Witnesses Kinsella and Sorenson of the Junction emphasized this fact, as follows:

> "Q. Are your yards and facilities taxed to capacity at the present time?
>
> "A. They are running bank full. We just have all we can do to master what we have to handle now." (R. 484)
>
> "As I stated before we are presently handling between 1,000 and 1,100 cars per day through this [Ashland Avenue] Yard, and the yard is being operated to capacity, and if the burden of handling this additional traffic was put upon us, *our yard operation would break down in its entirety.*" (R. 547, italics added)

The testimony of the operating witnesses of the line-haul carriers—all men with years of experience in and around the Chicago terminal area—fully demonstrates the critical nature of present operating conditions and the effect of Swift's proposal on the handling of stock and other freight.

Witness J. J. Stein, for 31 years with the Chicago North Western Railroad, nearly all of it in the Operating Department, and presently General Manager of that rail-

road, described the conditions now encountered in getting livestock to the chutes as follows:

> "Train operation under present conditions in the Ashland Avenue area is seriously hampered because of inevitable congestion in this district. About 8 line-haul carriers enter Ashland Avenue from the west as does the North Western. About 12 other line-haul carriers come in from the east. Our experience shows that even under present conditions, our stock relief crews trying to get stock to the unloading chutes encounter serious delay at Ashland Avenue due to other line haul carriers attempting to enter this point and because of the activities of the C. J. cars and engines. A score of carriers—both line haul and terminal—attempting to operate in and through an area as congested as Ashland Avenue just cannot avoid conflict with one another in many ways.
>
> "The result is that the run through Ashland Avenue to the Yards even today is not a rapid one which moves without interference. A large number of our stock trains going to the Yards today are stopped and must wait on the main running tracks because of the congestion." (R. 636)

Each of the other operating witnesses from the Burlington, Rock Island, Milwaukee and Santa Fe testified that his road was faced with similar operating difficulties and delays in moving cars of stock into the Ashland Avenue area because of the growth of the industries in this area, the consequent increased rail movement and the difficulty of effecting interchange of the dead freight in the Ashland Avenue Yards. (R. 624, 650-51, 677-78, 695-96, 701)

Witness Heide, Superintendent of the Rock Island, Chicago Division, and an operating man since 1905, stated:

> "Right today the Rock Island is having all it can

do to meet its schedules on delivery of livestock to the Stockyards because of the delays and congestion in that area under present conditions." (R. 651)

The difficulties encountered by the Rock Island in making deliveries to the stockyards emphasizes the seriousness and extent of the operating problem in and around Ashland Avenue. That road, unlike most of the other principal carriers of stock, does not have to use the running track through the crowded Ashland Avenue Yards in order to reach the stockyards. (R. 649-50) It might thus appear that the Rock Island would not face the same operating problem. As stated by witness Heide:

"But that isn't the way it works. The congestion arises because of this bottleneck at the Ashland Avenue interchange, and it spreads out and backs up for quite a distance on both sides of that interchange. For example, the Rock Island in carrying stock to the Yards from the east enters Chicago Junction tracks at Root Street, which is about two miles due east of the Ashland Avenue Yards, and we frequently have to stop our trains and hold up stock at Root Street, even though we are two miles from the Ashland Avenue interchange, because of delays at Ashland Avenue. In other words, even though we do not have to pass through Ashland Avenue in order to reach the Yards, we are many times forced to hold up our stock trains because of delays in the Ashland Avenue area. We are not the only carrier using the Junction tracks from the east. The Illinois Central, the Wabash, the C. I. & L., Erie, Pennsylvania, N. Y. C. and Nickel Plate, and some other roads coming in from the east may be delayed and back us up. *It isn't an uncommon experience for a Rock Island engine to take seven hours from the time it enters the Junction tracks at Root*

Street until it reaches the C. & N. W. Potato Terminal via Ashland Avenue. The potato terminal is four miles west and north of the Ashland Avenue Yards. *Seven hours to run approximately six miles*—that gives an idea of the operating problem we are facing in this Ashland Avenue area where Swift wants to create an additional burden." (R. 651-52, italics added)

The testimony of these practical operating men who have the direct responsibility of getting this stock to the market leaves no doubt that the interchange of direct shipments with the Junction for delivery by that road would convert a difficult operation into an impossible one. Witness Heide gave specific examples of just how close to capacity the rail movement is today.

Exhibit 38, introduced by witness Heide, consisted of foremen's trip reports on *all* Rock Island trains moving from the Burr Oak Yards of the Rock Island near Chicago to the chutes of the stockyards, Ashland Avenue, and to terminals just west and north of Ashland Avenue Yards between January 18 and 24, 1948. (R. 652, Ex. 38, R. 665, 1163-70) This exhibit shows the running time of each train which moved down to the stockyards and Ashland Avenue during this week. This exhibit shows that 60.6 per cent of these Rock Island trains during that week were delayed for one reason or another. (R. 655) On Sheet 1 of Exhibit 38, Engine 2100 is shown delayed at Root Street (the point just east of the stockyards' chutes where the Rock Island trains move onto Junction tracks). (R. 1163) Witness Heide testified as to this train:

"• • • he was held at Root Street to enter the C. J. tracks as I mentioned here by reason of the backups of other trains in there and we cannot even get on

their tracks from 2:35 A. M. to 5:20 A. M. on January 18, 1948, waiting for permission to enter C. J. tracks on account of congestion." (R. 653)

On page 2 of Exhibit 38, Engine 2539 on January 18th left Burr Oak (14 miles from Ashland Avenue) at 6:25 P. M. (R. 654) It arrived at Ashland Avenue at 4:10 A. M., the following day. It was delayed from 7:30 P. M. to 10:15 P. M., at Packers Avenue (just east of the Ashland Avenue Yards). At 10:15 P. M. this engine moved to the west end of Ashland Avenue where it stood until 4:05 A. M., waiting to switch off the cars which were to be interchanged with the Junction at Ashland Avenue. (R. 654) Witness Heide testified that:

"* * * the entire delay from 7:30 P. M. to 4:05 A. M. should be charged to the delay of not being able to get into the yard by reason of the other crews ahead of him that could not get into the yard." (R. 654)

Similar conditions are encountered by each of the other roads. The Santa Fe Corwith Yard at which it receives livestock is 3.75 miles from the chutes of the stockyards. (R. 694) If there should be relatively little difficulty, this run could be made through the Ashland Avenue Yard in 45 minutes. (R. 695) During a test period, November 1 to 7, 1947, inclusive, the Santa Fe made eight trips to the stock yards without having to stop at Ashland Avenue to interchange dead freight with the Junction. These trips took from 45 minutes to 4 hours (less than one mile an hour). (R. 694-96) On November 4th a Santa Fe train carrying only stock for the public chutes waited one hour and 45 minutes at the west end of the Ashland Avenue Yard and then consumed another hour and 45 minutes getting from the Ashland Avenue Yard to the chutes, a distance of about one mile when, as the operating witness stated,

without train interference "the move should be made in 10 to 15 minutes." (R. 695-96)

On November 5th, another Santa Fe crew trying to move direct to the public chutes consumed one hour and 20 minutes getting from Ashland Avenue to the chutes. This run consumed three hours and 10 minutes from Corwith Yard through the Ashland Avenue Yard to the chutes—a little better than one mile an hour. (R. 696)

On Santa Fe runs which required set-offs at the Ashland Avenue Yard the record is even more unfavorable. Witness Clousing of the Santa Fe testified as follows with respect to the operating problems caused by set-outs at Ashland Avenue:

> "Even more delay is frequently encountered on runs where traffic for Ashland Avenue Yard is consolidated with traffic for the Stock Yards. For example, a consolidated run on November 1st to Ashland Avenue Yard and the chutes took our crew five hours and 30 minutes in all, four hours and 50 minutes of the time being spent in moving through the congested area between Corwith Yard and Ashland Avenue Yard. In other words, it took from 7:00 P. M. to 12:30 A. M. to move from Corwith Yard to the chutes, making set-out at Ashland Avenue Yard. *This check of running times was made only for the period November 1st to 7th, inclusive, 1947, and there are many more such cases.*" (R. 696, italics added)

The Commission described these conditions in its report, stating:

> "Manifestly, as the line-haul carriers must use the same east-bound track into the Union Stock Yards, any delay to a train on that track results in 'piling up' trains of other lines seeking ingress to the Union Stock Yards. Frequently as many as four trains must wait

to enter this track as a result of its being blocked at the east end. Delays are necessarily experienced also because of 'set outs' made by consolidated trains, consisting of livestock and dead freight." (R. 63)

The difficulties and delay in making deliveries of livestock to the chutes due to crowded conditions in and around Ashland Avenue Yard have been getting steadily worse because of the growth of industry in this district. (R. 467; 501, 950) Traffic has increased enormously as the industrial area has developed but the Ashland Avenue Yard, closed in as it is by other structures, has no place in which to expand, and has become, year by year, a more serious bottleneck. (R. 523-24, 563, 925-26) The operating witness for the Burlington testified that a study of foremen's trip reports for a number of years shows that while in October, 1941, a round trip from the Burlington yards to the public chutes averaged slightly less than two hours, in October, 1947, on the same trip the average time had increased to four hours. (R. 624)

All of this testimony by experienced operating witnesses for the line-haul carriers was corroborated by the men who operate the Junction Railway—the crux of this entire operation. Witness Sorensen, Assistant Superintendent of the Junction, stated:

"* * * on several occasions during the past three months just handling the traffic which we were handling during that time and not handling any direct shipments of livestock, we were forced to delay foreign line crews waiting to set cars out at the Ashland Avenue South Yard of the Chicago Junction Railway as high as nine and ten hours before they could effect delivery of cars to our line, this being due to our badly congested yard and unable to handle the cars quickly enough to avoid such delay." (R. 547)

The tremendous volume of traffic handled by the Junction in its Ashland Avenue Yards, averaging some 726,144 cars in recent years (R. 465), requires full and maximum use of the receiving and classification facilities in those yards. As stated by the Superintendent of the Junction, those yards are now "running bank full." (R. 484) The difficulties which inhere in this full capacity operation are aggravated by the fact that the necessary terminal functions performed by that carrier for its twenty-seven connecting lines involves the use of Junction tracks by 167 foreign line crews per day for an average per crew of 3 hours and 12 minutes. (R. 467) With respect to the yard in which all inbound freight is received, classified and sent to base yards for further classification and delivery, the Commission found:

> "Having in mind the need for taking into account periods of peak movements and maximum use, the south yard appears to be used to capacity with no space for construction of additional tracks." (R. 73)

The vital significance of these operating conditions in and around the Ashland Avenue Yards may be fully appreciated when it is realized that it now requires a total of nearly 32 hours to deliver dead freight through these yards from the time that that traffic is interchanged with the Junction by the connecting carriers. (R. 471) This single fact forcefully demonstrates the extraordinary service which would be required in receiving, classifying and delivering livestock on short time through these yards and the destructive effect of that effort.

2. THE ATTEMPT TO EFFECT DELIVERY OF LIVESTOCK TO THE PRIVATE SIDINGS OF THE PACKERS BY INTERCHANGE OF SUCH TRAFFIC IN THE ASHLAND AVENUE YARD WOULD BE A PHYSICAL AND PRACTICAL IMPOSSIBILITY BECAUSE OF THE OPERATING CONDITIONS WHICH WOULD RESULT IN THE YARDS OF THE LINE-HAUL CARRIERS AND THE ASHLAND AVENUE YARDS.

Swift contends that the Commission should have required delivery of its directs on the siding at its proposed facility at the line-haul rate, the same rate which now applies to delivery at Swift's outlying Omaha plant pens and to the Union Stock Yards. This would mean that its directs, which have averaged 6,500 cars a year or 13,000 cars loaded and empty, would be added to the great volume of traffic handled by the Junction through the Ashland Avenue South Yard. (Ex. 28, R. 607, 1117) Moreover, the other packing companies would, of course, desire to place themselves on a competitive parity with Swift by providing similar yard facilities on their respective properties. As Swift stated to the Commission at the time that its small competitor, the Hygrade Company, attacked the Junction's switching charge for private track delivery of livestock, "if receipt of livestock direct to the packing plant of complainant is of advantage to it, it will be of advantage to every one of its competitors. They will all have to have the same service (T. 270)." (Appendix A, p. 50) This would mean that the direct shipments of all of the packers would be added to the volume of traffic handled by the Junction through its Ashland Avenue Yards. (R. 540-41) In the years 1943-47, an average of 31,000 cars of livestock or 62,000 cars loaded and empty were consigned to packers other than Swift, as so-called direct shipments. (Ex. 28, R. 607, 1117) The proposed operation must therefore be considered in terms of the effect on operations of a movement not only of the 13,000 Swift

cars but also in terms of a total movement of 75,000 cars through the Ashland Avenue switching yards.

The difficulties which necessarily attend terminal operations in the stockyards area would be multiplied and compounded by any attempt to perform the extraordinary service which Swift proposes. Indeed, while the witnesses attempted to visualize and describe the proposed operation it was their unanimous view that the inevitable result would be a complete breakdown of the rail transportation facilities in this heavily industrialized area. (R. 529-30, 547, 625-26, 636-37, 640, 644-45, 658-59, 683) The accuracy of this undisputed testimony may be fully appreciated by reference to the aerial photograph attached to this brief as Appendix B. That photograph accurately portrays the volume of traffic normally present in the Ashland Avenue Yards, except that the traffic shown in the North Yard is less than normal. (R. 550) Swift's proposal would place in those yards daily, a volume of livestock traffic, loads and empties, equivalent to a train two miles in length.

a. The Service Which the Line-Haul Carriers Would Have to Accord the Packers' Livestock Under the Proposed Operations Would be Extremely Difficult and Costly.

Starting with the operations which would be required in the outer yards of the line-haul carriers, the evidence shows that the proposed method of delivery would entail a vastly increased measure of service and operating difficulties of a serious nature. In the first place, private track delivery of livestock to the packers would involve a great deal of additional switching of livestock in the yards of the roads bringing stock to Chicago. (R. 620, 641, 656) This would result from the fact that the packers' stock which now goes to the Union Stock Yards would have to be interchanged with the Junction. It would thus be necessary to separate

all directs, amounting to almost 43 per cent of the total movement of livestock to Chicago, from the producers stock which would still be delivered at the chutes. (R. 622, 641, 656)

A train coming into a line-haul yard would have a number of cars of livestock as part of its consist, some of which would be consigned to private sidings. These cars would be mixed in with those still going to the public chutes. Each of the cars would have to be separated and reclassified into two groups before being hauled down to Ashland Avenue and the stockyards. (R. 620-23, 641, 656)

The operating men agreed that while *under ideal conditions*, this additional switch in their own yards would require at least one extra hour of time *per train* (R. 623-24, 641, 657, 700), the actual time consumed would probably be considerably greater because of an acute shortage of men and equipment to handle this additional work. (R. 656)

This additional segregation and classification of livestock in the yards of the line-haul carriers and the serious operating difficulties which would be encountered in attempting to interchange livestock with the Junction in the Ashland Avenue Yards would necessitate the operation of many more trains from the base yards of the line-haul carriers to the Ashland Avenue Yards and the Union Stock Yards. (R. 618-19, 624, 638, 679) This would be due to the inability of the line-haul carriers to consolidate the livestock for runs to the public yards to the extent that is now possible. Consolidation is possible only where there is sufficient time to hold cars pending the arrival in the line-haul yards of additional stock. (R. 638, 677) But because of the additional service which would have to be performed in the yards of the line-haul carriers and the serious operating difficulties which would be encountered

in the Ashland Avenue Yards, livestock could not be held for consolidation in the outer yards even for a few moments and many more runs would have to be made with one, two or three cars. (R. 631, 638, 679) Even under present conditions small cuts must sometimes be immediately run to the yard to avoid a violation of the Federal 28-hour law. (R. 631)

This point is forcefully illustrated by exhibit 41, introduced by witness Kiesele of the Milwaukee Road. (R. 687, 1173) That exhibit shows that during December, 1947, stock came *into* the Milwaukee yards on 168 trains permitting the operation of only 67 trains *from* the Milwaukee yards to the public chutes. (R. 679, 1173) But under the conditions which would inhere in the Swift proposal witness Kiesele stated:

> "We would have been required to operate up to 168 trains under the plan proposed and certainly many in excess of the 67 trains actually operated through the numerous consolidations made under the present plan." (R. 679)

Witness Starbuck of the Burlington stated:

> "The C. B. & Q. will be compelled as a result to make many additional runs in order to get stock to the C. J. and to U. S. Yards within the time limit, or much of the stock will have to be unloaded and fed at Clyde (C. B. & Q. Yards) before it can start for the stockyards. At Clyde, where the C. B. & Q. receives this stock there are feed and rest facilities for only fourteen cars of stock." (R. 619-20)

The witnesses from the North Western, the Rock Island, and the Santa Fe also testified that the proposed change would entail many additional runs to the Junction interchange and the stockyards. (R. 638, 663, 701-702)

Aside from the additional cost this would impose upon the railroads, it is obvious that the piling up of more engines and crews in the Ashland Avenue bottleneck would multiply the operating difficulties in that area.

The problems thus produced by the great increase in the number of engines and crews converging on the Ashland Avenue Yard would be compounded by the fact that, in contrast to today's operations, nearly every train carrying livestock to the stockyards would have to stop to make setouts at Ashland Avenue. Today, only about one-third of the trains carrying livestock to the public chutes stop to make setouts of dead freight at Ashland Avenue. (R. 485, 543) In contrast, the testimony shows, and it is obvious, that with almost 50 per cent of all the stock consigned to points on the Junction, practically every cut of cars would have stock to be set out at Ashland Avenue. (R. 488, 612, 663, 681, 696)

Swift so advised the Commission in its brief in the *Hygrade* case, stating:

> "In practically every train of livestock coming into the stockyards there are cars consigned direct to packers (Tr. 280)." (Appendix A, p. 49)

The vital point about this is that every time a train stops to make a setout at Ashland Avenue it must leave the cars bound for the public chutes standing on the main running track and thus stop all other movements to the public yard. (R. 487-89) In the case of all traffic entering Ashland Avenue from the west, and this includes all the major carriers of livestock except the Rock Island, the only passage to the stockyards through this bottleneck is closed.

The Commission's finding with respect to this feature of the proposed operation is as follows:

> "While, as above stated, any cars of livestock con-

signed to complainant could be handled in consolidated trains by grouping such cars at the head of the train with the cars of dead freight intended for set-out in the south yard, nevertheless, because of difficulties peculiar to livestock traffic, such handling would, it appears, affect adversely the line-haul carriers' operations in carrying livestock to the stockyards. As previously stated, all such traffic must move over east-bound track 1103 and, for that reason, any delay in unloading the stock tends to delay and 'pile up' other trains seeking ingress over the tracks to the stockyards. Consolidated trains always occasion some delay since the cars of livestock destined to the stockyards are left standing on the track while the engine hauls the cars of dead freight a short distance eastward and then, after backing them onto a sidetrack leading to the receiving tracks of the south yard, 'kicks' the cars as previously described." (R. 72)

b. The "Services and Modification of Services Which Would Be Required For the Desired Deliveries" (R. 80) Would Cause a Collapse of Terminal Operations In the Junction's Ashland Avenue Yards.

Although the operating difficulties which would confront the line-haul carriers in their efforts to interchange the packers' stock with the Junction in its Ashland Avenue Yards are substantial, the burdens which the Junction would have to assume are insurmountable.

As Swift pointed out in its brief in the *Hygrade* case, "the spotting and switching involved, and which the charge of the Chicago Junction would cover, is quite complicated and complex." (Appendix A, p. 39) The "considerable and detailed proof of operating conditions involved in a movement" to the Hygrade plant (Appendix A, p. 45)

was declared by Swift to show that such an operation "would be *very expensive, very difficult* and would undoubtedly affect the other perishable freight business of the Chicago Junction (T. 264)" (Appendix A, p. 47, italics added), and that the necessity of furnishing such service to all of the packers in the stockyards area "*would increase the difficulties of operation to the point of making such deliveries impossible.*" (Appendix A, p. 50, italics added) As the record here shows, these statements are equally true with respect to the identical service now sought by Swift.

The fact that this livestock would have to be interchanged with another carrier instead of being moved directly to its destination by the line-haul carrier would mean up to two hours of delay solely because of the additional mechanical and clerical work which would have to be done. (R. 539-40) Under the proposed method after receipt of the cars by the Junction, it would be necessary that they be given interchange inspection by the Junction's car inspectors as required by the Safety Appliance Act; the yard clerks would be required to check the trains, record seal protection, and apply side-carding in accordance with the data shown on the train consist; and the cars would have to be bled. (R. 539-40) Under the present method, none of this costly and time consuming procedure is necessary.

All of the large volume of livestock consigned to the packers would have to be received on the Junction's nine receiving tracks and classified on the 24 classification tracks in the South Yard. (R. 539) It is these same tracks that are now used for the receipt and classification of over 1,000 cars of dead freight per day, and as the evidence shows, the handling of that traffic requires maximum utilization of those facilities. (R. 484, 529-30, 547) As the Commission stated in its report:

"Having in mind the need for taking into account

periods of peak movements and maximum use, the south yard appears to be used to capacity with no space for construction of additional tracks." (R. 73)

In the process of placing this livestock on the Junction's receiving track and assuming that in some unknown manner space had been found for that purpose, the line-haul carriers would shove those cars only far enough to clear the switch point. (R. 494) Before another line-haul carrier could get its cars off the single main running track by which the public yard can be reached from the west, a Junction crew would have to shove the first cut of cars further down the receiving track. (R. 494-95, 660) The Junction would then have to separate the stock cars from the dead freight, switch the cars onto its overcrowded classification tracks and there classify the cars according to consignee. (R. 469-70, 495, 544-45) In other words, stock for Swift, for example, would be segregated from that going to the other packers. (R. 492-93) This segregation is always the job of the receiving carrier in any interchange of freight. (R. 492-93) After this separation, the livestock would have to be moved to an appropriate base yard and held there until moved to the packers' private tracks. (R. 469-70)

Since the packers' livestock would have to be received and classified on the same tracks that are now utilized to capacity by dead freight, the inevitable result would be that that livestock would be intermingled with and buried behind dead freight that now requires nearly 32 hours from the time it is received by the Junction in its Ashland Avenue Yards and delivered to the consignee. (R. 495, 545-46, 659) This is in excess of the total elapsed time that livestock may be confined in cars from its origin in the country without unloading for feed, water and rest. It is thus obvious that livestock could not wait its turn for de-

livery by the Junction as does the dead freight, but would instead require a degree of expedited service that is beyond the capacity of that terminal line.

The livestock blocked in between cars of dead freight which arrives in a continuous stream would have to be "dug out" and given preferred handling in every respect. (R. 496, 497-500, 544-46) It would be necessary to make special runs to the packers' private tracks in this extremely congested area in order that this livestock which invariably reaches Chicago on short time could be unloaded before expiration of the statutory confinement time. (R. 496, 544-46) It is indisputable that the attempt to render this preferred service to the packers' livestock would disrupt the classification and delivery of the dead freight now handled in that yard. (R. 529-30, 538, 546) Witness Sorenson described that necessary consequence of the proposed operation, stating:

> "It would so seriously hamper our switching operations that in my opinion as an operating man, we could not keep our yard open for the receipt and classification of cars consigned to industries located on our rails." (R. p. 546)

The Superintendent of the Junction testified:

> "* * * about the second day we were doing it, I don't know what we would do with the dead freight that we did not yet handle because we were trying to segregate and handle livestock * * * we would have to sacrifice the other freight for the livestock." (R. 529-30)

Although the extremely difficult and impractical character of the proposed operation is quite evident when it is considered in connection with the present delivery time required on dead freight, that comparison substantially understates the operating burdens which the Junction

would have to assume. (R. 499-500) The figures with respect to dead freight relate to switching operations as they are now performed in the Ashland Avenue Yards, but they do not reflect the wholly dissimilar switching operations which would be necessary if the livestock consigned to the packers were handled in those yards. In performing its traditional and customary job of receiving, classifying and delivering dead frieght consigned to the 499 industries served solely by it, the Junction employs the time saving and efficient technique of a "kicking" operation. (R. 543-44) The Commission described this practice as follows:

> "In the ordinary and usual course of classifying dead freight by the Junction, the engine pushes a string of cars along a track leading to the classification tracks. Uncoupled cars are 'kicked' or given impetus to roll freely through a switching lead onto the proper classification track." (R. 65)

It is only by such a method that the Junction can handle the great flow of traffic through this yard. But livestock cannot be switched in that manner. Because of its extremely perishable nature, it must be shoved to rest and carefully placed on the receiving and classification tracks. (R. 469, 543-44) As the Commission stated, "if livestock were so handled it would result in injury to the animals by being thrown against the ends or sides of the cars or knocked down. Cars of livestock must necessarily come to rest without rough shocks or jolts." (R. 65-66) It should also be emphasized that that painstaking and time consuming method of switching would have to be employed with respect to a commodity as to which the statutory confinement time has almost expired and must therefore be delivered in a fraction of the time that is now required for dead freight in the Ashland Avenue Yards unburdened with livestock and switched by the much speedier practice of "kicking".

It would not only be necessary to shove and carefully place the cars of livestock which would move through the Ashland Avenue Yards. The tremendous volume of dead freight would also have to be handled in that same manner. (R. 544) Because of the lack of any space for expansion of the Junction's receiving and classification facilities, the livestock would have to be handled on the same tracks that are presently utilized to capacity for dead freight, assuming that space could be found for that traffic. (R. 495-96, 539-40, 543-44, 563) Once the cars of livestock were carefully brought to rest, subsequent cars of dead freight could not be kicked and allowed to roll against the cars of livestock. (R. 544) As the Commission stated:

> "Whether the livestock were handled alone or together with the dead freight, the cars could not be simply 'kicked', but would have to be switched and actually placed on the receiving track to avoid risk of injury to the animals; and, once the cars were so placed, subsequent switches of dead freight could not be 'kicked' and thus permitted to roll freely against the cars of livestock." (R. 73)
>
> "In its work of classifying dead freight for switching delivery, the Junction, which serves, not only the packers, but hundreds of other industries, follows the usual and time-saving practice of 'kicking', whereby uncoupled cars at the end of the string of cars being classified are sent on their way over the switching lead and onto the proper classification track; but if classification track 19, or any other, were to be used for the livestock destined to complainant, neither the livestock cars nor subsequent cars of dead freight could be so 'kicked', but would have to be pushed over the lead and along the track to the point of placement, such cars remaining coupled until brought to rest." (R. 73)

In short, the service which would have to be accorded to the packers' livestock in the Junction's yards would revolutionize the operations in those yards and would in fact precipitate a total collapse of the terminal service in the stockyards area. Witness Sorenson, one of the principal operating officers of the Junction, testified:

> "In my considered opinion, based on my 20 years' experience in the operating end of the railroad industry, all of which has been spent in terminal yards, if the Chicago Junction Railway was forced to handle direct shipments of livestock for delivery to private sidings of the packing companies located on our rails, the net result would be the complete breakdown of the operation of the Chicago Junction Railway." (R. 548)

It is also clear that the Junction's efforts to "work" a large volume of livestock through yards saturated with dead freight would seriously interfere with and impede the efforts of the line-haul carriers to interchange traffic with it in the Ashland Avenue Yards and to deliver the producers stock at the public yards. As the operating witnesses testified, the Junctions' efforts to segregate this livestock according to consignee and to dig it out from between cars of dead freight would preclude the use of its receiving tracks for set-outs by the line-haul carriers. (R. 469-70, 529, 546, 613) The trains "piled up" on running track 1103, waiting for an opportunity to interchange livestock and dead freight with the Junction and to deliver livestock at the public yards, would have to remain there, thus blocking any movement on that main running track and further compounding the delays and difficulties which would accrue from the proposed operation. (R. 612-13, 637)

Witness Starbuck of the Burlington stated the practical

effect of this Junction operation upon the crews and engines of the line-haul carriers:

> "* * * while the C. J. is switching cars on their lead [track] no other engine can enter that yard during the time that operation is being performed." (R. 613)

Witness Heide of the Rock Island described these difficulties which would result from the Junction's attempt to handle this tremendous increase of new traffic as follows:

> "The Junction would be getting livestock and dead freight set out all over its yards, mixed right in together. It would have to switch out the livestock from the dead freight, and then block the livestock at Ashland Avenue according to the consignee. All this activity—if the job can be done at all—would mean more delay to the Rock Island when it attempts to place its cars on the Ashland Avenue interchange. If the Junction is blocking the receiving yard lead because of an attempt to separate and then collect stock, dead freight or perishables, we just aren't going to be able to set off our cars of stock at that point. Neither is the fellow ahead of us or behind us. And furthermore, if the Junction hasn't been able to clear out stock which had arrived previously because of these difficulties, there isn't going to be any room for us to put our stock on the interchange tracks. How the Junction people could do it I don't know. I do know, after many years' experience in this area, that the Junction's handling, however it does it, is going to have a very bad effect upon our operations." (R. 659)

The attempt of the Junction to handle thirty-five to forty thousand cars of stock in the Ashland Avenue Yard would not be the only source of difficulty inherent in Swift's proposal. The problem raised by the attempted

return of an equivalent number of empty stock cars by the Junction would be equally serious. Today all empty stock cars are brought back to the outer yards by the line-haul crews as soon as they are unloaded at the chutes. This is a relatively fast and efficient operation which requires no interchange, and places no burden upon the tracks in the Ashland Avenue North Yard. (R. 469, 548) But the Swift proposal would require the Junction to collect all empty stock cars at the private sidings, run them either into the Ashland Avenue or Loomis Street yards and classify them according to the line-haul carrier which was to receive them. (R. 470, 547-48) This would materially interfere with the attempt of the line-haul carriers to make setouts at Ashland Avenue. For example, in order to return empty cars from the proposed Swift facility to that part of the Ashland Avenue Yard where the Junction interchanges the empty cars with the line-haul carriers, the Junction would have to cut across and interfere with the main running track which must be used to get stock to the public chutes. (R. 637) Likewise, the line-haul carriers would not be able to get in to make setouts at Ashland Avenue because the Junction could not get over to the North Yard to place the empties without blocking the tracks the line-haul carriers use in making such setouts. (R. 637, 660)

The handling of the empties would cause serious difficulties because of another factor. In the opinion of the carriers' operating officers, their roads would have to send additional engines and crews down to Ashland Avenue to pick up the empties as they assemble in Ashland Avenue. (R. 660, 683, 700)

Witness Stein described the problem the North Western would face as follows:

"Today, we have several transfer runs every 24

hours that pick up traffic including empties for our line in the Ashland Avenue District, but the point is that we will not be able to depend upon those transfer trains to handle the greatly increased number of cars the Junction will be turning back to us at Ashland Avenue, and in my opinion there is not ample facility in this congested yard for assembling and holding the number of stock cars which will be made empty awaiting movement on scheduled transfers. This is one illustration of the necessity of operating additional engines which will be required in this congested area." (R. 638)

The handling of these empties will be particularly acute with respect to the Rock Island which, entering the stockyards area from the east, never takes stock cars, loaded or empty, as far as Ashland Avenue. (R. 660) Under this proposed setup the Rock Island must, of course, take stock into the Ashland Avenue Yard and pick up empty stock cars at this yard. In this connection Witness Heide observed:

"I know that we would have to send down additional engines to collect these empties under the proposed arrangement. Today, we have two runs every 24 hours to pick up cars from the Junction. Now, those trains can handle just so many cars. Furthermore, the Junction would probably have to ask us to act more quickly in getting the empties out of the Ashland Avenue Yards than twice in every 24 hours." (R. 660)

Thus, here again the proposal would require the cramming of additional engines and crews into the narrow and confined Ashland Avenue Yards and the stockyards area.

c. The Proposed Operation Will Require Greatly Increased Service With Respect to Livestock Because of Setouts for Feed, Water and Rest Which Would be Required by Federal Statute.

The requirements of the Federal Confinement Law would also pose most serious operating difficulties in connection with the proposed private track delivery of livestock. Once unloaded to comply with the law the stock must remain outside the car a minimum of five hours. (45 U. S. C. § 71) The effect of this regulation in its relation to the question here is apparent from a study of the time schedules of stock cars moving into the Union Stock Yards. A substantial percentage of the stock coming into the chutes is running on very short time and any delay would mean a violation of the Federal law unless provision be made for an additional stop for feed, water and rest. (R. 642-43, 680-81) Exhibit 45 shows in detail the very close margin of safety on much of this stock. (R. 825-26, 1681-1842) The increased delay in the yards of the line-haul carriers and at Ashland Avenue, would mean that a great volume of stock which is now delivered within the prescribed time would have to be unloaded to avoid violation of the law. (R. 619-20, 642-43, 657, 680-681, 702-03) Since there are no facilities on the Junction to feed, water and rest the animals, it would fall to the line-haul carriers to unload the stock, either in Chicago, where adequate facilities do not presently exist, or by a complete reorganization of their operating schedules, to provide unloading at some intermediate point. (R. 489, 619-20, 643, 657, 681) The former would occasion delay and added service not only to stock on short time but to other stock on sufficient time which must be separated out from those cars which must be unloaded. (R. 643) For example, *witness Stein of the North Western estimated that during the period from April 15 to May 15, 1947, 209*

cars of livestock from 36 trains, constituting 33 per cent of the trains hauling livestock during this period, would have required set-outs for feed and rest if the proposed plan with all its delays had been in effect. (R. 642-43) To meet such a condition it would be necessary for the line-haul carriers to revise their livestock schedules and provide an additional stop for a substantial part of the traffic. (R. 643, 657, 682-83, 702)

By this latest effort to secure a special advantage, Swift would precipitate the collapse of an operating system founded upon the long recognized principle that the regular terminal for livestock in the stockyards area in Chicago is the public yard. At the time that the Hygrade Company proposed the identical service to its plant in the stockyards area, Swift advised the Commission that "the complainant desires to overturn a method of receiving livestock which has been a part of and essential to the growth and operation of the Chicago live stock market" (Appendix A, pp. 35-36), and that the plant-door delivery sought by its competitor "would absolutely demoralize transportation in or about the stock yards." (Appendix A, p. 48) This is an equally accurate characterization of what Swift itself now proposes.

The evidence which describes the disastrous consequences of attempting to work livestock through the Ashland Avenue Yards proves the Swift proposal to be a physical and practical impossibility, and as pointed out, the testimony of the operating officers as to the conditions which would be created by Swift's proposal is uncontradicted on this record. It may fairly be said that its accuracy is accepted. Swift conceded in the submission of its case in chief, on the first day of the hearing that it was not concerned with the practicality or the possibility of performing the service requested by it. (R. 336-39) The carriers then offered a mass of operating evidence showing in full detail

the operating conditions which would be created by Swift's proposal. Before the conclusion of the hearing, and nine days after Swift had acknowledged that it was not concerned with the operating results of its request it offered rebuttal testimony on miscellaneous matters of highly dubious relevance, but it made no pretense of questioning the accuracy of the testimony as to the conditions at Ashland Avenue, and the result which would flow from the change in practice which is here proposed. We desire particularly to emphasize the fact, as the record shows, that Swift employs yardmasters who spend their working lives in the Ashland Avenue Yard and are fully acquainted with the railroad operations in that area. (R. 1034) Swift dared not call these men as witnesses either in chief or on rebuttal. It made its presentation through a tariff man. The explanation for all this is apparent. As shown by its brief in the *Hygrade* case, Swift recognizes that the statements of the railroad witnesses as to the operating consequences of this proposal are correct and unassailable.

d. Direct and Immediate Injury Would Result to Shippers of Livestock to the Stockyards and to Shippers of Dead Freight in the Stockyards Area from the Difficulties Inherent in Any Attempt to Work 75,000 Cars of Added Traffic Through the Ashland Avenue Yards.

The effect of this proposal on the handling of the producers' livestock which would continue to go to the public yard makes it clear that Swift is not interested in the continuance of the public yard in Chicago or the maintenance of the livestock market in that yard. In addition to the serious financial and operating consequences to the railroads through the disruption of their terminal service, it is abundantly clear from the testimony that the consequences of this proposal would fall heavily upon the shippers of

other freight and particularly the shippers of livestock who would still desire to consign their stock to the Union Stock Yards. (R. 496, 500, 624-25, 638-39, 655, 683)

The producers who intervened in this proceeding in opposition to the complaint, both in the lower Court and before the Commission, testified to the adverse effect of the proposal on their interests. They are ably represented and will present their own case. It should be noted, however, that the duties of the railroads in the handling of the producers' stock are clearly defined, and if they are not properly discharged, damage results and claims are invariably filed.

The producer counts upon his stock reaching the Chicago market in the very early morning hours and the well-established railroad schedules are set up to meet this essential requirement. (R. 719-21) A delay of even a few hours would frequently mean that the producer would miss the intended market. (R. 721) But the consequences of delay are not limited to loss of market. The shippers claim that physical damage to stock invariably results from serious delay. (R. 721-22) It is indisputable that the delays incident to this proposed change would force the roads to revise their livestock schedules, thus providing an additional unloading for feed and rest of stock which could not be delivered within the time allowed by law. (R. 643, 657, 682-83, 702) But this would itself increase the expense of handling and the loss to the shipper. One witness testified:

> "Our figures show that on shipments that we have made where the cattle have to be unloaded and fed at one time our shrink would amount to practically twice as much as it will if they can get through without an unloading while en route." (R. 772)

Witness H. R. Park, presently and for 29 years traffic manager of the Chicago Livestock Exchange, summed up the effect of the Swift proposal as follows:

> "I would say, Mr. Belnap, it would crucify the Chicago market if things came to pass as has been depicted here by these railroad witnesses. It would crucify the Chicago market." (R. 722)

The railroad operating officers emphasized the consequences of the proposed change on the market stock.

Witness Starbuck of the Burlington stated that there would be delay to all livestock "with greatest delay occurring to stock which would still be delivered to U. S. Yards." (R. 624-25)

Witness Stein of the North Western testified as follows:

> "One of the important facts about this added delay is that people will suffer who have nothing to do with the proposal; namely, shippers who still choose to take their deliveries at the unloading chutes. When we are delayed at Ashland Avenue because of the Swift demand, it is going to mean, of course, that that stock which must run through Ashland Avenue to get to the Yards is going to be held up while the operations just described are taking place in that area." (R. 638-39)

Witness Heide summed up his testimony by stating:

> "In my opinion, if the Rock Island and all these other carriers were required to throw all this livestock on the hands of Junction at Ashland Avenue, it is going to create a terrible congestion there. I would like to further say that this congestion and delay is not going to be just on stock consigned to these packers

but is going to definitely delay stock which we still have to deliver to the stockyards and the delivery of dead freight as well." (R. 655.)

Witness Heide's testimony concerning dead freight calls attention to another consequence of the proposed change; namely, that the carriers which would have to furnish this new service to the 13 packing plants in this area also have obligations to hundreds of other industries in Packingtown. The responsibilities to maintain efficient service on the dead freight and perishables could not be met. Even under present conditions it takes the Junction nearly 32 hours from the time of interchange with the line-haul carriers to effect delivery of dead freight. (R. 471)

The Junction's principal operating officers summed up the plight of shippers of dead freight as follows:

"I would say from my own observation that about the second day we were doing it, I don't know what we would do with the dead freight that we did not yet handle because we were trying to segregate and handle the livestock.

"Exam. Diamondson: In other words, it is your position based on the present track facilities, you just could not do it?

"The Witness: That is correct, we would have to sacrifice the other freight for the livestock." (R. 529-30)

"This would also result in our being unable to switch cars of dead freight consigned to industries on our railroad because of our switching leads being tied up in the handling of this livestock. It would so seriously hamper our switching operations that in my opinion as an operating man, we could not keep our yard open for the receipt and classification of cars consigned to industries located on our rails." (R. 546)

The disruption of service to other industries would not be confined to those in and around Ashland Avenue. The operating witnesses of the line-haul carriers testified that the delay to the livestock imposed by Swift's proposal would ultimately force the railroads to overhaul their schedules to provide for additional stops for water, feed and rest. (R. 643, 657, 682-83, 702) The effect of this upon *other* freight was described by witness Stein of the North Western as follows:

> "We have a through time freight train and those are the trains on which stock is usually carried. We will say that train is operating from Omaha to Chicago. The schedule is set up with certain terminal points for switching for any setouts or additions, inspection and servicing of the trains and based upon years of experience and operation, that train is fitted in between other trains, freight and passenger alike, and streamliners, and we have many of them on our lines. We have a train to Calumet which carries quite a bit of Swift and Company stock quite regularly. That train is now set up so that if we had to make a stop say at West Chicago to set out one car of stock, that train would make no eastern connections. That schedule of that train would be entirely disrupted.
>
> "Q. Do you have a number of trains that are on tight schedules of that sort that would be interfered with by these additional settings out?
>
> "A. Yes. Mr. Kinsella and Mr. Sorensen of the Junction have emphasized the delay and inconvenience which will result to other non-packer shippers on the Chicago Junction. Similarly with the North Western, the Swift demand will not merely add cost and confusion to our handling of stock, but will inevitably delay our deliveries for other industries." (R. 644-45)

It must be emphasized that the proposed method of handling would also seriously impede the return of the empty stock cars for reloading, the prompt handling of which is obviously imperative to the normal flow of live-stock to the public markets. The Junction would be required to collect the empties, bring them into Ashland Avenue Yards and then sort them out for a return to the line-haul carriers. (R. 547-48) Mr. Sorensen of the Junction estimated that its part of the operation would result in "at least a 24 hour delay in most cases to this equipment, which presently it is not receiving." (R. 548) Witness Keisele of the Milwaukee explained the additional difficulties and delay which would attend this change in the method of returning empty stock cars, stating:

> "The proposed plan would result in the change in the handling of return empty stock cars after being unloaded at the packers' plants. Our present agreement with the labor organizations would not permit stock relief crews to pick up empty stock cars at either Ashland Avenue Yard or Seeley Avenue Yard upon return from the stockyards, and this would result in the operation of additional crews to handle the empty stock cars for return movement to Bensenville.
>
> "It is estimated that the required handling under the new plan would result in as much as *two days' additional delay in returning the empty cars to the stock loading territory for subsequent loading.*" (R. 683, italics added)

The conclusion is unavoidable in the opinion of the men who have the responsibility for the conduct of these operations that the interests of every shipper concerned with operations in this area would be adversely affected by the proposed change of practice. As Swift stated the matter in the *Hygrade* case, "the absorption of switching charges in the stock yards district on live stock would completely

demoralize the present system of handling live stock" and "would absolutely demoralize transportation in or about the stock yards." (Appendix A, p. 48)

3. THE LINE-HAUL RATES TO CHICAGO WERE PRESCRIBED BY THE COMMISSION FOR APPLICATION TO THE PUBLIC STOCKYARDS AND WOULD NOT COMPENSATE THE CARRIERS FOR THE SERVICE NOW REQUESTED BY SWIFT.

In seeking delivery at its plant in the stockyards area at the flat Chicago rate, Swift is asking that the line-haul carriers be required to absorb the switching charge of the Chicago Junction Railway which was $28.80 at the time of the hearing. This rate basis has been in effect for many years. It is exactly the same rate, subjected to certain general increases, which the Commission held to be reasonable in the *Hygrade* case. (R. 342-43, 838-39)

The packers may not be accorded a service they do not pay for, and the carriers made studies to determine whether the line-haul rates prescribed by the Commission include any allowance for such a terminal service. The studies prove that the carriers receive no revenue from the handling of the stock on the basis of the terminal allowance in the line-haul rates that could be used to pay, or to permit the absorption of, the applicable switching charge. (R. 952-71, Ex. 50, R. 964, 1856-63; Ex. 51, R. 964, 1863; Ex. 52, R. 971, 1864)

In its report herein, the Commission expressly stated that the line-haul rates to Chicago, prescribed by it in prior proceedings, do not and were not intended by it to compensate the carriers for the delivery service which Swift seeks here. The Commission's discussion of that point was as follows:

"The line-haul rates on livestock to Chicago are Commission-prescribed rates. In *Chicago Livestock*

Exch. v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 545, 546, we said that 'the line-haul carriers operate over the tracks of the Chicago Junction to the Union Stock Yards and make delivery there thereby making these yards their own terminals.' We pointed out that in prescribing the rates on livestock to Chicago, among other markets, there was specifically taken into consideration as an element 'the rendition of terminal service in connection with the transportation of livestock,' and there was included what was considered 'sufficient to cover such terminal services under a normal operation as well as to cover the unloading and loading of livestock at public stockyards,' *but we did not there consider what the services would be in connection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services.*" (R. 78-79, italics added)

It is indisputable, we submit, that on the basis of the uncontradicted cost studies in the record and the Commission's express finding as to the transportation services covered by the line-haul rates that they do not provide any compensation for plant-door delivery of livestock.

4. SWIFT & CO. DEFAULTED IN THE PRESENTATION OF ANY SUBSTANTIAL SHOWING IN SUPPORT OF ITS CLAIM.

Swift's presentation before the Commission must be deemed, by any standard, an extraordinary one. It has form and bulk, but is utterly without substance. In view of its default in the submission of any substantive showing Swift must take the position that the historic practice of delivering livestock in Chicago should be condemned, regardless of the practicality or even the possibility of the proposed change and regardless of its effect on the public

interest, the shippers, or the railroads. It evinced no interest in the facts and simply went through the form of offering evidence.

The reason is plain. The proposal is so extreme and impractical, and its effect would be so disastrous to every other interest that Swift was obliged to disclaim any knowledge of the realities, despite its position and brief in the *Hygrade* case, and to deal with the whole matter in a peculiarly shallow manner.

The witness Tally, Swift's Assistant General Traffic Manager, offered a number of maps and pictures of scenes in the stockyards area with which the Commission had become intimately familiar through years of litigation involving the delivery of livestock in Chicago. (R. 267-80, Exs. 1-9, R. 389, 1040-46) The witness then submitted his exhibit 10, a document consisting of 27 pages, which may be succinctly summarized. (R. 389, 1047-74)

The first eight pages consist only of an index and certain letters from the respective traffic officers of the carriers to Swift, declining the request which is the subject of this complaint. (R. 1047-52) Those letters give bulk to Swift's presentation, nothing more.

The next eight pages, 9 to 16, inclusive, are devoted to a comparison between the actual per car revenues on livestock delivered to Swift during a certain period and purely fictitious or hypothetical revenue on a number of supposititious shipments of dead freight. (R. 1053-61) The distances which the livestock actually moved, and the distances which the theoretical shipments of dead freight were assumed to have moved, are not shown. (R. 344-45) The compared livestock revenue is actual, the per car revenue on the dead freight is based on the tariff minimum, not the higher actual minimum in effect for years under the orders of O. D. T. (R. 345-46) In the light of these facts it was

not pretended by the witness on cross-examination that the showing has any meaning. (R. 344-45) It proves nothing save that defendants maintain tariff rates on both livestock and dead freight. What conceivable use could be made of it was not disclosed.

The submission of such material reflects nothing but Swift's desire to make some capital of the fact that dead freight is frequently delivered on industrial sidings at the flat Chicago rate, whereas a substantial switching charge is now applicable on livestock delivered to Swift's plant in the stockyards area. But Swift would be the last to accept the rates or service on dead freight as the standard for livestock. It is not attacking the line-haul rates on livestock, and it recognizes, of course, as the Commission has found (R. 65) that the livestock must have a very different and faster service than that accorded dead freight. (R. 300, 340-41) The average time consumed by the Junction in handling a car of dead freight, from the time it is placed in Ashland Avenue until it is delivered, is over thirty-one and a half hours. (R. 471) Under similar circumstances livestock would suffer an additional unloading for feed, water and rest, with all the loss and expense attendant upon that action. This shows the hypocrisy of pretending to rely on comparisons between the handling of dead freight and livestock.

The tariffs pertaining to the delivery of dead freight and livestock in Chicago are essentially the same as those in effect when the Commission decided the *Hygrade* case, *supra*, and found applicable to livestock, and lawful in all respects, *the very switching charge which is here again attacked.* (R. 342-43)

a. In Support of Its Section 3 Allegation Swift Offered No Proof That Conditions in Chicago Are Similar to Conditions at Points Named in Its Complaint, and the Carriers Affirmatively Proved the Complete Dissimilarity Between Conditions at Those Points and at Chicago.

In the same casual manner that characterized its submission respecting other issues in the case, Swift scarcely made a gesture of attempting to support the allegation that it was being discriminated against in Chicago by services rendered to other packers at other points. The reason for this perfunctory attitude is that no one knows better than Swift that conditions governing the delivery of livestock within the stockyards area in Chicago have no counterpart anywhere else in the country. And no one had more to do with that fact than Swift.

The concluding pages of witness Tally's exhibit 10, pages 17 to 27, simply make reference to certain tariff provisions pertaining to delivery of livestock at other points. (R. 389, 1062-72) As pointed out below they show nothing as to the conditions existing at other points in relation to the conditions surrounding delivery at Chicago.

The history, custom and usage surrounding the delivery of livestock at Chicago makes the practice there *sui generis*. The operations there are not remotely comparable to the relatively simple conditions surrounding the delivery of livestock at any of the points named in the complaint. In keeping with the purely routine nature of its Section 3 allegation, and with its knowledge of the actual facts, Swift made no pretense of comparing conditions at the several points named with those existing at Chicago. Nevertheless, as part of their own case, the carriers demonstrated the wide difference between conditions at those points and

Chicago. This showing appears in exhibits 12, 53 and 54, the accuracy of which was stipulated by Swift. (R. 420, 972-75, 1083-90, 1868-1896)

Exhibit 12 shows that with the exception of Sioux City, Iowa, no packer whether he be at Fort Atkinson, Wisconsin or Kansas City, Missouri, or any other point named in the complaint, receives any greater service than does Swift at its Omaha Packing Company plant at Chicago. (R. 973, 1083-90) Each of the packers which receives livestock at its plant is located, like the Omaha Packing Company, on the rails of a line-haul carrier. Indeed, at 25 of the 37 points named in the complaint and tabulated on exhibit 12, there is no public stockyard which can serve, as does the Union Stock Yards in Chicago, as the proper and adequate terminal for livestock at that station. The maps which make up exhibit 53 show more clearly than could words, the relatively simple operation at each of the compared points. (R. 975, 1868-95)

Only at Sioux City does any competitor of Swift receive livestock at a plant located in the immediate area of the public stockyards. (R. 973, Ex. 12, R. 420, 1083-90) Even there, where Cudahy receives a few shipments of sheep at its plant on the rails of the Sioux City Terminal Railroad, the differences in history, custom and operating conditions make any comparison to Chicago ridiculous. The movement of livestock to Sioux City averages less than 15,000 cars a year, approximately the amount of stock brought to Chicago by one of the major roads, and in 1946 Cudahy received a total of only 211 cars directly at its plant, and in 1947, 289 cars. (R. 973-75) In contrast to the revolutionary change in operations which Swift's proposal would work at Chicago, the small movement of sheep to Cudahy's plant involves the identical operation for the line-haul carriers at Sioux City as the delivery of stock going to

the public yards in that city. In either instance the carrier interchanges the cars with the terminal railway in the latter's yard, and the terminal carrier makes all deliveries, both of livestock and other freight. (R. 974-75; Ex. 54; R. 975, 1896)

Referring to the points named in the Section 3 allegation of the complaint, Swift's witness Tally testified on cross-examination: "Well, I will start by saying that I don't know the detailed facts as to the physical operations at any of them" (R. 347), and again "I can't recall any place where the situation is identical [with Chicago]." (R. 348) In contrast the witness Heinemann, whose knowledge of the handling of livestock in the various terminals throughout the west is probably more extensive than that of anyone else in this field, testified that at no point named in the complaint is there a situation which is comparable to the conditions which would be created at Chicago by the delivery of directs at the plants of the packers located in the stockyards area. (R. 945-46)

Counsel for Swift in effect conceded that he was making no attempt to prove his Section 3 allegation, but, instead, was relying on something said by the Commission in its report in the *Chicago Livestock Exchange* case, 219 I. C. C. 531 (1936). This is shown by the following colloquy between the Examiner and Mr. Rynder:

> "Exam. Diamondson: Yes. I mean are you going to go beyond the mere showing as to what the tariffs say about delivery at these various points?
>
> "Mr. Rynder: I don't think you can show that the services at any two points are exactly similar.
>
> "Exam. Diamondson: Well, under an allegation under Section 3 there has got to be some showing of similarity of circumstances and conditions.
>
> "Mr. Rynder: I think the Commission has about

settled that for us. It said in the *Livestock Exchange* case here that that scale was made to cover the origin and terminal costs at all points and as to the deliveries at Chicago that the matter must be considered as an average matter and that there wasn't such a great difference between deliveries at Chicago and at these other Western Trunk Line points as to warrant any difference in terminal treatment." (R. 302)

When asked to identify the language of the report on which he relied to prove that the terminal service at other points named in the complaint is not dissimilar to *the proposed new terminal service to Swift's plant in the stockyards area*, Mr. Rynder made the following statement:

"Mr. Rynder: Here is one statement. I will not go through the entire decision. At page 538:

" 'Although these facts do not establish that the terminal operations at the points mentioned are identical with those in Chicago, it is clear that the character of the services rendered and the charges at the compared points do not vary greatly.'

Mr. Rynder added:

"And the points they are referring to are named earlier in the decision." (R. 303)

The statement of the Commission which immediately follows the part quoted by Mr. Rynder shows that *the terminal service at Chicago* there stated by the Commission not to "vary greatly" from that rendered at other points, was, of course, the service of making delivery at the public stockyards at Chicago and not the proposed new service to Swift's plant. We quote the part omitted by counsel as follows:

"While defendants' witnesses testified at considerable length respecting the details of the movement, the

terminal service at Chicago is not a complicated one, *as was stated at page 122 of the report in Live Stock-Western District Rates, supra.* Most of the trunk lines entering Chicago have direct connections with the Chicago Junction, and their road engines operate into the stockyards, although the crews are frequently changed at the break-up yards as the trains pass through, in instances where the matter of overtime pay is involved. The train proceeds to an unloading platform, the engine cuts loose and, proceeding to the rear, removes the caboose and places it at what was the head of the train. Then, proceeding to the other end, it is ready to remove the empty cars. The unloading is very expeditious as the stockyards now have dock capacity for setting 283 cars of livestock for unloading at one time. Each chute has capacity for two carloads of livestock, so that the first 283 cars may be removed when empty, and 283 more carloads set immediately. The trains placed at the chutes may contain hogs, cattle, or sheep, in single-deck or double-deck cars, or short cars with long cars, yet only one spotting is necessary to take care of the whole trainload. In other words, no further 'cutting' or 'spotting' is necessary because of different species of livestock or types or sizes of cars." (219 I. C. C. 531 at 538-39)

The reference to the report of the Commission in *Live Stock-Western District Rates,* 176 I. C. C. 1 (1931), which the Commission cited, as shown above, is as follows:

"The terminal service covered by the charge is not a complicated one. The road engines generally operate into the stockyards, although the crews are often changed in the break-up yards as the trains pass through. The train proceeds to the unloading platform, the engine cuts loose, and proceeding to the rear

end removes the caboose and places it at what was the head of the train; then proceeding to the other end it is ready to remove the train of empties. The ordinary train of 30 to 40 cars is usually unloaded in an hour. However, on days when receipts are heavy, trains are frequently required to wait, sometimes for several hours, before they can get into the stockyards." (p. 122)

In its report in *Live Stock-Western District Rates* the Commission then proceeded to discuss delivery of livestock to public stockyards at other points.

It is thus perfectly clear that the Commission was comparing the delivery of livestock *at the public stockyards in Chicago* with the delivery of livestock at public stockyards elsewhere. As the Commission stated in its present report, "we did not there consider what the services would be in connection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services." (R. 79) We think the effort on Swift's behalf to make it appear otherwise, speaks for itself, and very eloquently. It was an effort to pervert the Commission's clear statement into a finding that the conditions *which would be encountered in delivery of livestock at Swift's plant*, as here proposed, would not be dissimilar from terminal services performed at other points. The Commission had no such question before it and made no such finding; consequently in its reliance on the report in the *Chicago Livestock Exchange* case, Swift is simply in default of any showing in support of its Section 3 allegation.

b. Swift Did Not Call Its Yardmasters to Testify as to the Operating Conditions in the Stockyards Area, But Instead Attempted, Unsuccessfully, to Qualify Its Rate Witness to Deal With That Subject.

Swift recognized that it should at least make a pretense of offering some showing concerning the operating conditions in the stockyards area. Because of the great volume of Swift's dead freight handled by the Junction through its Ashland Avenue Yard, Swift employs a general yardmaster and several assistant yardmasters who have had training as operating men and who work in the Ashland Avenue Yard with the Junction's operating officers. Presumably these men are intimately familiar with the railroad operations in that area. (R. 1034) They were not called as witnesses. Instead, a rate or tariff man, the witness Tally was asked to testify on the subject. Witness Tally testified:

> "Q. I believe you said that you were quite familiar with the operations in the Ashland Avenue Yard and the layout there, did you not?
>
> "A. I said that I had a general idea of it. I have watched the operation on several different occasions, I am not a yardmaster or out there every day. I won't say that I have complete knowledge." (R. 328)

Witness Tally then proceeded to disclose the fact that he knew nothing about the operations in the Ashland Avenue Yards and, of course, he was not asked by his counsel to discuss the really critical point as to the operations which would have to be performed to effectuate the new proposed service.

It was developed that the witness Tally was unacquainted with the track layout of the yard (R. 328-29) or with the approximate volume of traffic handled there. (R.

329) He thought that the predominant movement of stock to the yard was in consolidated trains, whereas the reverse is true. (R. 330) He was completely misinformed as to how the stock is handled on consolidated trains, a point which of very great significance in its relation to Swift's proposal. He erroneously thought that the stock in a train with dead freight was handled on the head end of the train and taken at once to the yard. (R. 330-31) Actually, the operating necessities are such that the dead freight is on the head end, and the stock is cut off and left standing on the running track, thus blocking that track, and the sole ingress to the stockyards until the cars to be interchanged with the Junction have been set out in the Ashland Avenue Yards. (See *supra*, pp. 39-40)

The witness admitted finally that he did not understand even the present operations and could not describe them. (R. 331-32) The witness conceded, also, and we think the fact is entitled to great emphasis, that Swift, which had just experienced the most profitable year in its history under the existing practice (Ex. 11, R. 397, 1074-82), filed the complaint before the Commission and made the charges and the demand stated in the complaint without the slightest concern as to the practicality of its proposal, or its profound effect on any of the many other interests involved. (R. 336-39)

5. The Commission's Findings.

On the basis of the evidence discussed above and considered in detail in its report, the Commission found:

> "We find (1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for the transportation of livestock for delivery on the private sidetracks to be constructed by com-

plainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference, and (2) that the establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest." (R. 81)

With reference to the reasonableness of the switching charge, the Commission stated:

"The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of services that would be required for the desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plant." (R. 80)

The Commission found that the existing charges were not prejudicial to livestock as a commodity, stating:

"The measure of transportation services rendered shipments of live animals is substantially greater than that accorded dead freight. Livestock cannot be switched in the same manner as other freight." (R. 65)

Its findings with respect to deliveries of livestock at the Union Stock Yards and at Swift's Omaha plant pens in Chicago were as follows:

"The transportation services, conditions, and circumstances connected with deliveries at the Omaha plant pens are substantially dissimilar from those connected with the delivery here sought. There, the unloading chutes are on the rails of a line-haul car-

rier, outside the stockyard congested area, and the delivery made by that carrier is nothing more than a simple switch, at carrier's ordinary operating convenience and without interruption or interference from connecting line engines, as all of the switching is under the control of and performed by the Burlington. The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought." (R. 78)

In regard to Swift's allegation of preferential treatment to certain points named in paragraph VII of its complaint, the Commission found:

"There is no showing that services as desired will result in a situation similar to that at a point or points alleged to be preferred." (R. 79)

With respect to the difficulties inherent in the proposed practice and its effects upon terminal operations in the stockyards area, the Commission made the following findings:

"Under the present practice, followed since the inauguration of services to the Union Stock Yards in the interest of expeditious centralized delivery, the yards of the Junction are not burdened with livestock cars either loaded or empty. It clearly appears that any attempt by the Junction to make deliveries of livestock generally to packers or to transport an amount of livestock substantially greater than complainant's present needs, would result in serious disruption of operations and services and serious delays in the delivery of livestock." (R. 71)

"We have indicated generally the difficulties which

would confront defendants if required to make delivery of livestock at complainant's plant, the basic difficulty being that such method of delivery is not adapted to defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and services described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays." (R. 72)

The Court will note that what is here described as the "basic difficulty" is that arising out of the practice which Swift actively initiated and sponsored in order that it might profit as a partner in the public yards. (Ex. 42, R. 1174-1638, 316 U. S. 216 at 227-31)

"While, as above stated, any cars of livestock consigned to complainant could be handled in consolidated trains by grouping such cars at the head of the train with cars of dead freight intended for set-out in the south yard, nevertheless, because of difficulties peculiar to livestock traffic, such handling would, it appears, affect adversely the line-haul carriers' operations in carrying livestock to the stockyards." (R. 72)

"While these conditions—all necessitating prompt handling of the traffic—are suited to the practice, long followed, of making deliveries of all shipments of livestock at the stockyards, they are not, it is evident, at all suited to the plant delivery service sought by complainant, in the performance whereof the cars of livestock would have to be switched and otherwise intermingled with cars of dead freight which latter, it appears, may, in the case of perishable freight, require nearly a full day for movement through the yards to points of delivery, and in the case of other dead freight, nearly 32 hours." (R. 74)

"Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants' operations. Moreover, although it is shown that complainant's direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipments exceeded 18 cars. Also it appears that the number of complainant's direct shipments of livestock in proportion to the number bought at the stockyards has been steadily increasing, and the testimony of complainant's witnesses affords ground for the belief that that condition will continue." (R. 74-75)

In response to the statutory requirement that the joint rates sought by Swift must be "necessary or desirable in the public interest" (49 U. S. C. Sec. 15(3)) the Commission made the following findings:

"There is no warrant, however, for a conclusion that the establishment of joint rates as desired by complainant is necessary or desirable in the public interest." (R. 77)

"* * * establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest." (R. 81)

These two findings taken together not only mean that Swift failed to satisfy the statutory specifications for the relief sought by it, but that the evidence of record affirmatively demonstrates that such joint rates would be contrary to the public interest. As noted above, Swift has not assigned error with respect to these two findings and in all of the 140-some pages of its brief in this Court there is not a single reference to these two vital findings. Swift thereby admits, we submit, that it has not established its right to the relief which it sought.

The findings quoted above, as well as the others which appear in the Commission's report, are addressed to every issue in this case. We respectfully submit that these findings are abundantly supported by the evidence discussed above, and that the record before the Commission required the findings which it made. There is no evidence to the contrary in this record.

II. THE COMMISSION'S FINDINGS ARE IN ACCORD WITH THE APPLICABLE AND GOVERNING PRINCIPLES OF LAW AND FULLY SUPPORT ITS ORDER OF DISMISSAL

The principles of law which govern the issues raised by Swift's complaint before the Commission have been stated by this Court on numerous occasions and are well settled. It is elementary, of course, that a rate which fairly reflects the quantum and character of the service performed is not unreasonable, and that a difference in charges is not discriminatory or preferential where the services involved are rendered under substantially dissimilar circumstances and conditions. *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541 at 549-50; *Manufacturers Ry.*

Co. v. *United States*, 246 U. S. 457, at 481-82; *L. T. Barringer & Co.* v. *United States*, 319 U. S. 1; *United States* v. *Wabash R. Co.*, 321 U. S. 403 at 410-13; *New York* v. *United States*, 331 U. S. 284 at 305.[1] It is these very principles which the Commission applied in its determination of Swift's complaint, and it was the conclusion of the lower court that the Commission's application of these principles was without error. (R. 195) These findings dispose of every contention advanced by Swift and fully support the Commission's order of dismissal.

III. THE PURPORTED ERRORS URGED BY SWIFT ARE WITHOUT MERIT.

Swift's first point concerns the following finding made by the Commission:

> "The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of services that would be required for the desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plant." (R. 80)

Swift says that this was "the sole finding of the Commission as to the quantum of the switching charge." (Brief, p. 50) Actually it is merely a conclusion, which by the reference to "services and modifications of services required for the desired deliveries" is expressly based upon the numerous findings on this subject to which the Commission devoted almost its entire report. The Commission's conclusion is supported by detailed findings as

[1] We also refer the Court to Swift's discussion of Sections 2 and 3 of the Interstate Commerce Act in its brief in the *Hygrade* case. (Appendix A, pp. 10-28, 55-56)

to the services covered by the Junction's terminal charge and as to the services required for delivery of livestock to the Union Stock Yards and for delivery of ordinary freight through the Ashland Avenue Yards. The Commission in its report made a step by step comparison of each of these operations which showed that the delivery of livestock to Swift's sidetrack requires services substantially dissimilar from and much greater than those required by either of the other operations. (R. 60-79) Swift's objection must be evaluated therefore not in terms of the one sentence quoted from the report, but in terms of the total effect of all the Commission's comprehensive findings.

While Swift pretends to ignore these primary, underlying findings,[1] its contention must be construed to mean that these findings were not enough to support the conclusion that the Junction's switching charge was not shown to be unreasonable. In the light of the findings establishing the substantial difference in the quantum and nature of the service covered by the compared rates, Swift finds it necessary to contend that the Commission's conclusion is unsupported because it did not make findings as to the precise dollars and cents difference in cost between the delivery of livestock at the packer's plant, on the one hand, and on the other, the delivery of livestock at the public yards and the delivery of ordinary freight at industries on the Junction.

Swift's position is, therefore, that in the absence of such cost findings, the Commission was obliged to find the Junction's switching charge to be unreasonable. But the burden of proof was on Swift. It is well established that the burden of showing the unreasonableness of a

[1] Swift asserts that there is not a "syllable of evidence" or a "shred of testimony" on which such findings could be based. (Brief, p. 55)

rate in a complaint proceeding is always on the complainant. *Louisville & Nashville R. Co.* v. *United States*, 238 U. S. 1, 11 (1915); *Miller Brothers Foods Co.* v. *Atchison, Topeka & S. F. Ry. Co.*, 273 I. C. C. 562, 565 (1949); *Moore Business Forms, Inc.* v. *New York Central R. Co.*, 274 I. C. C. 404, 407 (1949).

It appears to be Swift's theory that a complainant meets the burden of proving a rate to be unreasonable simply by referring to the rates charged for other services, no matter how dissimilar such other services may be, and that when this is done the Commission must strike down the rate attacked as unreasonable unless the defendant carriers or the Commission itself have produced studies establishing the precise dollars and cents cost of the services covered by the rate attacked and by the other rates referred to.

Entirely apart from the fact that here the burden of proof was upon Swift, it has never been held that an assailed rate must be found to be unreasonable *per se* unless it is supported by a finding as to the costs of the service rendered. This court has said recently as to this in *Alabama G. S. R. Co.* v. *United States*, 340 U. S. 216, at 223: "Neither the Commission nor this court has held that lesser cost of service is a finding without which the Commission may not fix a charge, division of rate, or differential." No court has ever held that a rate is unreasonable unless justified in terms of mathematical cost relative to the rates covering wholly different services. In the earlier case of *Commission* v. *Texas & N. O. R. Co.*, 284 U. S. 125, this Court disposed of a contention similar to that which Swift advances, stating:

"While in the making of reasonable rates all the

> material facts are to be regarded, it has never been deemed necessary or practicable—if indeed it is at all possible—to ascertain in advance the cost to carriers of each of the various elements embraced in the transportation service. The Act does not require any such determination." (p. 132)

Swift has not cited any cases in support of its position because it cannot do so. It has cited cases only for the general proposition that there are circumstances in which subsidiary findings are required to support an ultimate finding.[1] One of these cases clearly shows the error of Swift's position. In *New York Central R. Co.* v. *United States*, 99 F. Supp. 394 (D. Mass., 1951), affirmed, 342 U. S. 890 (1951) the court, discussing the kind of a case which is presented here, stated:

> "The difference in physical operations might indicate that the rates to the ports would not have to be the same; to that extent, the Commission's statement that the terminal operations are sufficiently different 'to warrant' the differential may well be accurate. And of course this was all the Commission had to decide in the 1941 proceeding, for there the carriers were defending the differential against attack by the New York port interests. *Port of New York Authority* v. *Baltimore & Ohio Railroad Co.*, 248 I. C. C. 165 (1941). The present proceeding is quite different."

It is thus obvious that in this case, the carrier's evidence as to the substantial dissimilarity of the services not only

[1] *Florida* v. *United States*, 282 U. S. 194; *United States* v. *Baltimore & O. R. Co.*, 293 U. S. 454; *United States* v. *Chicago, M. St. P. & Pac. R. Co.*, 294 U. S. 499; *Interstate Commerce Commission* v. *Mechling*, 330 U. S. 567; *New York Cent. R. Co.* v. *United States*, 99 F. Supp. 394 (D. Mass.), affirmed, 342 U. S. 890; *Tennessee Valley Authority* v. *United States*, 96 F. Supp. 409 (N. D., Ala.); *Palmer* v. *United States*, 75 F. Supp. 63 (D. D. C.).

precluded a finding of unreasonableness but in fact required the contrary conclusion.[1]

After the complaint was filed the Junction sought to cancel the long established switching rate applicable to the plant-door delivery of livestock in this area because of the great difficulty of making such a placement and the fact that the rate has practically never been used. Swift, joined by Armour and Wilson, protested and accordingly the Commission required that the rate be retained in the tariff for such use as might be made of it and found the rate to be reasonable and lawful for the service covered. Swift now asserts that the switching charge is not "an honest fee measured by the cost of services to be rendered," but is instead a penalty charge. (Brief pp. 56-62) The Commission did not, of course, measure in dollars and cents the cost of the service which Swift seeks, which has never before been performed, and which Swift formerly described as "very expensive, very difficult", and "impossible." (Appendix A, pp. 47, 50) The Commission did investigate, analyze and describe in full detail the special services that would be required to accomplish such a delivery of the stock, and found on the basis of that evidence that the rate had not been shown to be unreasonable. Now the strange contention is advanced that when the Commission refused to permit the rate to be cancelled, as the packers demanded, and found the measure of the rate to be warranted by the quantum and nature of the services covered, that the Commission was guilty of establishing a penalty charge. In characterizing the rate as a penalty, Swift is simply resorting to epithet. It is inevitable that a rate covering

[1] A determination of the precise mathematical cost of performing plant door delivery of livestock in this area reflecting all the factors which would be involved in such an ascertainment would be an undertaking of great magnitude. Moreover, in view of the extreme differences in the quantum of the services covered by the compared rates a cost study would have been superfluous.

plant-door delivery of livestock in this area under the circumstances attending such a service must exceed the charge for the efficient and economical delivery to the public yard or Swift's Omaha plant. But the fact that Swift naturally does not use the higher rate applicable to the more onerous service does not make the higher rate in any sense a penalty charge.

In this connection and in support of practically every argument made by it, Swift elaborates at great length what it characterizes as an "inconsistency" in the Commission's report. (Brief, p. 60) This argument is summarized at page 2 of Swift's brief as follows:

> "2. Whether the Interstate Commerce Commission may lawfully sanction a high additional charge for switching service in respect of a single commodity to a particular sidetrack which service it asserts would lead to interference with and disruption of terminal transportation operations, where it refrains from prohibiting such switching service altogether, where it cancels as 'not just and reasonable' a proposal by a carrier to exempt that particular commodity from transportation altogether and where it permits the identical service by the same carrier without such additional switching charge in respect of the same commodity consigned to a stockyards on the same line of railroad a few city blocks distant from the same sidetrack."

A careful reading of the text shows that the essential question posed by this argumentative statement is the question whether the Commission may find lawful, and forbid the cancellation of a long existing rate basis, and yet refuse to establish a *lower rate* basis for the same service on the grounds that the nature of the service, the operating conditions under which it must be performed, and the effect

of the proposed rate on the carriers, the public, and other shippers are such that a lower joint rate is not "necessary or desirable in the public interest."

It is claimed that when the packers induced the Commission not to permit the cancellation of the rate the Commission was somehow trapped, that it lost its power to pass upon the issues raised by Swift's complaint and had no alternative but to establish the lower rate sought by Swift. The argument, in effect, is that the Commission thus recognized it to be physically possible to set a car of livestock at Swift's proposed facility, and, therefore, that the administrative body was forced by some automatic compulsion to substitute for the approved rate the lower rate for that service which is sought by Swift, and to do so notwithstanding any other considerations whatsoever. Swift is obliged to try to give the case this strange twist because it cannot deal with the facts which underlie the Commission's determination.

In its appraisal of the demands made by Swift the Commission considered and weighed not only the special services and preferred treatment which the livestock would require in the Ashland Avenue Yards because of its highly perishable character and the speed with which it must be handled, but also the interferences, delays and disruptions which that service would necessarily impose upon the whole terminal operation in the stockyards area. The request was that joint rates, not in excess of the line-haul rates to Chicago, be established for application to deliveries of livestock at Swift's proposed receiving pens. Under the terms of the Interstate Commerce Act it thus became necessary for the Commission to determine whether the proposed joint rates would be necessary or desirable in the public interest. (49 U. S. C. Sec. 15(3)) The manner in which the proposed delivery would affect

the numerous other interests served by the Junction and the line-haul carriers was therefore a matter of major importance in the proceeding before the Commission, and in its findings, the Commission accorded proper weight to that factor.

In addition to the plain mandate of the statute, this Court, in the previous attempts by Swift and Armour to compel the carriers to effect a "readjustment of their rate schedules" on livestock (312 U. S. 195 at 201), made it altogether clear that the interests of other shippers and receivers of freight cannot be disregarded. As the Court stated; "*the Commission was justified in considering, as it did, all that would account for the evolution of the practice complained of, as well as the effect of existing and proposed practices on the interest of the carriers, the public and other shippers. Adams* v. *Mills, supra,* at 409, *et seq.; Atchison, T. & S. F. Ry. Co.* v. *United States,* 295 U. S. at 198, *et seq.; Armour & Co.* v. *Alton R. Co., supra,* at 201. *Neither the railroads nor the Stock Yards exist for the benefit of the packers alone. Their patronage is large and important, but neither in the regulation of the carriers nor in the regulation of the Stock Yards are they entitled to facilities or treatment that will ignore the existence of other interests.*" (316 U. S. at 226-27, italics added). The Commission did not ignore the existence of other interests and its finding that delivery of livestock to Swift's private tracks at the flat line-haul rates would adversely affect those interests is overwhelmingly supported by the undisputed evidence discussed above. (R. 77, 81)

The record before the Commission also shows, and the Commission found, that the Junction has never been called upon to make private track deliveries of livestock to any of the Chicago packers. (R. 60) Swift and the other packers had elected in return for a large participation in the

profits of the Yard Company to receive their livestock only at the public yards "so long as the yard company maintained its business in Chicago." (316 U. S. 216 at 228-30) Entirely apart from that fact, however, delivery of the stock at the public yards was faster, more efficient and economical and therefore took a lower rate. As the Commission pointed out in *Chicago Livestock Exchange* v. *A. T. & S. F. Ry. Co.*, 197 I. C. C. 463:

> "Centralized delivery has been found to be advantageous to both the carriers and the livestock industry." (p. 466)

Consequently, the Commission's finding that the published switching charge was not unreasonable or otherwise unlawful is not at all inconsistent with its failure to permit the cancellation of the rate over the protest of the packers. In its report, the Commission stated:

> "The published switching charge is appropriate for any switching that may occur of cars of livestock to complainant's proposed plant. It does not appear that the maintenance of a switching charge for livestock will have any detrimental effect upon terminal operations." (R. 80-81)

This finding is a recognition of the undisputed fact that the Junction's switching charge for private track delivery of livestock has never been used.

As Swift states (Brief, p. 11) it has for some years received its direct shipments of livestock at the Omaha plant pens outside of the stockyards area. Since the flat line-haul rates apply to such deliveries, Swift considers this method of delivery preferable to receipt at the public yards or at its plant in the stockyards area. But the fact that Swift prefers to take its directs at the Omaha plant pens does not in any manner impinge upon the lawfulness of the charge applicable to the delivery of its directs at its plant

in the stockyards area or convert that charge into a "penalty." We doubt that it would be possible to add anything to Swift's own defense of this difference in the two charges as stated in its brief in the *Hygrade* case where it was specifically involved. (Appendix A)

The result of the Commission's decision, therefore, is to leave in effect a rate basis which the evidence shows, and the Commission found, to be lawful and proper in all respects, but because there are alternative and more attractive facilities available to the packers for the receipt of their direct shipments, it is also a rate basis that will not be used, in all probability, except, as in the past, in case of emergency. Swift's argument that the Commission's decision makes "neither good sense nor good law" (Brief, p. 59) is thus predicated on the unreal assumption that the packers will now utilize a rate basis which has been in existence for generations but which they have never before utilized. The Commission found to the contrary and the evidence of record sustains that finding. (R. 60) Furthermore, the assertion of an inconsistency between the Commission's findings in the I. & S. proceeding and its findings with respect to Swift's complaint presents matters which this Court has repeatedly held to be outside the scope of judicial review. In *Western Chemical Co.* v. *United States*, 271 U. S. 268, Mr. Justice Brandeis, on behalf of a unanimous Court, stated:

> "The objections presented here in brief and argument were addressed mainly to the soundness of the reasoning by which the Commission reached its conclusions. *It was urged that these are inconsistent with conclusions reached by it in similar cases; that the findings are inconsistent with some views expressed in its report in this proceeding;* that some evidence was improperly considered; and that inferences drawn from

some of the evidence were unwarranted. *These objections we have no occasion to discuss. The determination whether a rate is unreasonable or discriminatory is a question on which the finding of the Commission is conclusive if supported by substantial evidence, unless there was some irregularity in the proceeding or some error in the application of the rules of law.*" (p. 271, italics added)

See also *Georgia Comm.* v. *United States*, 283 U. S. 765 at 775 and *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38 at 75-76 (concurring opinion by Mr. Justice Brandeis).

It should also be noted that Swift's brief in the *Hygrade* case stressed the "demoralizing" effect upon transportation in and about the stockyards area that would result from plant door delivery to the Hygrade plant as a particularly persuasive reason why the Commission should sustain the switching charge. (Appendix A, pp. 47, 48-52) Consideration of those same factors in this case and the same result as Swift urged in the *Hygrade* case is now said to be "neither good sense nor good law." (Brief, p. 59)

In support of its argument with respect to Sections 3(1) and 2 of the Act, Swift pretends to rely upon a comparison between the charges applicable to dead freight delivered by the Junction, livestock delivered at the Union Stock Yards by the line-haul carriers, and the charges which would apply to the delivery service sought by it.[1] (Brief, pp. 63-80) As the evidence shows, and the Commission found, the measure of service rendered shipments of livestock is

[1] Although Swift purports to rely on Secs. 1(9), 1(10), 1(11), 2, and 15(5), its complaint before the Commission did not raise those issues, and they cannot, therefore, be raised here. *United States* v. *Capitol Transit Co.*, 338 U. S. 286 at 291; *United States* v. *Baltimore & Ohio R. Co.*, 231 U. S. 274 at 297-98; *Oregon R. & N. Co.* v. *Fairchild*, 224 U. S. 510 at 526.

substantially greater than that accorded dead freight. (R. 65) Swift's acknowledgment of this indisputable fact in its brief in the *Hygrade* case was as follows:

> "Necessarily, any system of transportation which has been evolved for the handling of livestock into and out of a market such as the Chicago live stock market, including the packing companies which are adjacent to and form a part of said market, must be so constructed as to furnish the type of service demanded by probably the most perishable type of traffic handled by the railroads." (Appendix A, p. 35)

This Court has recognized the vital dissimilarities between the transportation characteristics of dead freight and livestock and the substantially higher degree of service which must be accorded the latter. In the prior *Swift* case, the Court stated:

> "This transportation is of a special kind of property on the hoof, which calls for special handling in the interests of economy, safety, sanitation, and health." (316 U. S. 216 at 227)

The "special handling" which the proposed operation would entail is fully apparent from the fact that livestock on short time would have to be received, classified and "dug out" from between cars of dead freight, constantly flowing into the Yards, which now require over 31 hours for delivery through the Ashland Avenue Yards under the present terminal practice unimpeded by the presence of "a special kind of property on the hoof." (R. 74)

Swift insists that it is discriminated against if livestock is denied what it calls "equal treatment" (Brief, p. 76) in the Ashland Avenue yards, knowing perfectly well that the perishable nature of that traffic, the expedited service which it requires, and the mandate of the 28-hour law, would force the carriers to accord that commodity not

equal service, but preferred service, and to do so at the sacrifice of all other traffic in the terminal. In every metropolitan area there are terminal facilities which, like the public stock yards,[1] are designed for the handling of a particular type of traffic. In Chicago, for example, there are special facilities for the unloading of ore, automobiles, fresh produce, coal, express matter, LCL and other commodities. Ore cannot be given what Swift calls equal treatment in the stock yards, or coal at the automobile docks, or LCL in the produce terminal, but such special facilities available only for the commodities for which they are designed are recognized to serve the public interest and have never been deemed discriminatory because the governing conditions are essentially different.

The Commission also found that the line-haul rates on livestock, prescribed by it, were not intended to compensate the carriers for the type of delivery sought by Swift (R. 60, 78-9) and the cost studies introduced by the carriers show that the terminal allowance included in those rates would be wholly inadequate for delivery of livestock by the Junction. (Exs. 50-52, R. 952-70, 1856-67) Livestock delivered to the Union Stock Yards is not handled by the Junction, and therefore does not require the difficult and costly service that deliveries to Swift's private track would entail. We have described in detail, as does the Commission in its report, the operation which would be necessary in working Swift's livestock through the Junction's Ashland Avenue Yards after delivery by the line-haul carriers to that road. That operation, in its entirety, is foreign to deliveries at the Union Stock Yards. With regard to the contention that deliveries to the Union Stock Yards were accorded preferred treatment, the Commission found:

"The transportation services, conditions, and cir-

[1] This Court stated in *Adams* v. *Mills*, 286 U. S. 397: "That the yards are in effect, terminals of the railroads is clear. They are in effect used as terminals and necessarily so" (p. 409).

cumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought." (R. 78)

This finding is abundantly supported by the evidence of record and it destroys any pretended reliance upon a comparison between the charges applicable to deliveries at the Union Stock Yards and deliveries of livestock at Swift's private track.

Swift's attempt to support its assertion of a violation of Sections 3(1) and 2 by reference to the charges applicable to delivery at the Union Stock Yards produces certain statements which fully demonstrate the difficulties under which it labors. The first such statement which we desire to call the Court's attention to is as follows:

"Moreover, and this is of the essence here, at least 37% of the livestock consigned to the Union Stock Yards *arrives there* in consolidated trains (*i. e.*, intermingled with dead freight), so that switching and 'set outs' are necessary to get that livestock to the Union Stock Yards. See 274 I. C. C. at 561-562. Yet neither the Union Stock Yards nor their consignees are subjected to the $39.24 a car switching charge in respect of that 37% so switched." (Memorandum for Appellant in Opposition to the Motions to Affirm, p. 6, italics added)

This representation, made in substantially the same form throughout Swift's brief (pp. 38, 40, 55, 65, 71), is contrary to the facts. In the first place, livestock does not arrive at the Union Stock Yards in consolidated trains. The consolidated trains to which Swift refers consist of dead freight and livestock which are not "intermingled", the

dead freight being grouped behind the engine while the livestock makes up the rear part of the train. (R. 487) The livestock is left standing on the running track, the dead freight is cut off from the train and placed in the Ashland Avenue Yards. The engine thereafter returns to the running track, couples onto the livestock, and proceeds to the public yards. (R. 487-89) The train which arrives at the Union Stock Yards does not therefore contain cars of dead freight. Those cars are set out at the Junction's yards. Furthermore, that operation does not in any degree involve the switching or setting out of livestock as Swift asserts. It is the dead freight and not the livestock that is set out at the Ashland Avenue Yards. As stated by the Commission at the pages referred to by Swift in the above quote:

> "In a consolidated train the dead freight is on the head and behind the engine. The cars of livestock are cut off and left standing at the eastern end of the eastbound running track while the line-haul carrier's engine sets the dead freight on one of the nine receiving tracks in the south yard. This operation blocks the running track until the engine returns and hauls the livestock into the Union Stock Yards." (R. 63)

In short, the livestock now carried in consolidated trains does not receive any switching service by reason of its inclusion in such trains. So far as the handling of the livestock is concerned, the movement is precisely the same as that involved in exclusive livestock trains except that the livestock cars stand on the running track while the dead freight is being interchanged with the Junction in its Ashland Avenue Yards.

Immediately following the matter quoted above, Swift states:

> "Furthermore, considerable switching of livestock takes place earlier, since—*although the Commission*

> *significantly fails to advert thereto*—it is the fact that even the trains destined to the Union Stock Yards which consist of livestock exclusively are made up at the several line-haul carriers' break-up yards from mixed trains arriving at Chicago." (Memorandum For Appellant In Opposition To The Motions To Affirm, pp. 6-7, Brief, p. 65, italics added)

In connection with the italicized portion of the above statement, we quote from the Commission's report as follows:

> "The following operation over the Chicago, Rock Island & Pacific Railway Company, hereinafter called the Rock Island, is typical of the operation over other line-haul carriers entering the stockyards area from the east. Consolidated trains containing livestock and dead freight, arrive at that carrier's Burr Oak Yard, 14 miles from the Ashland Avenue yards. At Burr Oak yard, the cars of livestock and dead freight are separated, and cars of livestock consigned to the Union Stock Yards are hauled directly to the latter yards by a Rock Island switch engine without passing through the Ashland Avenue yards." (R. 70)

The Commission did not fail to "advert" to the fact that livestock arrives at the carriers' outer yards in trains containing livestock and dead freight, and it described fully the process by which livestock is separated from the dead freight and made up into trains for movement to the Union Stock Yards. What Swift fails to point out, however, is the fact that that operation is performed with respect to all livestock regardless of whether it moves to the public yards or to Swift's Omaha plant pens, and the same operation would be necessary in connection with delivery to Swift's proposed plant. That service is a recognized part of the line-haul movement. It does not even remotely resemble the "very expensive, very difficult" and "impossi-

ble" (Appendix A, pp. 47, 50) delivery service which Swift seeks in this proceeding.

An additional statement, cut from the same cloth as those noted above, is the assertion that delivery to Swift's proposed stockyards is "the identical service by the same carrier" as that involved in delivering livestock to the Union Stock Yards. (Brief, p. 2) Swift thus represents to the Court that delivery to its proposed plant by the Junction through the Ashland Avenue yards is the "identical service by the same carrier" as the delivery made by the line-haul carriers directly to the public yards without interchanging that traffic with the Junction.

The evidence in this case, discussed above and in the Commission's report, establishes clearly and without contradiction the utter dissimilarity between the two, and we respectfully submit that the statement referred to is entirely unjustified and contrary to the facts.

Swift's claim of a violation of Section 2 (Brief, 69-80) is predicated wholly on the fact that the Junction's switching charge does not apply to deliveries at the public yard by the line-haul carriers while it does apply to livestock funneled through the Junction's Ashland Avenue Yards and delivered by that terminal road. The short answer to this is the following finding by the Commission:

> "The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are substantially dissimilar from the private track delivery sought." (R. 78)

Nowhere in its discussion of Section 2 (Brief, pp. 69-80) does Swift specifically refer to this finding which completely defeats its claim. It should also be noted that the applicable rates to the Union Stock Yards apply equally

to all shippers of livestock including Swift and its competitors, and the Junction's switching charge also applies to all private track deliveries of livestock by it, including deliveries to Swift and its competitors. Swift's complaint is not that its competitors utilize a rate basis inapplicable to it but that the Commission refused to accord it a rate basis that is not available to its competitors. As stated by the Commission in *Richfield Oil Corp.* v. *Central R. Co. of N. J.*, 232 I. C. C. 505, in connection with a similar claim:

> "Complainant has not shown or contended that it could not have shipped over the routes accorded the 19-cent rate. A showing of inequality between shippers over the same line is necessary to prove discrimination." (p. 505)

It would seem elementary that there can be no inequality between shippers when the rate complained of is equally available to all shippers as it is here. *Philadelphia Commercial Traffic Mgrs.* v. *B. & O. R. Co.*, 104 I. C. C. 173 at 177; *American Warehousemen's Assn.* v. *Inland Waterways Corp.*, 188 I. C. C. 13 at 17. In other words, Swift's claim of discrimination is based upon a situation in which there is a precise equality in the rates available to Swift and its competitors.

So far as the claim of a violation of Section 1(9) is concerned, that issue, as we have pointed out above, was not raised by Swift in its complaint before the Commission and is therefore not present here. *United States* v. *Capitol Transit Co.*, 338 U. S. 286 at 291; *United States* v. *B. & O. R. Co.*, 231 U. S. 274 at 297-98; *Oregon R. & N. Co.* v. *Fairchild*, 224 U. S. 510 at 526. Furthermore the record shows and Swift admits that the switch connection required by that section is constructed, maintained and operated. It is the *measure* of the published charges for delivery of livestock via that switching connection

of which Swift complains. As Swift recognized in its complaint before the Commission, that matter is governed by other provisions of the Act, and the Commission found that the present charge complies with each of those provisions cited and relied upon by Swift at the time that it invoked the Commission's jurisdiction. (R. pp. 53-54)

As authority for its demands in this proceeding and in support of practically every argument made by it, Swift cites *United States* v. *Baltimore & O. R. Co.*, 333 U. S. 169, in which this Court upheld the action of the Commission.

In that case (hereinafter sometimes referred to as the *Cleveland case*) the carriers serving Swift's plant at Cleveland, had for many years delivered livestock at Swift's private track at the flat line-haul rates and the same service had been accorded other packers at Cleveland. *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 I. C. C. 55 at 58. As the Commission pointed out, that had been the practice at Cleveland since 1910. (266 I. C. C. at 59) These deliveries of livestock were made by the line-haul carriers in the same manner as livestock is presently delivered to Swift at its Omaha plant pens in Chicago. In Chicago, livestock deliveries to the packers at their plants in the stockyards area would have to be funneled through the Junction's yards for delivery by that terminal carrier. Such deliveries have never been attempted by that road, and as the Commission found, the line-haul rates to Chicago prescribed by it, do not encompass that type of service. (R. 79)

In 1935, the stock yards, which owned a segment of the track used to make deliveries of livestock at Swift's Cleveland plant, demanded a payment equal to its yardage charges on each car of livestock delivered to Swift. The carriers refused to pay this charge and consequently discontinued deliveries of livestock to Swift's plant. (333

U. S. at 173-74) At the same time, however, the carriers *continued to deliver livestock to Swift's competitors in Cleveland* whose plants were served without use of the track owned by the stock yards. (333 U. S. at 174-75) In other words, Swift at Cleveland was seeking a continuation of the service which had been accorded that company for many years and was currently accorded other packers; in fact, the New York Central's tariff continued to provide for such deliveries to Swift at the flat line-haul rates. (333 U. S. at 174)

The situation at Chicago is the precise reverse of that which existed at Cleveland. At Chicago, it is Swift which seeks a type of delivery service which is different from the long custom and usage in Chicago, and is not accorded any other Chicago packer. Here Swift contends that the Commission erred in considering the rights of the other Chicago packers to demand the same privileges which might be granted to Swift.

With respect to deliveries of livestock to Swift's competitors at Cleveland whose plants were reached without the use of track owned by the Stock Yards, the Commission found that the transportation services, circumstances and conditions were substantially the same as those involved in making deliveries to Swift. (266 I. C. C. 55 at 68) In the present case, the Commission found that deliveries of livestock at points which take the line-haul rates to Chicago (deliveries to the public yard, and to Swift's Omaha plant) were substantially dissimilar from those involved in making delivery to Swift's proposed facility. The sole issue involved in the Cleveland case was defined by this Court on appeal as follows:

> "Ownership of track 1619 by Stock Yards and its objection to livestock deliveries is, in fact, the only reason suggested for the railroads' failure to deliver

> shipments of livestock to Swift *as they do to neighboring packers*, and for their failure to provide switching connections for livestock shipments." (333 U. S. at 175)[1]

The Commission thus held that since the New York Central's tariff provided for delivery of livestock to Swift at the line-haul rates, a charge which Swift was ready and willing to pay, Swift was entitled to that service. This Court affirmed the Commission's decision.

In the present case, Swift is unwilling to pay the published charges for the delivery which it seeks, and asks instead, for a rate basis that is conclusively shown to be noncompensatory with respect to such delivery service to Swift's proposed facility. This record thus presents no issue which is even remotely similar to that presented by the Cleveland case.

In the Cleveland case the Commission refused to permit the Stock Yards Company to destroy the historic custom of delivering livestock at that point and this Court sustained its action; in this proceeding, the Commission sustained the long existing terminal custom at Chicago. The decision in the Cleveland case does not impeach, but sustains the Commission's action here.

The argument which appears at pages 90-104 of its brief reflects Swift's position that in its rate determinations the Commission may not consider the physical conditions under which the traffic moves and the consequent operations which the carriers must perform in according the service which the rate covers. In its report, the Commission referred to and considered the congested conditions

[1] Swift pretends to challenge the statement that, in the *Cleveland* case, "the defendant carriers continued to perform that service for appellant's competitors while refusing it to appellant." (Brief, p. 87, footnote 12.) We respectfully refer the Court to the italicized portion of its decision in that case.

in the Junction's Ashland Avenue Yards and the stockyards area in general, and necessarily so. It is in that area and through those yards that Swift seeks private track delivery of its livestock and the physical circumstances under which such traffic would move is, therefore, of vital importance.

Operating conditions encountered in the movement of the traffic involved are always considered by the Commission in determining the lawfulness of the transportation charges applicable thereto and necessarily so. Congestion and other like factors affecting the character of the service and the measure of the rates necessary to compensate therefor have been considered in countless cases. *St. Louis Chamber of Commerce* v. *B. & O. R. R. Co.*, 57 I. C. C. 639 at 646; *Illinois Brick Co.* v. *Director General*, 73 I. C. C. 215 at 217; *Illinois Brick Co.* v. *Director General*, 102 I. C. C. 64 at 66; *Mississippi Valley Iron Co.* v. *C. & N. W. Ry. Co.*, 104 I. C. C. 243 at 245-46; *Carload Traffic In Chicago District*, 174 I. C. C. 111 at 116; *Sonken-Galamba Corp.* v. *Chicago & A. R. Co.*, 181 I. C. C. 229 at 247; *Switching Fruits and Vegetables at Baltimore, Md.*, 201 I. C. C. 689 at 695 and 697. It would be novel indeed, if the Commission were required to appraise the lawfulness of the charges for a particular movement without regard to the physical conditions under which the service is performed. If the Commission were to ignore, as Swift suggests, the congested traffic in and around the Ashland Avenue Yards, it would accord no weight to the fact that the receiving and classification tracks in those yards are used to capacity for dead freight, that any livestock moving through those yards must be received and classified on those same tracks, that that short time livestock would be mixed in with cars of dead freight that now require more than 31 hours for the movement through those yards and would have to be "dug out" for special treatment, that the entire switching operation in those yards would be revolutionized

and that the effort to deliver this livestock would preclude proper service to the dead freight and producers' stock. All of these facts derive wholly or in part from the extreme congestion in and around the Ashland Avenue Yards, and it is not possible to appreciate the service demanded by Swift without reference to that vital operating condition.

The suggestion that the Commission's report has the effect of assessing "the entire cost of the congestion" against livestock is wholly untenable. (Brief, p. 93) In its report the Commission considered in detail the services that Swift's livestock would require in a movement through the Ashland Avenue Yards and it is those "very expensive, very difficult" and "impossible" services (Swift's Brief in the *Hygrade* case, Appendix A, pp. 47, 50) that justify the Junction's switching charge in all respects. What Swift proposes is that the cost of that service, peculiar to livestock, should be assessed against the shippers of dead freight.

With respect to the Commission's finding that any attempt to receive, classify and deliver Swift's livestock through the congested Ashland Avenue Yards would considerably delay and burden defendants' operations, Swift asserts that this is "an amazing conclusion which necessarily generates disbelief even on its face." (Brief, p. 100) It is said that 20 cars of livestock per day could not possibly have that effect. We respectfully refer the Court to our previous discussion of the evidence which shows in detail the disastrous consequences of any attempt to funnel livestock on short time through the overcrowded Ashland Avenue Yards. (*Supra*, pp. 54 to 64) As we have pointed out Swift did not undertake to question this evidence in any manner and it abundantly supports the Commission's findings. In this connection, the record in the *Hygrade* case shows that the volume of direct shipments to Swift's

competitor was less than one-half of the present volume of Swift's directs. (I. C. C. Docket No. 24375, Ex. 24) In that case, Swift advised the Commission as follows:

> "In this connection the complainant [Hygrade Company] may state that its business is so small as to make no particular effect upon the method of handling livestock into the Chicago livestock market. It is doubtful if this is true * * *." (Appendix A, p. 36)

In other words, the effect of intermingling any livestock in those congested yards would be so drastic if the stock were to be protected from injury and yet handled with the necessary speed that less than ten carloads per day would, Swift asserted, "absolutely demoralize transportation in or about the stockyards." (Appendix A, p. 48) But the Commission's finding that Swift's much larger volume would have that same effect "generates disbelief even on its face."

Swift argues that private track delivery by the Junction of the direct shipments of livestock consigned to Swift and the other Chicago packers would not disrupt and interfere with terminal operations in the stockyards area because there have been periods in the past when the movement of livestock to the public yards exceeded the present volume of that traffic. (Brief, p. 100) As the Commission stated in its report (R. 71), there were fewer cars of livestock going to the Union Stock Yards at the time of the hearing than there were at certain periods in the past, but the fact Swift ignores is that that livestock is not and never has been handled by the Junction. The livestock consigned to the Union Stock Yards moves from the outer yards of the line-haul carriers directly to the unloading chutes at the public yards over the Junction's main running track, and it is not funneled through the Junction's receiving and classification facilities. (R. 493) On the

other hand, delivery to Swift's proposed facility would involve receipt, classification and delivery by the Junction through its Ashland Avenue Yards, and it is that feature of the delivery service sought by Swift that would interfere with, and disrupt the terminal operations of the Junction and all other carriers operating in the stockyards area. In this connection the significant fact is that the traffic handled by the Junction in its Ashland Avenue Yards, the same yards through which Swift proposes to move its livestock, has increased tremendously. (R. 501, 950) The record in this case shows that during the years 1945, 1946 and 1947, the Junction handled through its Ashland Avenue Yards, an average of 726,144 cars, loads and empties (R. 465), and that there are 499 industries served solely by that road. (R. 443) In 1922, at the time of its report in the *Chicago Junction Case, supra*, the Commission stated:

> "Besides serving the stockyards and Packingtown, the Junction performs terminal service for all the carriers in reaching the Central Manufacturing district, which as an institution has been in existence for about 15 years and has 180 industries, producing a tonnage of over 100,000 carloads per year and 100,000 tons per year of less-than-carload freight." (71 I. C. C. 631 at 633)

It is thus obvious that during the years in which there has been a decline in the movement of livestock to the public yards, the volume of traffic moving through the Ashland Avenue Yards and handled by the Junction has multiplied, and it is through those congested yards that Swift proposes to funnel its livestock. What Swift suggests is that the substantial flow of livestock which remains should be taken off the running track over which the traffic has declined and turned into the already saturated Ashland Avenue Yards

laboring under a greatly increased burden of traffic. In its report, the Commission noted the same spurious argument advanced by Swift, stating:

> "Complainant contends that any disruption of operations would be the result of inefficiency, and that this is indicated by the fact that in the past there were times when the movement of livestock to the stockyards was much greater than the present movement. There can be longer trains and greater movements of livestock by the line-haul carriers to the stockyards, but the conclusion is warranted that a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the large movement of livestock to the stockyards area and the return movement of the empty cars, were performed by the Junction." (R. 71)

Confronted with overwhelming proof that a complete breakdown in the terminal service in the stockyards area would attend its proposal, Swift now purports to state advice as to the manner in which these terminal operations should be conducted. (Brief, pp. 106-17) Swift has a number of employees in its operating department, sometimes called yardmasters (R. 1034), whose duties have to do with the handling of Swift's traffic in the Ashland Avenue Yards. In that work, they are "associated with the Chicago Junction" (R. 1034) and they spend their entire time in that yard. Although the hearing was held in Chicago and there was every opportunity to offer rebuttal, Swift found it impossible to call any of those men as witnesses, or otherwise to offer testimony that its proposal is practical or even possible. As shown by its brief in the *Hygrade* case, Swift recognizes that its proposed operation is a practical impossibility. (Appendix A, pp. 45-52) In

view of the proof and its own admission that an effort to deliver direct shipments of livestock to private yards would be disastrous to every interest involved, Swift now finds it necessary to attack the Junction's efficiency.

The best possible proof of the efficiency of that road is that it is actually doing its real job effectively and to the satisfaction of those who have always depended upon it for service. In a greatly restricted space in a densely developed district, it has successfully handled the increasing business that has come to it through an intensification of the industrial activity in that area. Swift's complaint is that the Junction is not able to supply an entirely new and different service which the developments of eighty years, in which Swift played a major role, have made it impossible to render. Swift fully appreciated this at the time that it opposed the Hygrade Company's request for plant door delivery of livestock by the Junction, stating: "All of the railroad facilities in and about the stock yards have been constructed to conform with the practice of delivering all incoming live stock direct to the loading and unloading chutes of the Union Stock Yards and Transit Company." (Appendix A, pp. 48-49) Notwithstanding the long custom and usage under which the Junction has never been called upon to handle livestock, and the conditions which have come into existence, in conformity with and as a result of that fact, Swift argues that the Junction's inability now to change those immutable physical conditions is evidence of its inefficiency.

This assertion of inefficiency is predicated in part on a claim that the Junction's motive power is inadequate, which is based entirely upon a count of the engines on the Junction. It completely ignores the fact that many of the units in service in 1948 were capable of a much higher tractive effort than those in service in 1922 and that the units disposed of since

1922 were replaced by engines that are more efficient and better suited to the operating needs of the Junction. (Ex. 58, R. 1963-65) In other words, the changes made in the type and quality of locomotives coupled with the revised operating practices described in exhibit 58 (R. 1963-65) have produced a substantial increase in the operating efficiency of the Junction. So far as the decrease in the number of locomotives is concerned, that same trend has characterized the transition from steam to diesel power on all of the rail carriers. Diesel power has enabled the carriers to reduce the number of units owned by them, and at the same time it has improved their ability to meet their line-haul and switching requirements. With respect to this same period of time, statistics published by the Commission show that the number of locomotives owned by all of the roads has declined from 69,414 in 1923 to 44,474 in 1948. (Thirty-Seventh Annual Report on the Statistics of Railways in the United States, 1923, p. XVI; Sixty-Second Annual Report on the Statistics of Railways in the United States, 1948, p. 14) Figures for the same two years with respect to the Junction are 77 and 47. (Ex. 58, R. 1963-65) The percentage decrease on the Junction is therefore approximately the same as that on the roads as a whole. Furthermore, the same statistics show that all of the railroads owned a total of 8,981 diesels in 1948, constituting twenty percent of the total while the Junction's diesels in that same year (12) amounted to more than twenty-five percent of the total number of locomotives (47) operated by it. (R. 466) Swift's preoccupation with numbers is, therefore, utterly meaningless.

The nature of Swift's efforts to support its claim of inadequate motive power is adequately characterized by the following statement:

"For the Superintendent of the Chicago Junction

testified that that carrier did not have sufficient *engines* to take care of all of the industrial placement of cars (Tr. 422)," (Memorandum for Appellant in Opposition to the Motion to Affirm, p. 8, Brief, p. 107, italics added)

The testimony thus referred to is as follows:

"Q. Have you sufficient *Diesels* to take care of all of the industrial placement of cars?

"A. No, sir, no, sir, we have not." (R. 524)

The statement that the Junction does not have a sufficient number of *diesels* to do all of its industrial placement work is thus converted into an assertion that that road does not have sufficient *engines* to perform that service. As the record shows, there are 24 steam locomotives, in addition to the 12 diesels, that are suitable for and are used in the industrial placement of cars. (R. 466-67)

Despite the enormous increase in traffic moving through its Ashland Avenue Yards, the Junction has handled and continues to handle that traffic as promptly and expeditiously as possible. As stated by witness Kinsella, Superintendent of the Junction, in response to interrogation by Swift's counsel:

"Q. But granting that that is true the inability to handle it as promptly as you might desire would be due either to lack of motive power or lack of tracks or both?

"A. I don't quite understand your question. *We are handling it now.*" (R. 526)

The Junction has not, however, undertaken to acquire and maintain, on a standby basis and subject always to Swift's command, the facilities that would be required to effect plant door delivery of livestock to the packers in the stockyards area. Throughout the period of intensive in-

dustrial development in that area, the packers chose to enrich themselves by becoming partners in the public yards and insisted with that purpose in view that livestock be delivered in this area only at that point. As a result, the entire development of the transportation and industrial facilities in the stockyards area has been geared to the long established and customary practice of delivering livestock at the public yards and interchanging dead freight with the Junction for delivery to the various industries. As early as 1922, the Commission recognized and Swift, a party to the proceeding, conceded that livestock could not be handled in any other way:

> "The movement of livestock in and out of the Junction yards is essentially different from the method of handling dead freight, in that each carrier moves its trains to the unloading chutes with its own power, and goes into the pens for outbound stock destined for its own line. All parties concede that that is the only practical method of handling that traffic." (*Chicago Junction Case,* 71 I. C. C. 631 at 633)

The Junction's facilities have developed in conformity with those historical facts, and it has not been possible to reserve, subject to Swift's call, the terminal facilities required to meet that packer's present demands.

Swift refers to an agreement made to avert a threatened strike by the Junction's employees as one which "a carrier chooses to sign." (Brief, p. 111) It does not require a long memory to recall that Swift's management has recently entered into agreements with its organized employees which its executives probably do not regard as altogether a matter of choice. Swift may not like the Junction's agreement with its employees or, for that matter, its own, but what conceivable action the Commission should or could take with reference thereto is not explained. Practically

every operating practice in the railroad industry is governed by agreements between the roads and their employees negotiated and arrived at pursuant to the provisions of the Railway Labor Act. Followed to its logical conclusion, Swift's argument that operations which conform to collective bargaining agreements must be disregarded would require the Commission to ignore all operating conditions and circumstances and to pass upon the lawfulness of rates without the slightest consideration of the transportation services actually involved.

Still struggling against the undisputed evidence which shows that the proposed operation cannot be performed, Swift finds it necessary to inveigh against the fact that trains handling both livestock for the public yards and ordinary freight for interchange with the Junction in its Ashland Avenue Yards cannot take the entire train into the unloading chutes at the public yards. (Brief, p. 112) Swift offers no suggestion as to what would be done with the dead freight in the public stock yards while the livestock was being unloaded and of course there is no place at that livestock terminal for the storage of dead freight.

In its Exceptions to the Examiner's Proposed Report, Swift advised the Commission that the "operations on the Junction could be improved" by requiring the line-haul carriers to interchange all freight with the Junction in its Ashland Avenue Yards, including all the packers' directs (37,500 loads, 75,000 loads and empties) and the producers' stock (46,000 loads, 92,000 loads and empties). (Swift's Exceptions to the Examiner's Proposed Report, pp. 120-121) In short it was suggested that the way to fix the Junction so that it could handle the great volume of direct shipments of livestock was to double the burden by adding thereto all the producers' stock consigned to the public yards. Swift thus proposed that the line-haul carriers should be barred from operating over the Junction's tracks (including running

track 1103) except for the purpose of interchanging traffic with that switching line in its Ashland Avenue Yards. This matter has apparently been given some further consideration and the opinion now offered is exactly the reverse of that tendered to the Commission. It is now suggested that the Commission should have required the Junction to accord trackage rights to its 27 connecting lines and that all deliveries of livestock to the packers on their private tracks should be made by those connecting carriers without interchanging that traffic with the Junction. (Brief, pp. 112-13) In other words, the proper way to relieve the congestion on the Junction's tracks is to multiply by 27 the number of carriers making deliveries to the industries served by the Junction. It would be difficult to decide which of these two contradictory suggestions is the more fantastic.

In connection with what it characterizes as "the heart of the case," Swift argues that the Commission, by its decision, undertook to enforce a covenant between the Union Stock Yards and the New York Central, which purportedly requires operation of the Junction in such a manner as to accord special advantages to the Union Stock Yards. The agreement to which Swift refers was introduced by its own counsel in the closing minutes of the hearing before the Examiner. (R. 1038-39) It has no relation to the issues raised by the complaint before the Commission and neither the carriers nor any of the other parties who opposed Swift's complaint have at any time sought to justify the charges under attack by reference to that covenant. We respectfully submit that Swift cannot identify a single finding by the Commission which is in any manner dependent upon the covenant to which it refers.

In its report, the Commission considered Swift's own reliance upon the agreement in question and stated:

"The operation of the Chicago Junction is subject

not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the *Chicago Junction Case, supra.*[1] These conditions were particularly intended to insure that the Chicago Junction and Chicago River & Indiana should be operated as neutral terminal carriers, without special advantage favoring the New York Central but the conditions were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards." (R. 80)

It is thus plain that the Commission did not, as Swift charges, undertake to enforce the covenant in question, but instead, held the covenant ineffective insofar as it might be construed to require the Junction to accord special advantage to the Union Stock Yards. Apparently, Swift's position is not that the covenant must be neutralized and held ineffective but on the contrary that it must be construed to require line-haul carriers who were never parties to the covenant to perform a transportation service for Swift at rates substantially less than those found to be reasonable and lawful in every respect.

The letter written by Counsel for the Yard Company to the New York Central and River Road appears to reflect the Yard Company's apprehension that in this case, as in most rate cases brought by large shippers, potential traffic pressure might be brought to bear upon individual carriers in an effort to affect their participation in the defense of the case. Swift conceded at the hearing that prior to the date of this letter the operating officers of the Junction had advised their executives that the Junction could not handle livestock through its Ashland Avenue Yards without completely disrupting the operation of those Yards. (R. 1039)

[1] The Commission retained jurisdiction of that proceeding for the purpose of making such amendments or modifications of its conditions as might become necessary or desirable in the public interest. (71 I. C. C. 631 at 641)

CONCLUSION.

The railroad interveners respectfully pray the Court to affirm the decision of the lower court.

Respectfully submitted,

KENNETH F. BURGESS,
DOUGLAS F. SMITH,
MARTIN M. LUCENTE,
Counsel for Railroad Interveners.

SIDLEY, AUSTIN, BURGESS & SMITH,
Of Counsel.

APPENDIX A

BEFORE THE

Interstate Commerce Commission

HYGRADE FOOD PRODUCTS CORPORATION

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.

Docket No. 24375.

BRIEF ON BEHALF OF INTERVENER, OMAHA PACKING COMPANY.

ROSS DEAN RYNDER,
WILLIAM N. STRACK,
Attorneys for Intervener.

Chicago, March 12, 1932.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

PAGE

Abstract of Evidence 3

Testimony on Behalf of Intervener, Omaha Packing Company 3

Basis of Freight Rates Paid by Omaha Packing Company 7

Facilities Maintained by the Omaha Packing Company for Holding of Live Stock 8

Location and Character of Business Done by the Omaha Packing Company 3

Municipal Ordinances of Chicago, Restricting the Driving of Live Stock on Public Streets 5

Qualifications of Witness 3

Rail Movement of Live Stock Destined to Omaha Packing Company 5

Receipts of Direct Shipments by Swift and Company at Union Stock Yards 8

Source of Live Stock Shipped to Omaha Packing Company 4

Argument 9

Alleged Violation of Section Two 10

Collection of Yardage Charges No Violation of Section Three 29

Essentials of a Case of Violation of Section Three 25

Introduction 9

No Alternative Order Should Be Issued in This Case. 62

Rates Applicable on Livestock to Intervener's Plant Fixed by Commission 9

Refusal of Chicago Junction to Deliver Cars to Complainant's Plant Not a Violation of Section Three ... 21

Refusal of Line-Haul Carriers to Absorb Chicago Junction Switching Charge Not a Violation of Section Three 32

1. Complainant Is Located on a Purely Switching Line and Intervener Is an Industry on a Line-Haul Carrier 34

2. Complainant Is Located at the Union Stock Yards, Along with Many Other Packers, All Being Adjacent to The Union Stock Yards & Transit Company, While Intervener Is Two and One-half Miles Away in a Different District 35

3. Complainant Desires Free Switching, Spotting, and Holding of Cars Involved in a Plant Layout of Privately Owned Tracks While Intervener Gets Only a Delivery on the Tracks of the Chicago, Burlington & Quincy Railroad, on Which Intervener Is an Industry. 37

4. Complainant Does Not Either Own or Have Available Facilities for Unloading, Weighing and Handling Incoming Live Stock While Intervener Owns Ample Facilities..... 40

5. Operating Conditions Connected with the Direct Delivery of Live Stock to Complainant's Plant Are Much More Difficult Than to Intervener's Plant 41

6. Absorption of Charges in Connection with Direct Delivery to Complainant's Plant and the Resultant Direct Delivery Would Demoralize Live Stock Deliveries to the Stock Yards District of Chicago, While No Such Situation Exists in Connection with Deliveries to Intervener's Plant 48

7. There Is No Proof of the Amount of the Absorption by Line-Haul Carriers in Deliveries to Intervener's Plant..... 52

8. Complainant Has Made No Proof of Damage by Reason of the Alleged Violation of Section Three 53

9. Commission Has Already Recognized Substantial Difference Between the Location of Complainant and Intervener 56

Conclusion 64

Statement of the Case 1

CASES CITED.

Arizona Packing Company v. Director General, 74 I. C. C. 387 43
Aurora, Elgin & Chicago R. R. Co. v. I. H. B. R. R. Co., 51 I. C. C. 331 42
Biggs Boiler Works v. Erie R. Co., 171 I. C. C. 712, 714 .. 33
Dorchester Board of Trade, Inc. v. N. Y., N. H. & H. R. R. Co., 179 I. C. C. 423 19
Duluth Chamber of Commerce v. C. St. P. M. & O. Ry. Co., 122 I. C. C. 739, 742 55
East Springfield Citizens' Club v. Am. Ry. Exp. Co., 68 I. C. C. 482 14
Gamble-Robinson Commission Co. v. Chicago & N. W. Ry. Co., 168 Fed. 161 26
Hawley Pulp & Paper Co. v. Aberdeen & R. R. Co., 168 I. C. C. 747, 749 55
Indianapolis Board of Trade v. B. & O. R. R. Co., 120 I. C. C. 675 56
Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. C. 144, 42 L. ed. 414 26
Interstate Commerce Commission v. B. & O. R. Co., 145 U. S. 263, 36 L. ed. 699, 703 ..... 12, 14, 25
Interstate Commerce Commission v. Chicago Great Western Ry. Co., 141 Fed. 1003, affirmed 209 U. S. 108, 52 L. ed. 705 26
Interstate Commerce Commission v. Detroit, G. H. & M. R. Co., 57 Fed. 1005 13
Interstate Commerce Commission v. Detroit, G. H. & M. R. Co., 167 U. S. 633, 42 L. ed. 306 13
I. C. C. v. Diffenbaugh, 222 U. S. 42, 46 61
Lehigh Portland Cement Co. v. Director General, 62 I. C. C. 231, 234 18
Manufacturer's Ry. Co. v. U. S., 246 U. S. 457, 62 L. ed. 831 26
Mathews v. State, 47 S. W. 647 29
Ohio Farm Bureau Federation v. N. & W. Ry. Co., 136 I. C. C. 602 56

Ohio-Michigan Coal Cases, 80 I. C. C. 663, 677 23
Omaha Live Stock Exchange v. C. M. & St. P. Ry. Co., 69 I. C. C. 688 ..... 41, 43
Omaha Packing Co. v. A., T. & S. F. Ry. Co., 66 I. C. C. 44 57
Omaha Packing Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 378 ..... 7, 9, 47, 53, 60, 63
Peters Cartridge Co. v. Director General, 73 I. C. C. 311, 313, 314 23
Port Arthur Board of Trade v. A. & S. Ry. Co., 27 I. C. C. 388, 402 61
Providence Fruit & Produce Exchange v. R. I. Co., 69 I. C. C. 422 17
Rates on Bunker Coal, 73 I. C. C. 62 18
Rates on Sand, Gravel and Crushed Stone, 177 I. C. C. 123, 133 61
Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438 61
Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 463, 466 ..... 19, 22
Seaboard Air Line Ry. Co. v. U. S., 254 U. S. 257 19
Sioux City Grain Exc. v. Chicago, B. & Q. R. Co., 173 I. C. C. 506, 510 55
State v. Brookhouse, 38 Pac. 862 29
State v. Lawn, 80 Mo. 241 29
Texas, etc. R. Co. v. Interstate Commerce Commission, 162 U. S. 197, 40 L. ed. 940 ..... 26, 28
Tide Water Oil Co. v. Director General, 58 I. C. C. 92 39
Union Pac. R. Co. v. Updike Grain Co., 178 Fed. 223, affirmed 222 U. S. 215, 56 L. ed. 171 26
U. S. v. Atchison, T. & S. F. R. Co., 234 U. S. 476, 58 L. ed. 1408 28
U. S. v. Delaware, L. & W. R. Co., 40 Fed. 101, 103 13
Wight v. U. S., 167 U. S. 512, 42 L. ed. 258 28
Wood, Iron & Steel Co. v. P. R. R. Co., 83 I. C. C. 503, 507 23

BEFORE THE

Interstate Commerce Commission

HYGRADE FOOD PRODUCTS CORPORATION vs. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.	Docket No. 24375.

BRIEF ON BEHALF OF INTERVENER, OMAHA PACKING COMPANY.

STATEMENT OF THE CASE.

This is an action brought by complainant, a packing company located in the stock yards district of Chicago, Illinois, on the rails of a terminal switching carrier, Chicago Junction Railway Company. The complainant seeks to obtain delivery of incoming live stock at the chutes of the Union Stock Yards & Transit Company at Chicago, without charges other than the through Chicago rate, plus $2.70 per car, and also the receipt of live stock direct at its plant without charges other than the through Chicago rate plus $2.70 per car. In seeking to obtain this relief, complainant contends, first, that the other charges being made for either service are unrea-

sonable and that under section 1, it should be entitled to this relief. It further asserts that because these other charges are being made to complainant, while no charges, other than $2.70 per car, are being made to intervener, a packing plant located two and one-half miles north of the stock yards district, on the rails of the Chicago, Burlington & Quincy Railroad Company, there is a violation of both sections 2 and 3 of the Interstate Commerce Act. Intervener is only interested in the allegations of complainant that any services being rendered for intervener, or any charges in connection therewith, are either discriminatory or prejudicial in connection with services and charges to complainant. Therefore, the following presentation is being made solely with respect to the alleged violations of sections 2 and 3 of the Interstate Commerce Act in so far as they relate to intervener.

ABSTRACT OF EVIDENCE.

TESTIMONY ON BEHALF OF INTERVENER, OMAHA PACKING COMPANY.

W. C. WATSON, a witness called on behalf of intervener, Omaha Packing Company, testified in substance as follows:

He is assistant to the Freight Traffic Manager of Swift and Company and its subsidiaries (309).

Qualifications of Witness.

For twenty-eight years he has been in the Transportation Department of Swift and Company, a greater portion of which time he was assistant to the Freight Traffic Manager and specialized in rates, rules and regulations pertaining to stock yards and the transportation of live stock. Omaha Packing Company is one of the subsidiaries of Swift and Company and all its transportation matters are handled by Swift and Company. Witness particularly looks after matters pertaining to live stock of the Omaha Packing Company.

Location and Character of Business Done by the Omaha Packing Company.

The Omaha Packing Company is a corporation incorporated in the State of Kentucky and operates a packing plant at Chicago, Illinois, slaughtering principally hogs. It is located at 2320 South Halsted Street (310), which is slightly in excess of two miles north of the Union Stock Yards. It is located on the tracks of the Chicago, Burlington & Quincy Railroad Company. It is not

reached by the tracks of the Chicago Junction Railway Company. It is one of the industries of the Chicago, Burlington & Quincy Railroad Company here in Chicago.

Source of Live Stock Shipped to Omaha Packing Company.

The Omaha Packing Company obtains its live stock, and has for a good many years, from direct shipments from various country points, the location of which depends upon the market supply of live stock and other items which normally enter into the purchasing of live stock. It never buys any live stock at the Union Stock Yards (311). In the event it did, it would be necessary to either reload the live stock and switch it to the Omaha Packing Company plant at a charge of 2½ cents per hundred pounds, minimum 60,000 pounds, or virtually $15.00 per car, or drive the live stock approximately two and one-half miles north on Halsted Street to the plant of the Omaha Packing Company. The purchase and loading of live stock into cars would involve a substantial delay. It would probably be an over-night move from the Stock Yards to the plant of the Omaha Packing Company.

Halsted Street, between the plant of the Omaha Packing Company and the Union Stock Yards, is strictly a business thoroughfare upon which there are double street car tracks, and in addition to the street cars, many trucks and automobiles pass along this street. Also, many automobiles and trucks are parked from time to time along the curbs of the street. There are a number of stop and go lights at various corners (312). The character of the adjoining property is strictly business and industrial. The traffic on Halsted Street is very heavy.

Municipal Ordinances of Chicago, Restricting the Driving of Live Stock on Public Streets.

Witness has made an investigation of the city ordinances respecting the driving of live stock in the streets of Chicago. Section 977, of the Revised Code of Chicago —1931, provides:

> "No person or persons shall, between the hours of seven o'clock A. M., and seven o'clock P. M., of each and every day, drive upon or along any public street or alley within the city more than five head of cattle at any one time. Any person who shall violate the provisions of this section shall be fined not less than ten dollars nor more than one hundred dollars for each offense." (313)

Section 3936 of the Revised Code of Chicago—1931 provides:

> "No person having the charge, custody or control thereof shall permit any horse, mule, ass, ox, cow, goat, pig or other like animal to go loose or at large in any of the public ways in the city; and the running at large within the limits of the city, except in inclosed places on private property, of poultry, chickens, hens, turkeys, ducks, geese, and other like fowl is hereby declared to be a common nuisance and the same is hereby prohibited. Any person owning, in charge of, or having the custody or control of such animals or fowls that shall permit the same to run at large contrary to the provisions of this section shall be subject to a fine of not more than ten dollars for each offense." (314)

Irrespective of the question of city ordinances, it would not be a practical proposition to drive live stock two and one-half miles north on Halsted Street to the Omaha Packing Company.

Rail Movement of Live Stock Destined to Omaha Packing Company.

None of the live stock purchased by the Omaha Packing Company, even though not purchased at the Union Stock Yards, moves to the Union Stock Yards. Ship-

ments destined to the Omaha Packing Company are billed direct from either country shippers or its own shippers from stations located on various lines of railroad, including the Chicago, Burlington & Quincy. From stations on all lines other than the Chicago, Burlington & Quincy, the Omaha Packing Company pay a terminal charge of $2.70 as is assessed at the Union Stock Yards. From points on the Chicago, Burlington & Quincy the delivery is made free, the same as is made to all industries located on its rails, and as published in C. B. & Q.—I. C. C. 17660.

The Omaha Packing Company has six switch or spur tracks leading from the main line of the Chicago, Burlington & Quincy. Four of these tracks are used for incoming dead freight and outgoing fresh meat and packing house products. The westerly two tracks are used solely for unloading live stock. Between these tracks is an unloading platform about 11 feet, 8 inches wide, and about 496 feet 6½ inches long. The platform is closed in at the north end and has sides consisting of a series of sliding slatted doors. The platform has room for eleven cars on one side and twelve cars on the other. Because the sides consist of these sliding doors, cars can be spotted at any place on the tracks and an opening made at the door of the car. At the south end of this platform, the Omaha Packing Company maintains a first-class standard live stock scale, quite similar to scales maintained at public stock yards.

When live stock arrives at this unloading platform, it is unloaded by employes of the Omaha Packing Company, driven a short distance to the scale at the south end of this platform, where it is weighed on this scale, owned by the Omaha Packing Company, by an employe of the Omaha Packing Company. A representative of the Western Weighing & Inspection Bureau checks all

weighing done by the Omaha Packing Company. In addition to that, the scale is checked daily by employes of the Omaha Packing Company, and at least twice a year the scale is checked by representatives of the City of Chicago. No notice is given the Omaha Packing Company of the time of these inspections.

The live stock is then driven from the scale to the holding pens owned and maintained by the Omaha Packing Company. The unloading platform is likewise owned and maintained by the Omaha Packing Company (317).

No firm or corporation, including all of the railroads which enter the City of Chicago, the Union Stock Yards and Transit Company of Chicago, or the Chicago Junction Railway Company, furnish any yarding, unloading, weighing, driving or holding of live stock in pens after unloading, in connection with any live stock received by the Omaha Packing Company at its plant other than the Omaha Packing Company itself. There is no service of yarding, unloading, weighing, driving or holding performed even by the Chicago, Burlington & Quincy Railroad Company.

Basis of Freight Rates Paid by Omaha Packing Company.

The basis of the freight rates now paid by the Omaha Packing Company for the receipt of live stock by rail was prescribed by the Interstate Commerce Commission in *Omaha Packing Company* v. *C. M. & St. P. Ry. Co.*, 37 I. C. C. 378, in which the charge of $2.00, in addition to the line-haul rate on live stock to Union Stock Yards, Chicago, Illinois, was prescribed on all shipments of live stock not originating on the lines of the Chicago, Burlington & Quincy Railroad Company. On shipments originating on the Chicago, Burlington & Quincy, the rates prescribed were the line-haul rates to Chicago, Illinois, without the addition of the $2.00 terminal charge.

The subsequent percentage increases and reductions have changed this $2.00 terminal charge to $2.70.

The Omaha Packing Company has been in its present location, to the best of the knowledge of witness, from fifty-five to sixty years which precedes the time when it became a subsidiary of Swift and Company.

Facilities Maintained by the Omaha Packing Company for Holding of Live Stock.

The Omaha Packing Company has forty-seven pens for the holding of live stock. The pen capacity is approximately 8000 head of hogs. The killing capacity of the plant is 4500 hogs per day (318).

Receipt of Direct Shipments by Swift and Company at Union Stock Yards.

Swift and Company receives direct shipments of live stock at the Union Stock Yards in substantial quantities. When it does receive such direct shipments of live stock the service charges, etc., are exactly the same as those which have been described by witnesses for the Hygrade Food Products Corporation. There is no difference in the service charges and the terminal charges.

ARGUMENT.

INTRODUCTION.

The intervener, Omaha Packing Company, is directing its argument solely to the allegations of violations of Sections 2 and 3 of the Interstate Commerce Act, insofar as said allegations affect said intervener. We shall show; first, that the rates and charges in effect on shipments of livestock destined to the plant of the Omaha Packing Company have been fixed by the Commission and are, therefore, both legal and reasonable; second, that because of vastly different circumstances and conditions, no discrimination, prejudice or preference, prohibited by law, exist. Therefore, the Commission should dismiss that part of the complaint based upon alleged violations of Sections 2 and 3 of the Act.

RATES APPLICABLE ON LIVESTOCK TO INTERVENER'S PLANT FIXED BY COMMISSION.

This is not the first time the Commission has had before it the rates on livestock destined to the plant of intervener. In *Omaha Packing Company* v. *C. M. & St. P. Ry. Co.*, 37 I. C. C. 378, a complaint was filed by the Omaha Packing Company attacking the rates being charged it by the carriers on shipments of hogs destined to its plant. At the time the complaint was filed the Milwaukee was absorbing $4.00 of the $6.00 switching charge of the Burlington, on whose rails the Omaha

Packing Company is situated. For a period from January 12, 1913 to April 6, 1913, the Milwaukee refused to absorb any part of the $6.00 switching charge. The Omaha Packing Company sought a through rate to its plant on the basis of the Chicago rate. It appeared that on shipments to the Chicago Union Stock Yards there was a terminal charge of $2.00 per car. The Commission found that the rates charged were unreasonable to the extent that they exceeded the rates to Chicago plus the charge of $2.00 per car. The reasonable rate prescribed was the Chicago rate plus $2.00 per car. Since that time the percentage increase and reductions have changed this $2.00 per car rate to $2.70 per car (T. 138). Therefore, intervener is now paying rates fixed by the Commission in 1915. By reading the report of the Commission in that case, it will be seen that conditions were substantially the same then as they are now. Therefore, the finding of the Commission fixing a lawful rate to intervener's plant should apply equally at the present time.

ALLEGED VIOLATION OF SECTION TWO.

The complaint alleged that the defendants were violating section 2, by discriminating against it in favor of intervener. Although no formal announcement was made that it was abandoning this allegation, complainant has completely failed to prove any violation of section 2. The only facts proved by complainant, which could possibly apply to a section 2 case, were that both complain-

ant and intervener had shipped livestock from some of the same origin points. However, the evidence clearly shows that these shipments to complainant were consigned to it either at its plant at 3830 S. Morgan Street, Chicago, Illinois, or at the Chicago Union Stock Yards, both on the rails of the Chicago Junction Railway Company. The evidence shows that the shipments to intervener were consigned to its plant at 2320 S. Halsted Street, Chicago, Illinois, being located on the rails of the Chicago, Burlington & Quincy Railroad Co. Under these facts there could not possibly be a violation of section 2.

Section 2 of the Interstate Commerce Act provides:

> "That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

The decisions under this section may be summarized as holding that in order to show a violation of section 2,

it is encumbent upon a complainant to practically prove that the carrier or carriers have charged the favored shipper less than the published rate while charging complainant the published rate for the same identical transportation, in other words, that the carriers are guilty of giving a rebate.

Respecting the elements of a case under section 2 of the Interstate Commerce Act, the Supreme Court said, in *Interstate Commerce Commission* v. *B. & O. R. Co.*, 145 U. S. 263, 36 L. ed. 699, 703:

> "For instance, it would be obviously unjust to charge A a greater sum than B for a single trip from Washington to Pittsburg; but if A agrees not only to go, but to return by the same route, it is no injustice to B to permit him to do so for a reduced fare, *since the services are not alike*, nor the circumstances and conditions substantially similar, *as required by Section 2 to make an unjust discrimination*" (italics ours).

Again on page 705 of the law edition, the court stated:

> "In order to constitute an unjust discrimination under Section 2, the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate, or other device; but, in either case, it must be for a 'like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions.' To bring the present case within the words of this section, we must assume that the transportation of ten

persons on a single ticket is substantially identical with the transportation of one, and, in view of the universally accepted fact that a man may buy, contract, or manufacture on a large scale cheaper proportionately than upon a small scale, this is impossible."

In *U. S.* v. *Delaware, L. & W. R. Co.*, 40 Fed. 101, 103, in discussing sections 2 and 3, the court stated:

"The former (section 2) relates to unjust discrimination in rates. The latter (section 3) is comprehensive enough, standing alone, to include every form of unjust discrimination, not only in rates, but also in the conveniences and facilities supplied to shippers in any of the details of the carrying service."

In *Interstate Commerce Commission* v. *Detroit, G. H. & M. R. Co.*, 57 Fed. 1005, Circuit Judge Taft (later Chief Justice of the Supreme Court) held that the furnishing of free cartage in Grand Rapids and refusing to do so in Ionia was not a violation of section 2. When the case got to the Supreme Court, the assistant attorney general abandoned any claim of violation of section 2 (see *Interstate Commerce Commission* v. *Detroit, G. H. & M. R. Co.*, 167 U. S. 633, 42 L. ed. 306.)

The same question has come before the Commission in numerous cases. There have, however, been few findings of violations of section 2. In order to clearly illustrate that complainant has not made out a case under section 2, we shall quote from a few of the decisions of the Commission.

In *East Springfield Citizens' Club* v. *Am. Ry. Exp. Co.*, 68 I. C. C. 482, the only question involved was an alleged violation of section 2, because defendant furnished delivery service to certain parts of the city of Springfield, Mass., *i. e.*, Park and Franconia sections, and did not furnish it to the East Springfield section. Because in many respects that case is quite clearly analogous to the case here presented to the Commission, we are quoting extensively from said decision. On page 483, the Commission stated:

> "Complainants do not allege that the failure of defendant to extend its free collection and delivery limits to the East Springfield section is unreasonable, but merely that it is unjustly discriminatory under section 2 of the act. In *Interstate Com. Commiss.* v. *B. & O. Railroad*, 145 U. S. 263, 281, the Supreme Court of the United States said:
>
> > In order to constitute an unjust discrimination under section 2, the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate or other device; but in either case it must be for a 'like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions.'
>
> "It becomes necessary, therefore, to consider whether the 'kind of traffic' of the East Springfield section is 'like' the traffic of the Park and Franconia sections, and whether the transportation would be 'under substantially similar circumstances and conditions.' As before stated, the principal express

traffic in East Springfield which would receive the benefit of the desired free collection and delivery service is that of the manufacturing concerns, parties to the complaint. During the first six months in 1921 it is shown that there were 2,767 outbound and inbound shipments from and to East Springfield, over 2,500 of which were for the Westinghouse Electric & Manufacturing Company and the Rolls-Royce company alone. The shipments of the Westinghouse Company consist principally of small motors, electrical appliances and parts, the average weight being about 130 pounds. The express traffic of the Rolls-Royce company is principally inbound and consists of automobile head lamps and delicate automobile parts. The average weight of these shipments is not shown. The shipments of the Storms Drop Forging Company consist of forgings and dies averaging about 54 pounds. The character of the traffic of the other complaining plants is not disclosed. The traffic of the Park and Franconia sections is chiefly to and from householders, the shipments of the Diamond Match Company and the small chemical manufactory being the only important exceptions. The average weight of the shipments of these sections is materially less than in the case of East Springfield.

"From the Union Depot the present free collection and delivery limits extend 1.9 miles in the direction of East Springfield. The Springfield Tool Company, the most distant manufacturing plant in that section, is 3.1 miles beyond these limits, or 5 miles from the depot. The most distant house in the Park and Franconia sections is 3.6 miles from the depot. All told, there are approximately 370 families in East Springfield as compared with 3,777 families in the

Park and Franconia sections. The testimony indicates that the density of residences in the latter section is probably not substantially greater than in East Springfield, but defendant states that while it holds itself out to deliver and collect in the Franconia section, no such service has, as a matter of fact, been rendered during the past three years.

"The service of free collection and delivery is performed in the Park section with a 2-ton truck driven by one man. Defendant estimates that to collect and deliver the heavier shipments of the East Springfield section would necessitate the acquisition of a 3.5-ton electric truck, requiring a driver and helper. At the present time several of the complaining plants perform the service with their own trucks in connection with other hauling.

"Upon this record we find that it has not been shown that the express traffic to and from the East Springfield section is 'like' that to and from the Park and Franconia sections, within the meaning of that word as used in section 2 of the act; and that the free collection and delivery of express shipments in the East Springfield section, as compared with such service in the Park and Franconia sections, would not be 'under substantially similar circumstances and conditions.' As aforesaid, the reasonableness of the practice of defendant in refusing to extend its free collection and delivery limits to the East Springfield section is not in issue."

In the instant case, complainant has made no showing at all as to the amount of traffic to intervener so that it may be compared with the traffic to complainant to see if the traffic is "like". Also there has been absolutely

no proof of the fact that the transportation was "under substantially similar circumstances and conditions." The record clearly shows that any movement to complainant at either its plant or at the Chicago Union Stock Yards must move over the Chicago Junction Railway Company, which has no part in the transportation to the plant of intervener. While the service rendered by the Chicago Junction is described in great particularity by witness O'Brien, on pages 246 to 271 of the transcript, giving the difficulties of both the service to the Chicago Union Stock Yards and the service requested by complainant at its plant, there is no evidence of the details of the service rendered in a movement to intervener's plant after it leaves the break-up yards, so it would be impossible to prove any similarity, even if the hurdle of the independent switching carrier, the Chicago Junction, could be jumped by complainant. In view of the decisions of both courts and the Commission, however, it seems that that fact alone would make section 2, and probably section 3, inapplicable.

In *Providence Fruit & Produce Exchange* v. *R. I. Co.*, 69 I. C. C. 422, the Commission held that failure of defendant to absorb switching charges of an electric line while absorbing switching charges of connections on competitive points was not a violation of section 2. In that connection the Commission stated, on page 424:

> "The unjust discrimination prohibited by section 2 is in *movements over the same road or roads*, and *not over* different roads or *partly over the same road and partly over different roads*" (italics ours).

A substantially similar question was before the Commission in *Rates on Bunker Coal*, 73 I. C. C. 62. One of the questions was whether the fact that different rates apply on coal to piers for unloading into vessels and coal to industries or team tracks within the terminal district was a violation of section 2. The Commission held, on page 75, that the two classes of movements are not made "under substantially similar circumstances and conditions" of carriage.

In *Lehigh Portland Cement Co.* v. *Director General*, 62 I. C. C. 231, 234, the commission held that failure to do spotting, switching, etc., without charge on a system of tracks, in and about complainant's plant, of 2.96 miles, all owned by complainant, was not a violation of section 2, even if defendant performed free spotting in instances where the tracks were owned by defendant.

That case is very close to the case now before the Commission, because the contemplated direct delivery to the plant of complainant would involve considerable switching and spotting of cars, done entirely on tracks owned by complainant, and within its plant. Deliveries to intervener's plant do not involve any switching or spotting, as intervener's plant is directly adjacent to the right of way of the Chicago, Burlington & Quincy Railroad Company, and is served direct from the tracks of that railroad.

The Commission recently decided in a somewhat similar case that there was no violation of section 2. In *Dor-*

chester Board of Trade, Inc., v. *N. Y., N. H. & H. R. R. Co.*, 179 I. C. C. 423, it was alleged that failure to include that part of Boston, known as Dorchester, and served by the Neponset Station, in the switching limits of Boston, violated section 2 because other parts of Boston were included. The Commission found that there was no violation of section 2. The facts there, in respect to a violation of section 2, were quite similar to the facts in the case now before the Commission. The object of the complaint in that case was to get an absorption of switching in that part of the Dorchester district, served by the Neponset Station. That is the object of complainant here. There complainant felt it had made a case under section 2, because the territory served by other stations, *i. e.*, Harrison Square, Harvard Street, etc., received free switching. In holding that there was no violation of section 2, the Commission established a precedent which is controlling in this case.

It is possible that complainant may urge that *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 44 I. C. C. 455, 466, affirmed in *Seaboard Air Line Ry. Co.* v. *U. S.*, 254 U. S. 257, is authority for a finding that the existing practice of non-absorption of switching charges of the Chicago Junction is a violation of section 2. As indicated, both in the decision of the Commission and the decision of the Supreme Court, the evidence must come within certain narrow confines to warrant such a finding. The Commission clearly predicated its decision on the following findings:

"Where *the short delivery service* within the

switching district *is substantially the same in either instance,* we are of the opinion that the line-haul carrier is receiving a greater compensation from one shipper than from another for a like service when it absorbs the switching charges of one switching line and not those of another" (italics ours).

The Commission then continued:

> *"We do not consider that the carriers must absorb the switching charges* indiscriminately *to all industries* within the switching limits of Richmond *if they choose to absorb the swiching charges to any one industry off their rails. The illegality* herein found to exist *is the receiving of a greater compensation for one service than for a like service under substantially similar circumstances and conditions"* (italics ours).

There is absolutely no showing of "a like service under substantially similar circumstances and conditions" in this case. The complainant utterly failed to make proof of the character of the service rendered in respect to either movements to complainant's or intervener's plants. The defendant, Chicago Junction, gave in great detail the difficult and complex service involved in a switching movement to complainant's plant. We shall go into this question more in detail later in this argument, where we shall point out the absolute dissimilarity of circumstances and conditions which make both sections 2 and 3 inapplicable to this case. Furthermore, as we shall later indicate in connection with the section 3 allegations, complainant has failed to prove the amount, if any, of the switching absorption on shipments to intervener's plant.

REFUSAL OF CHICAGO JUNCTION TO DELIVER CARS TO COMPLAINANT'S PLANT NOT A VIOLATION OF SECTION THREE.

We now come to the allegations of violations of section 3. In that connection there are three possible aspects: (1) the refusal of the Chicago Junction to deliver livestock at complainant's plant; (2) requiring complainant to pay yardage charges on all livestock received by it through the facilities of the Chicago Union Stock Yards Company; and (3) refusal of the line haul carriers to absorb the switching charge of the Chicago Junction in case shipments are made direct to complainant's plant. We shall discuss these three aspects in order.

The refusal of the Chicago Junction to switch cars of livestock to complainant's plant may or may not be a reasonable practice under section 1, but clearly it has no place in the section 3 aspect of this case. The evidence clearly shows that the Chicago Junction is not a party in any way to the delivery of livestock to intervener. Intervener is an industry on the Burlington Railroad (T. 311). Complainant is located solely on the Chicago Junction (T. 80). No other railroad is closer than a mile or possibly two miles (T. 111). According to the testimony of its general manager, (T. 248 to 271, inclusive) the Chicago Junction should not be required to deliver livestock direct to complainant's plant. He gave numerous reasons not only why it is not reasonable, but even went further, stating such a proposition is impossible from a practical operating point of view. However,

that is the argument of the Chicago Junction and does not concern intervener, except as a basis for possible refusal of railroads to deliver direct to intervener's plant.

In the refusal to deliver direct to complainant's plant, only the Chicago Junction is concerned and the other railroads, which take part in any movement to intervener's plant, have no connection with it. The Commission has repeatedly held that there can be no undue prejudice under section 3, unless it be within the power of the carrier charged with causing the undue prejudice to remove it by its own act.

This is clearly shown in *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 44 I. C. C. 455, 462, 463, where the Commission held there was no violation of section 3 under somewhat similar circumstances. The only difference there was that the prejudiced point was on the rails of the C. & O., a line-haul carrier, while here the alleged prejudiced point is on the rails of a purely switching carrier. In that case the Commission stated:

> "We have expressly said that there can be no undue prejudice within section 3, unless it is within the power of the carrier charged with the discrimination to do away with it by its own act."

In this case, if the line-haul defendants be charged with undue prejudice, and ordered to remove it, they cannot require the Chicago Junction to switch cars direct to complainant's plant. It is beyond their power. The

only thing they could do would be to refuse to participate in a delivery to intervener's plant. This, for reasons we shall later indicate, would be a most unreasonable requirement. The fault of the refusal, if a fault, is one of the Chicago Junction. Even if all the line haul defendants desired to participate in direct deliveries to complainant's plant, they are powerless to do so, because the plant is not on the line of any of them, but on a purely switching road.

There are other decisions of the Commission to the same effect. Some of them are given below:

Ohio-Michigan Coal Cases, 80 I. C. C. 663, 677.

Peters Cartridge Co. v. *Director General*, 73 I. C. C. 311, 313, 314.

Wood, Iron & Steel Co. v. *P. R. R. Co.*, 83 I. C. C. 503, 507.

We, therefore, believe the conclusion is reasonable, that the mere refusal of the Chicago Junction to make direct deliveries of livestock to complainant's plant does not make out a case of undue prejudice under section 3, merely because the Burlington Railroad makes delivery direct to intervener's plant in an entirely different section of Chicago.

Furthermore, the record conclusively shows that unless the line-haul carriers absorb the Chicago Junction switching charge of $12.00 per car, the complainant does not want direct delivery of live stock to its plant. We say the record conclusively shows this because complain-

ant attempted to have a total of 22 cars delivered direct to its plant (T. 58, 59). The record shows that none of these cars were so delivered because complainant refused to pay the Chicago Junction switching charge of $12.00 per car (T. 66, 244, 293). If the action of the complainant in that respect has any meaning at all, it is that it is not interested at all in the bare question of delivery of live stock direct to its plant. It is only interested in direct delivery *if the line-haul carriers agree to absorb the incidental expense,* covering switching, spotting, etc., connected with it. Therefore, the question of direct delivery really is not in this case so far as either alleged violations of sections 2 or 3 are concerned. Actually the sole question presented is: Does the failure of the line-haul carriers to absorb the incidental expenses of switching, spotting, etc., in connection with direct deliveries to complainant, constitute a violation of either sections 2 or 3?

We have already discussed the section 2 aspect of the case. We shall later specifically discuss the section 3 aspect of the refusal of line-haul carriers to absorb the incidental expenses of switching, spotting, etc., under the heading, "Refusal of Line-Haul Carriers to Absorb Chicago Junction Switching Charge Not a Violation of Section 3."

ESSENTIALS OF A CASE OF VIOLATION OF SECTION THREE.

The pertinent portion of section 3 reads as follows:

> "(1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

In connection with this section, the Supreme Court has repeatedly held that there must be a substantial identity of circumstances and conditions. In one of the leading cases, *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 145 U. S. 263, 36 L. ed. 699, the Supreme Court stated (see page 705 of the law edition):

> "In this connection we quote with approval from the opinion of Judge Jackson in the court below: To come within the inhibition of said sections (2 and 3), the differences must be made under like conditions; that is, there must be contemporaneous service in the transportation of like kinds of traffic under substantially the same circumstances and conditions. In respect to passenger traffic, the positions of the respective persons, or classes, between whom differences in charges are made, must be compared with each other, and there must be found to exist substantial identity of situation and of service, accompanied by irregularity and partiality resulting in undue advantage to one, or undue disadvantage

to the other, in order to constitute unjust discrimination' ".

It has been repeatedly held by the Supreme Court, and lower federal courts, that the mere existence of a preference or advantage in a particular case is not enough to bring it within the prohibition of section 3. Some of the cases so holding are:

Texas, etc. R. Co. v. *Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940.

Interstate Commerce Commission v. *Alabama Midland R. Co.*, 168 U. S. 144, 42 L. ed. 414.

Gamble-Robinson Commission Co. v. *Chicago & N. W. Ry. Co.*, 168 Fed. 161.

Union Pac. R. Co. v. *Updike Grain Co.*, 178 Fed. 223, affirmed 222 U. S. 215, 56 L. ed. 171.

Interstate Commerce Commission v. *Chicago Great Western Ry. Co.*, 141 Fed. 1003, affirmed 209 U. S. 108, 52 L. ed. 705.

In *Manufacturer's Ry. Co.* v. *U. S.*, 246 U. S. 457, 62 L. ed. 831, the Supreme Court held that section 3 did not denounce every preference and prejudice, but only those that are undue or unreasonable.

It has also been held that the question of what constitutes an undue preference or advantage under section 3 is not a question of law, but one of fact. In this connection, the Supreme Court stated in *Texas and P. R. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940 (see page 947 of the law edition):

"The 3d section forbids any undue or unreason-

able preference or advantage in favor of any person, company, firm, corporation, or locality; and as there is nothing in the act which defines what shall be held to be due or undue, reasonable or unreasonable, such questions are questions, not of law, but of fact. The mere circumstance that there is in a given case a preference or an advantage does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act. Hence it follows that before the Commission can adjudge a common carrier to have acted unlawfully, it must ascertain the facts; and here again we think it evident that those facts and matters which carriers, apart from any question arising under the statute, would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered by the Commission in forming its judgment whether such preference or advantage is undue or unreasonable. When the section says that no locality shall be subjected to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, it does not mean that the Commission is to regard only the welfare of the locality or community where the traffic originates, or where the goods are shipped on the cars. The welfare of the locality to which the goods are sent is also, under the terms and spirit of the act, to enter into the question."

This quotation is particularly pertinent where the court refers to the duty of the Commission to ascertain the facts. As we shall later indicate, there are lacking, due to failure of proof or otherwise, certain fundamental facts which must exist in order to prove a violation of section 3.

It has also been repeatedly held that, in determining whether an alleged preference is undue or unreasonable, the dissimilarity of the circumstances and conditions affecting the two contrasted classes of transportation are to be taken into consideration and may prevent the alleged preference from being undue or unreasonable. These decisions are:

Texas & P. R. Co. v. *Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940.

Wight v. *U. S.*, 167 U. S. 512, 42 L. ed. 258.

U. S. v. *Atchison, T. & S. F. R. Co.*, 234 U. S. 476, 58 L. ed. 1408.

The foregoing general discussion of some phases of the construction of section 3 by the Supreme Court has a very important bearing upon the questions involved in complainant's allegation of undue prejudice under section 3. By way of summary, it may be said that the foregoing cases hold:

1. Every preference or advantage is not prohibited.

2. Only undue or unreasonable preferences or advantages are prohibited.

3. Whether a preference or advantage is undue is a question of fact.

4. The Commission must decide the question based on evidence of existing facts.

5. Facts must show a substantial identity of circumstances and conditions in order for a preference or advantage to be undue or unreasonable.

These principles should be borne in mind in the discussion which is to follow.

COLLECTION OF YARDAGE CHARGES NO VIOLATION OF SECTION THREE.

We do not know if complainant will seriously contend that, because it has been compelled to pay the Chicago Union Stock Yards a yardage charge in connection with its inbound shipments of live stock, there has been a violation of section 3. It is true that intervener did not pay, and never has paid, any yardage to said stock yards company. It is likewise true that none of its live stock moves through the Chicago Union Stock Yards (T. 311). The record clearly shows why that is. If its shipments were consigned to the stock yards, it would be necessary to reload them and switch them to its plant, involving substantial additional expense and delay (T. 312). It would be both impractical and illegal to drive the hogs along Halsted Street two and one-half miles north from the stock yards to intervener's plant. This is clearly established in the record (T. 312, 313, 314) and there is no testimony to the contrary.

The record shows that there is an ordinance in effect in the city of Chicago prohibiting the driving of more than five head of cattle along any public street. The word cattle has two meanings, one a broad meaning including all species of live stock, and the other a narrower meaning restricted to animals of the bovine family. In statutes or ordinances of the type referred to, the word cattle is usually held to mean all live stock (see *Mathews* v. *State*, 47 S. W. 647; *State* v. *Brookhouse*, 38 Pac. 862; *State* v. *Lawn*, 80 Mo. 241).

Even if this construction were not proper, another ordinance prohibits any and all live stock running loose on any public street. Loose, according to Webster's New International Dictionary, means, "not fastened." Obviously, it would be unlawful to drive hogs or other live stock along a public street in Chicago.

On shipments of complainant, the record shows that they are unloaded by the Chicago Union Stock Yards Company in and by means of facilities owned by said company and by employes of said company. Intervener has supplied its own facilities consisting of an unloading platform 11 feet 8 inches wide and 496 feet 6½ inches long. The platform is closed in at the north end and has sides consisting of a series of sliding slatted doors. Eleven cars can be unloaded on one side and twelve cars on the other (T. 317). The stock is unloaded by employes of intervener and driven to the scales by these same employes (T. 317).

Complainant's shipments are weighed by employes of the Chicago Union Stock Yards Company on scales owned by that company (T. 42). Intervener owns its own scales and does its own weighing (T. 317).

Complainant's live stock is yarded by the Chicago Union Stock Yards Company by its employes and in its pens (T. 40 and 41) with few exceptions. Intervener's live stock is driven by its own employes to holding pens, owned and maintained by it (T. 317).

The record is full of evidence that the Chicago Union

Stock Yards Company performs a substantial amount of service in connection with complainant's shipments of live stock. This was frankly admitted by complainant. Its only contention was that the service performed was really for the railroads and should be covered by the line-haul rate paid by complainant plus $2.70 per car.

On the contrary, the record shows that no firm or corporation, including all the railroads entering Chicago, the Chicago Union Stock Yards Company, and Chicago Junction Railway Company, furnish any yarding, unloading, weighing, driving or holding of live stock in pens after unloading in connection with any live stock received by intervener at its plant (T. 318). Not even the Chicago, Burlington & Quincy Railroad Company performs any service of yarding, unloading, weighing, driving or holding of live stock for intervener (T. 318).

It is hard to imagine a greater lack of similarity of circumstances and conditions. In fact, they are absolutely dissimilar. Applying the facts to the positive requirements of a violation of section 3, as set forth by our Supreme Court in the cases hereinbefore cited, it will be found that there is absolutely no evidence of a violation of section 3, in respect to the charges for yarding, weighing, etc., by the Chicago Union Stock Yards Company.

REFUSAL OF LINE-HAUL CARRIERS TO ABSORB CHICAGO JUNCTION SWITCHING CHARGE NOT A VIOLATION OF SECTION THREE.

Under a previous heading "Essentials of a Case of Violation of Section 3", we have pointed out from decisions of the United States Supreme Court and other federal courts, the absolute obligations of a complainant in a section 3 case. Under that heading we summarized these essentials as follows:

1. Every preference or advantage is not prohibited.

2. Only undue or unreasonable preferences or advantages are prohibited.

3. Whether a preference or advantage is undue is a question of fact.

4. The Commission must decide the question based on evidence of existing facts.

5. Facts must show a substantial identity of circumstances and conditions in order for a preference or advantage to be undue or unreasonable.

We shall now discuss the facts as presented at the hearing and point out particularly wherein these facts fail to show any preference or advantage and that, in connection with any alleged preference or advantage, there is no such substantial identity of circumstances and conditions as to warrant a finding of a violation of section 3.

In that connection it must be borne in mind that it is not the duty of either the defendants or the in-

tervener to make out a case for complainant. The burden rests solely upon complainant. The rule is tersely stated by the Commission in *Biggs Boiler Works* v. *Erie R. Co.*, 171 I. C. C. 712, 714, as follows:

> "The burden of proof rests on complainant to establish the existence of undue prejudice and preference."

We believe that the record shows that complainant has failed to make out a case of a violation of section 3, in so far as a comparison of movements to its plant with movements to the plant of intervener are concerned, for the following reasons:

1. Complainant is located on a purely switching line and intervener is an industry on a line-haul carrier.

2. Complainant is located at the Union Stock Yards, along with many other packers, all being adjacent to the Union Stock Yards & Transit Company, while intervener is two and one-half miles away in a different district.

3. Complainant desires free switching, spotting and holding of cars involved in a plant layout of privately owned tracks while intervener gets only a delivery on the tracks of the Chicago, Burlington & Quincy Railroad, on which intervener is an industry.

4. Complainant does not either own or have available facilities for unloading, weighing and handling incoming live stock while intervener owns ample facilities.

5. Operating conditions connected with the di-

rect delivery of live stock to complainant's plant are much more difficult than to intervener's plant.

6. Absorption of charges in connection with direct delivery to complainant's plant and the resultant direct delivery would demoralize live stock deliveries to the stock yards district of Chicago, while no such situation exists in connection with deliveries to intervener's plant.

7. There is no proof of the amount of the absorption by line-haul carriers in deliveries to intervener's plant.

8. Complainant has made no proof of damage by reason of the alleged violation of section 3.

9. The Commission has already recognized the substantial difference between the location of complainant and intervener.

We shall now briefly discuss each of these reasons, pointing out wherein the record supports these reasons and the conclusions naturally resulting therefrom.

1. Complainant Is Located on a Purely Switching Line and Intervener Is an Industry on a Line-Haul Carrier.

There should be no dispute of this point as the record clearly shows that complainant is located solely on the rails of the Chicago Junction Railway Company (T. 80). Intervener is an industry located solely on the tracks of the Chicago, Burlington & Quincy Railroad Company (T. 311). The Chicago Junction Railway Company does not participate in any movement of cars to the plant of intervener (T. 140).

2. Complainant Is Located at the Union Stock Yards, Along With Many Other Packers, All Being Adjacent to the Union Stock Yards & Transit Company, While Intervener Is Two and One-half Miles Away in a Different District.

The record shows that complainant is one of many packers located adjacent to the Union Stock Yards & Transit Company. Mr. O'Brien enumerated seventeen packing companies, all located similarly to complainant, both adjacent to the Union Stock Yards & Transit Company and on the rails of the Chicago Junction Railway Company (T. 277). This is the point where probably the greatest live stock market in the world is located. Necessarily, any system of transportation which has been evolved for the handling of live stock into and out of a market such as the Chicago live stock market, including the packing companies which are adjacent to and form a part of said market, must be so constructed as to furnish the type of service demanded by probably the most perishable type of traffic handled by the railroads. The record shows that the present system of receiving at the unloading docks of the Union Stock Yards & Transit Company all live stock consigned to either commission men or packers located in or adjacent to said stock yards, has been in existence since 1865 (T. 249). Mr. O. T. Henkle, Vice President and General Manager of the Union Stock Yards & Transit Company, gave a history of the development of this method of handling live stock (T. 209-226, inclusive). As indicated by this testimony of Mr. Henkle, the complainant desires to overturn a method of receiving live stock which has

been a part of and essential to the growth and operation of the Chicago live stock market. In this connection the complainant may state that its business is so small as to make no particular effect upon the method of handling live stock into the Chicago live stock market. It is doubtful if this is true, but even if it were, that is not the question which is here before the Commission. As we shall indicate in point 6 which will follow, there are many other packers receiving live stock direct under identical circumstances applicable to complainant and if complainant finds it of advantage to receive this live stock direct at its plant, and it has stated it intends to do so in the event the carriers absorb the switching charges, there will be many other larger packers who will demand the same thing.

The present method of handling shipments of live stock to the plant of intervener is likewise a situation which has existed for many years. Witness on behalf of the intervener testified that to his own knowledge the plant of the Omaha Packing Company has been in its present location for from fifty-five to sixty years (T. 318). He also testified that this plant had always received its live stock direct at its plant without going through the Union Stock Yards (T. 311).

As a matter of fact, we believe the plant of intervener existed possibly before the opening of the Union Stock Yards & Transit Company. That was probably the reason why intervener's plant was located some miles away

from the live stock market. During all that time it has been an industry on the line of the Chicago, Burlington & Quincy Railroad Company, receiving its live stock direct on the rails of that company. During the same period of years the packing companies located adjacent to the Union Stock Yards & Transit Company have been receiving their live stock at the unloading docks of said Stock Yards Company. Certainly, the history in connection with the facts alone finds ample justification for the finding that there is no substantial identity of circumstances and conditions. Delivery to intervener's plant, in a different section of Chicago, is obviously substantially dissimilar to delivery to any part of the largest live stock market in the world.

3. Complainant Desires Free Switching, Spotting, and Holding of Cars Involved in a Plant Layout of Privately Owned Tracks While Intervener Gets Only a Delivery on the Tracks of the Chicago, Burlington & Quincy Railroad, on Which Intervener Is an Industry.

This is not a case where the defendant carriers are performing for another shipper the identical service requested by complainant. The record shows that in the contemplated direct delivery to complainant, use will be made of a system of purely private industrial tracks, the sole property of the complainant. In fact, an exhibit was placed in the record, exhibit No. 2, upon which these tracks are shown. It conclusively appears that these tracks are owned by complainant (T. 112). The record also shows that, in the performance of the service necessary in direct delivery of live stock cars to the

plant of complainant, it would be necessary for the Chicago Junction Railway Company to spot cars (T. 123, 268, 278, 279), use the Chicago Junction tracks for storage (T. 128-129), and perform the service of feeding, watering and resting live stock (T. 130). For example, in describing the manner of making the delivery contemplated by complainants, witness O'Brien testified that the Chicago Junction Railway Company would remove such cars as might interfere, would place the car at the unloading platform and chute designated for that particular kind of stock, complete its delivery, and then remove the empty car as soon thereafter as possible. It would be necessary to make such switches as were necessary. If there were more cars than the track would hold at one time (the record shows the track could handle but very few), there would be additional switching, cutting and spotting (T. 268). Again Mr. O'Brien testified that the entrance to the two tracks which the complainant contemplated using for unloading live stock is from the east whereas the traffic approaches from the west and the so-called tail track room is quite small being only five or six car-lengths. This would be a most awkward, expensive and poor switching arrangement, and one that no one would undertake to lay out for the prompt, proper and efficient handling of live stock (T. 278-279). As stated by Mr. O'Brien, the service could be performed if they stayed as it long enough (T. 279).

By way of contrast the record shows that intervener is located directly adjacent to the tracks of the Chicago,

Burlington & Quincy Railroad Company. There is absolutely no spotting or other intraplant service performed for intervener while it is quite evident that the absorption which complainant desires in this proceeding is the absorption of charges for services which will include intraplant spotting and switching service upon the industrial plant lay-out of complainant.

In *Tide Water Oil Co.* v. *Director General*, 58 I. C. C. 92, the Commission held there was no undue prejudice in refusing to absorb charges of an industrial switching road for switching and spotting cars at complainant's plant, although defendant did absorb the charges of this switching road on certain independent industries served by it. This latter absorption did not involve any intraplant spotting, while the service performed for complainant did involve intraplant spotting.

This case is very much in point in this proceeding. The record shows that intervener is on the rails of the Burlington and there is absolutely no intraplant spotting involved. If the direct deliveries requested by complainant were made by the Chicago Junction, it would require considerable intraplant spotting; in fact, the record indicates that the spotting and switching involved, and which the charge of the Chicago Junction would cover, is quite complicated and complex.

4. Complainant Does Not Either Own or Have Available Facilities for Unloading, Weighing and Handling Incoming Live Stock While Intervener Owns Ample Facilities.

Still another difference in the circumstances and conditions surrounding the delivery of live stock direct to complainant as compared with delivery direct to intervener is in respect to the facilities available for this service. The record shows a total lack of such facilities at the plant of complainant. Complainant has no unloading dock or platform (T. 82, 83); it has no scales at its Chicago plant (T. 84); it has no runway for the driving of live stock to its holding pens (T. 82); and the tracks upon which it contemplates the unloading of its live stock are now leased to the Mather Stock Car Company (T. 206). These tracks are now used for the storage of cars (T. 113).

On the other hand, the situation at the plant of intervener is entirely different. Intervener has provided, at its own expense, an unloading platform about 11 feet, 8 inches wide, and about 496 feet 6½ inches long. The platform is closed in at the north end and has sides consisting of a series of sliding slatted doors. This permits cars being spotted at any place on the tracks and an opening being made at the doors. At the south end of the platform intervener maintains a first class standard live stock scale, quite similar to scales maintained by public stock yards. The live stock is driven from the unloading platform over the scales by employes of intervener into

holding pens maintained by it (T. 317). Again, we find a substantial difference in circumstances and conditions.

5. Operating Conditions Connected With the Direct Delivery of Live Stock to Complainant's Plant Are Much More Difficult Than to Intervener's Plant.

Necessarily, in consideration of the question of whether or not failure to absorb switching charges is undue prejudice under section 3, the question of the comparative difficulty of the operating conditions involved in the two transportation movements is quite important. We contend that before complainant can prove any undue prejudice of itself or undue preference of intervener in respect to the absorption of switching charges, complainant must prove that there is a substantial similarity in the operations and conditions under which the live stock is handled to the plant of intervener as compared with the movement to the plant of complainant. This similarity must exist from the time the cars leave the hands of the road-haul carriers in their break-up yards.

In *Omaha Live Stock Exchange* v. *C. M. & St. P. Ry. Co.*, 69 I. C. C. 688, the Commission had before it a complaint which alleged among other things that the failure of the defendants to absorb the entire amount of the charges assessed by the terminal carrier for switching carload shipments of live stock to or from the public stock yards at Omaha was prejudicial to complainant and unduly preferential of competitive markets at other named points where defendants absorbed all switching charges on live stock to and from said public stock yards.

The Commission, in holding that there was no proof of a violation of section 3, stated on page 693:

> "The record discloses no such substantial similarity in operations and conditions under which live stock is handled at Omaha and at the other markets that a finding of undue prejudice against Omaha can be predicated thereon. There is some testimony of a very general nature and expressions of opinion that conditions are similar, but the location of the public stockyards at the alleged preferred points and the physical operations incident to shipping live stock to and from them are not shown in any degree of detail."

In *Aurora, Elgin & Chicago R. R. Co.* v. *I. H. B. R. R. Co.*, 51 I. C. C. 331, the complainant, an electric line, was seeking relief from defendant's charges for switching cars to the connection with complainant's line. It was alleged that the rates charged violated sections 1, 2 and 3 of the Act. The violation of the latter section was because it listed complainant as an industry and treated it differently from other common carriers. After reviewing the evidence showing how expensive and difficult it was to perform the switching involved, and the larger volume of traffic in other interchanges, as compared with the amount interchanged with complainant, the Commission stated:

> "Under the circumstances shown of record the complaint should be dismissed. The difference in charges is justified by the difference in circumstances affecting the cost of services rendered in connection with complainant's traffic and that of other connecting lines, respectively."

Arizona Packing Company v. *Director General*, 74 I. C. C. 387, involved an alleged violation of section 3 because the defendants failed to absorb switching charges at complainant's plant at Cactus, while absorbing such charges on shipments to packing plants located at the Union Stock Yards of Phoenix, which it was alleged was a competitive point. In respect to this allegation of undue prejudice the Commission stated (see page 388):

> "The services rendered in connection with such shipments are essentially dissimilar from those rendered at complainant's plant."

That case is just the reverse of the present case. There, complainant was located away from the stock yards and here complainant is at the stock yards. The evident dissimiiarity, however, exists in either instance.

The only evidence offered by complainant was of the type condemned by the Commission in *Omaha Live Stock Exchange* v. *C. M. & St. P. Ry. Co., supra*, it being "testimony of a very general nature and expressions of opinion that conditions are similar". It is true complainant offered as a witness a man who had considerable experience in the operation of railroads. However, he had not been connected with any railroad since 1925 and gave absolutely no description of the movement of traffic from the break-up yards of any line-haul carrier to the interchange with the Chicago, Burlington & Quincy Railroad Company and, thence, over that line to the plant of intervener. Apparently, the extent of his investigation of that phase of the operation was to make

a personal examination of the tracks at intervener's plant. He told about the two tracks which were adjacent to the plant of intervener, stating in respect to that, "a very nice lay-out" (T. 180). The balance of his testimony respecting the operations to intervener's plant was most general and purely opinions not backed up by any investigation or statement of facts or based upon any prior knowledge he may have had of the situation. Examples of some of these statements are as follows:

> "Well, after the Chicago, Burlington & Quincy gets to the plant with their transfers in every instance the operation is simple enough. They run through a congested territory which is located down in the so-called lumber district and quite an operating problem to get down there and back. A lot of grade crossings, tracks on the streets" (T. 181).

Again he stated:

> "In making deliveries from the Chicago, Milwaukee, St. Paul & Pacific, for instance, to the Chicago, Burlington & Quincy of stock for the Omaha Packing Company, they are liable to run across the same delays we would run across" (T. 198).

We have referred above to all the testimony there is in the record showing the details of the operations involved in the switching movement from break-up yards of line-haul carriers to the plant of intervener. It certainly is most general in character and it is difficult to see how such general, inconclusive and speculative testimony could possibly be the basis of any finding of violation of a provision of the Interstate Commerce Act. We believe that the record clearly justifies a finding that

there is no violation of either section 2 or section 3 of the Interstate Commerce Act, if for no other reason, because the complainant has failed to prove substantial identity of operating conditions in respect to the two movements here before the Commission.

However, the lack of proof of the details of the operations in a movement to intervener's plant is not the sole reason why there is no proof of a substantial identity of operating conditions. There was considerable and detailed proof of the operating conditions involved in a movement to complainant's plant. The witness produced by complainant testified, in relation to the switching at the plant "It is not quite as simple as the Omaha situation" (T. 183). In respect to the movement of live stock into the stock yards district, he testified that he had never seen anything more congested than the stock yards district at the time live stock was coming in (T. 187). He further testified that if a train stopped before getting to the unloading chutes of the Union Stock Yards & Transit Company, it would be quite a serious matter (T. 188). He further testified that from a point perhaps six or eight miles from the stock yards, stock destined to complainant's plant would have to pass through a very congested district and any stops to switch out cars within that six or eight miles would delay a great many trains and would be a very serious matter (T. 190). He further testified, "It would be a very difficult matter to switch those cars out" (T. 191). He further testified that if other packers in the same vicinity would demand

the same service, "That would be quite a problem, would be another problem" (T. 192).

Mr. O'Brien, General Manager of the Chicago Junction Railway Company further testified as to the difficulties involved in moving live stock direct to the plant of complainant. In that connection he stated, "It would be awkward and fruitful of delay, and expensive more than usual,—more than the ordinary handling of the business" (T. 249). He further testified in relation to the tracks of the Chicago Junction in the stock yards district, "I do not know of any place in Chicago where we find so many so-called foreign line crews moving over the tracks of another company" (T. 251). Further in connection with this district, he stated:

> "It is closely built up, yes sir, and a highly developed industrial territory. We do move our traffic promptly but because of the intense industrial development there are a great many so-called cross movements from one district to another, and necessarily so; but the principal movement of traffic must be maintained at a high order, to avoid congestion and delay. We have that provided today in the present manner of conducting our business. That is the result of this present method of handling live stock has developed over a period of 66 years" (T. 251).

Mr. O'Brien also testified that, while it would not be impossible to deliver cars of live stock direct at the plant of complainant, providing they were equipped with proper unloading facilities, it would be very impractical

(T. 255). Mr. O'Brien further testified that the handling of live stock to the plant of complainant in the manner contemplated would be very expensive, very difficult and would undoubtedly affect the other perishable freight business of the Chicago Junction (T. 264).

As we shall indicate under point No. 6, which immediately follows, further operating difficulties would probably occur due to the fact that all other packers located in the stock yards district would demand the same sort of service here sought by complainant.

Not only do the facts before the Commission utterly fail to prove any similarity of operating conditions respecting the two switching movements but all the implications are to the contrary. The movement involved to intervener's plant has been going on for years, apparently, without difficulty. As pointed out above, the basis of the charges now in existence to the plant of intervener were prescribed by the Commission in *Omaha Packing Company* v. *C. M. & St. P. Ry. Co.*, 37 I. C. C. 378. From these facts it would be logical to assume that the movement of live stock direct to the plant of intervener is no more difficult than the movement of any other freight to industries on the line of the Chicago, Burlington & Quincy Railroad Company or any other line-haul carrier. This method of handling has grown up through years and, no doubt, the facilities in the operations of the various carriers have been adapted to that method of handling. The contrary is decidedly true in respect to the

contemplated direct movement to the plant of complainant. The entire transportation system in and about the stock yards and adjacent packing plants has been constructed on the basis of delivering all live stock direct to the unloading chutes of the Union Stock Yards & Transit Company. According to the testimony in this case, any other method of handling would absolutely demoralize transportation in or about the stock yards. In view of these two situations, the conclusion is inevitable that there is no substantial similarity of circumstances and conditions respecting the operations in deliveries of live stock direct to the plant of complainant, as compared with deliveries of live stock direct to the plant of intervener.

6. Absorption of Charges in Connection With Direct Delivery to Complainant's Plant and the Resultant Direct Delivery Would Demoralize Live Stock Deliveries to the Stock Yards District of Chicago, While No Such Situation Exists in Connection With Deliveries to Intervener's Plant.

Another reason why the circumstances and conditions surrounding the transportation service being rendered to, or requested by, complainant, and that being rendered to intervener, is because the absorption of switching charges in the stock yards district on live stock would completely demoralize the present system of handling live stock. As indicated above, the present method of handling live stock in the stock yards has been in force since 1865. All of the railroad facilities in and about the stock yards have been constructed to conform with the practice of delivering all incoming live stock direct

to the loading and unloading chutes of the Union Stock Yards & Transit Company.

Any finding by the Commission of violation of section 3 must have as its basis a finding that the circumstances and conditions surrounding the transportation of incoming live stock in the stock yards is substantially similar to the circumstances and conditions surrounding the delivery of incoming live stock at the plant of intervener. Because complainant is a part of a distinct district, known as the stock yards district, it naturally must partake of the advantages or disadvantages of being so located. In determining whether there is a substantial identity of circumstances and conditions, the Commission should not confine itself to the consideration of complainant alone but must also consider the other shippers engaged in like business and located in relatively the same position as complainant.

The record shows that complainant is not the only packer in the stock yards district which receives direct shipments of live stock. Practically all of them receive direct shipments (T. 260). In practically every train of live stock coming into the stock yards there are cars consigned direct to packers (T. 280).

Another witness testified that there are eight or ten others besides complainant who receive direct shipments (T. 286). One of these shippers receives nine times as many hogs direct as complainant, and another ten times as many, and, still another, four times as many (T. 287).

For the first six months of 1931, 1,425,892 hogs were received at the stock yards, consigned direct to the packing houses (T. 288). The total number of hogs received during that same period at the stock yards was 4,028,544 (T. 289). All of these packers to whom this live stock was consigned are located immediately adjacent to the stock yards and on the rails of the Chicago Junction Railway Company (T. 290).

According to the witness for complainant, the situation with respect to the delivery of live stock direct to all the other plants in the same neighborhood is identical to the situation with respect to the delivery of live stock to complainant (T. 108). Another witness testified that Swift and Company received direct shipments at the Union Stock Yards in substantial quantities. It received the same services and paid the same charges respecting these shipments as did complainant. There is no difference between the handling and the charges on Swift and Company's shipments and those of complainant (T. 319).

The testimony in the record is that, if receipt of live stock direct to the packing plant of complainant is of advantage to it, it will be of advantage to every one of its competitors. They will all have to have the same service (T. 270). This, according to the testimony of the General Manager of the Chicago Junction Railway Company, would increase the difficulties of operation to the point of making such deliveries impossible. In answer

to a question as to whether the delivery direct to the packers of their direct shipments would be possible, Mr. O'Brien stated:

> "I view with a great deal of alarm any thought of that kind, because I know from the experience that I have had the difficulties already encountered in handling these heavy runs of live stock, and necessarily I can only visualize or try to imagine what the conditions would be that we would have to deal with on this new proposed basis; and having regard for the fact that all of the territory has been built up on the old basis of handling, I can conceive of very great difficulties and changes in facilities involving possibly the tearing down of immense buildings, and the construction of new facilities adequate to take care of the peak requirements, that make of this something that—well, it impels me to say that it is almost impossible, except at an enormous expenditure of money that would not be at all justified in my opinion" (T. 256).

Still again Mr. O'Brien testified that making direct shipments to all of the various firms which receive direct shipments of live stock would be a task beyond anything with which he had ever had to deal (T. 260).

The figures quoted above indicate that approximately 35 per cent. of all of the hogs received at the Union Stock Yards & Transit Company for the first six months of 1931 were consigned direct to the packing companies located adjacent to the stock yards and all of them are industries on the rails of the Chicago Junction Railway Company.

Certainly, in view of the above situation, no one could assert that the circumstances and conditions surrounding the delivery of live stock to either complainant, or any other packing company located in the stock yards district, on the rails of the Chicago Junction Railway Company, is even remotely, let alone substantially, similar to the receipt of live stock by rail at the plant of intervener, located, as it is, two and one-half miles north of the stock yards district, on the rails of the Chicago, Burlington & Quincy Railroad Company and away from all of the influences and advantages of being located in and a part of probably the greatest live stock market in the world. Even assuming the switching haul is the same, and there is absolutely no proof of that fact, there is no more similarity between the circumstances and conditions surrounding intervener's receipt of live stock by rail and the receipt of live stock by rail within the stock yards district than if intervener were located entirely away from Chicago.

We, therefore, respectfully submit that the Commission must find that there is no substantial identity of circumstances and conditions as between complainant and intervener.

7. There Is No Proof of the Amount of the Absorption by Line-Haul Carriers in Deliveries to Intervener's Plant.

While there is much testimony in the record that the amount of absorption of switching charges in cases of direct shipments to the plant of the complainant would

be $12.00 per car, there is absolutely no testimony as to the specific amount, if any, the various line-haul carriers, other than the Chicago, Burlington & Quincy Railroad Company, absorb in connection with shipments of live stock made to the plant of intervener. The record shows that intervener pays the Chicago rate, plus $2.70 per car. The record further shows that this rate was prescribed by the Commission in *Omaha Packing Company* v. *C. M. & St. P. Ry. Co.*, 37 I. C. C. 378. The record does not, however, show in what manner this charge is divided, whether the Chicago, Burlington & Quincy Railroad Company only gets $2.70 or whether some greater or lesser amount is paid. A showing of the exact amount of the switching absorption is one of the primary essentials of the case of complainant in making out a violation of either section 2 or section 3. The record does not even show what the switching charge of the Chicago, Burlington & Quincy Railroad Company would be for that haul or any other switching movement. In failing to make any proof whatsoever, complainant has failed in one of the first essentials of its case and the Commission should accordingly find that there is no violation of either section 2 or section 3 in so far as intervener is concerned.

8. Complainant Has Made No Proof of Damage by Reason of the Alleged Violation of Section Three.

There was little or no evidence offered as to the damage done to complainant by reason of the alleged undue preference. The only witness, who testified at all on the

subject, stated that complainant and intervener both sold some of the same commodities in the same territory in Chicago (T. 202). The extent of the competition was not shown. It was not shown that intervener was able to sell cheaper or undersold complainant or that complainant was forced to sell below its normal price by reason of any advantage which intervener is alleged to have.

The record shows that there are at least seventeen other packers in Chicago, many of which are much larger than either complainant or intervener. The witness for complainant stated that there is general competition here among all packers (T. 202). No attempt was made by any witness to go into the question of marketing products in Chicago and how prices were fixed, etc. Obviously, most of complainant's competition comes from packing companies located at the stock yards and it is extremely doubtful if intervener's alleged advantage is really working any damage to complainant. The other packers all pay the same charges on direct shipments that complainant pays and none of them are claiming any violation of sections 2 or 3. Furthermore, there is no proof that an order which would leave it to the option of the railroad defendants to cause intervener to pay some switching charges would be of any substantial help to complainant. Quite apparently, the only relief complainant is seeking is a decrease in its charges on direct shipments. It now has to pay certain charges at the Union Stock Yards & Transit Company, and if shipments are made direct to complainant's plant, it would

have to pay certain charges to the Chicago Junction Railway Company. It desires to have these removed. That is apparently the only thing which will help complainant.

The Commission has held in a number of cases that a complainant must prove that it suffers an injury and that it will cease if the prejudice is removed, regardless of the manner of removal.

In *Sioux City Grain Exc.* v. *Chicago, B. & Q. R. Co.*, 173 I. C. C. 506, 510, involving alleged violation of section 3 because of non-absorption of switching charges, the Commission quoted with approval the following quotation from *Duluth Chamber of Commerce* v. *C. St. P. M. & O. Ry. Co.*, 122 I. C. C. 739, 742:

> "But to prove that this discrimination results in a violation of section 3 it must be shown that complainant suffers injury by reason of the discrimination, and that this injury will cease if the discrimination is removed, regardless of the manner of its removal."

In *Hawley Pulp & Paper Co.* v. *Aberdeen & R. R. Co.*, 168 I. C. C. 747, 749, the Commission stated:

> "Although complainant presented testimony to the effect that the granting of this stop-in-transit arrangement to its competitors in the East might enable the latter to ship mixed carloads to markets which they might not otherwise be able to reach, thus intensifying competition, and to obtain thereon the benefit of a lower basis of rates than it enjoyed on similar shipments, defendants urge that this evi-

dence is not sufficient to show undue prejudice. Complainant failed to cite any specific instance where it had lost business either by reason of defendants' failure to accord it the transit service sought or the granting of such service to its eastern competitors; nor has it shown that its competitors were thereby enabled to control any markets or the prices it received for its products. Preference to be unlawful must be undue, and prejudice to one shipper to be undue must be such that it shall be a source of positive advantage to another. *Indianapolis Board of Trade* v. *B. & O. R. R. Co.*, 129 I. C. C. 675. Here no such showing has been made. Neither has complainant shown that the transit service it seeks is a commercial necessity. *Ohio Farm Bureau Federation* v. *N. & W. Ry. Co.*, 136 I. C. C. 602. The mere showing that complainant's competitors are accorded lower aggregate charges on some westbound mixed-carload transcontinental shipments than complainant pays on like shipments eastbound is not sufficient to support either allegation of the complaint."

In view of the above decisions, the Commission should find that complainant has failed to prove that the alleged preference to intervener has damaged complainant, and, therefore, it has failed to make out a case under section 3.

9. Commission Has Already Recognized Substantial Difference Between the Location of Complainant and Intervener.

The Commission has already recognized that there is a substantial difference in the circumstances and conditions between complainant and intervener. Intervener filed a complaint some ten or eleven years ago, attacking

the practice of the carrier's of loading and unloading live stock at the Chicago Union Stock Yards, while refusing to do it at intervener's plant. This practice was alleged to violate section 3 of the Act. Other packers, in other cities, located away from the public market, also filed similar complaints which were consolidated with intervener's complaint. The case is reported in *Omaha Packing Company* v. *A. T. & S. F. Ry. Co.*, 66 I. C. C. 44. In discussing the relative location of these plants, the Commission stated (see page 46):

> "The packing plants of the complainants are widely scattered throughout the country and respectively served by one or more of the defendant carriers. Adjacent to each plant are stock pens, equipped with chutes and other necessary facilities, into which inbound shipments of live stock are unloaded and from which the animals are transferred to the plants for slaughter. These stock pens are adjuncts of the plants, maintained by or for the benefit of the latter, and are neither terminal facilities of the carriers nor otherwise public in any sense. Some of the plants and adjacent pens are located at points at which there are no public stockyards, as the latter term is defined, although it was suggested at the argument that at more or less of them the carriers may have provided unloading facilities not falling within the definition. Several of the plants are in New England, in which region there is but one public stockyard, located at Brighton, Mass., and used as a market for milch cows, not for the handling of beef cattle intended for slaughter. At other points covered by the complaints public stockyards are maintained, adjacent to which are

packing plants with which complainants are said to come more or less into competition in the purchase of live stock and in the sale of the products. A notable instance is Chicago, where the complainant Omaha Packing Company operates a packing plant and adjacent private pens, situate a considerable distance from the public stockyards operated by the Union Stock Yard & Transit Company and adjacent to which are the plants of some of the principal packers of the country. Another is Cleveland, Ohio, where the complainant in No. 12131 operates a plant near the public Cleveland Union Stock Yards, as do certain competitors, and operates another, with adjacent unloading pens, some 3 miles distant. Another situation is that a public stockyard is maintained at East St. Louis, Ill., while at St. Louis, Mo., having no such facility, one of the complainants and another large concern operate packing plants and accessorial unloading pens."

In holding that the practice of loading and unloading live stock at public markets, and refusing to do it at packing plants located away from public markets, was not a violation of section 3, the Commission stated (see page 49):

"We are also of opinion that the differentiation of the traffic covered by the amendment does not result in unjust discrimination or undue or unreasonable prejudice or preference; and we have more than once emphasized the distinction between mere discriminations or differences in transportation charges and services and those which are unjust or undue and unreasonable. Indeed, in obeying the amendment to the act the carriers do not load and unload live stock at public stockyards for the benefit

> of *certain* shippers or consignees; the service is available to *all* shippers or consignees who desire it. Whatever the practical advantages may be, the propinquity of certain packers is merely their good fortune, for which the carriers are not chargeable; and the latter are under no duty to make compensating concessions to competing packers less fortunately situated. *There is, in fact, an advantage to the complainants in having their inbound shipments placed alongside their plants in lieu of public terminal delivery''* (italics ours).

Complainant's plant is one of the plants located adjacent to the Chicago Union Stock Yard & Transit Company and referred to, as a group, by the Commission on page 47. Therefore, the Commission clearly found in that case that there was a substantial difference of circumstances and conditions and that obviously there may be advantages one way or the other. In that case the advantage lay with the packers located adjacent to the Chicago Union Stock Yards in that they had their live stock unloaded and loaded without charge. The Commission decided that this was but an advantage of location, stating:

> ''Whatever the practical advantages may be, the propinquity of certain packers is merely their good fortune, for which the carriers are not chargeable; and the latter are under no duty to make compensating concessions to competing packers less fortunately situated. *There is, in fact, an advantage to the complainants in having their inbound shipments placed alongside their plants in lieu of public terminal delivery''* (italics ours).

In other words, "every cloud has a silver lining." We now find there are both disadvantages and advantages in being located away from a public stock yards. If the disadvantages are not "undue or unreasonable" because they are caused by location, likewise the advantages are not "undue or unreasonable" for the same reason.

The advantage, if any, in this case certainly is solely one of location and because intervener is an industry located immediately adjacent to the right of way and tracks of the Chicago, Burlington and Quincy R. R. Company, while complainant is located adjacent to the right of way of a purely switching railroad. Obviously there may be many advantages in the latter location which are not enjoyed by intervener, but there is one disadvantage which cannot be overcome in being located on a purely switching road, and that is that in movements over said switching road, necessarily, switching charges are involved. Furthermore, because it has no line haul, it is in no position to take advantage of reciprocal switching arrangements. This was recognized by the Commission in *Omaha Packing Co.* v. *C. M. & St. P. Ry. Co.*, 37 I. C. C. 378, 380, where the Commission stated:

> "The stockyards are situated on a switching road that cannot participate in reciprocal switching, while complainant's plant is located on the rails of a line carrier which serves 302 industries in Chicago."

The Commission has repeatedly recognized that advantages or disadvantages of location are not undue or unreasonable under sections 2 or 3 of the Act. For ex-

ample, in *Port Arthur Board of Trade* v. *A. & S. Ry. Co.*, 27 I. C. C. 388, 402, the Commission stated:

> "Unjust discrimination by carriers can not be predicated upon their failure or declination to remove, by preferential rates, services, or privileges, the natural disadvantages of location under which one community rests in competition with another that is more favorably located. We have consistently held that it is not our province to adjust rates for the purpose of equalizing natural or commercial advantages. Neither may the carriers lawfully do so. *Red River Oil Co.* v. *T. & P. Ry. Co.*, 23 I. C. C. 438. The interstate commerce act is not intended to equalize fortune, opportunities, or abilities. *I. C. C.* v. *Diffenbaugh*, 222 U. S. 42, 46."

In *Rates on Sand, Gravel and Crushed Stone*, 177 I. C. C. 123, 133, a good illustration is given of the type of advantage, due solely to location, and which is not undue. In that case the Commission held that the fact that a shipper can use a single line haul under a lower rate than another shipper who must use a joint line haul under a higher rate, does not confer upon the first one an undue advantage under section 3.

That is very much the same situation in this case. The advantage, if any, is because intervener is located away from the stock yards district, on the right of way of a line-haul carrier, while complainant is located at the stock yards on the right of way of a switching carrier.

NO ALTERNATIVE ORDER SHOULD BE ISSUED IN THIS CASE.

Even if the Commission should find that there is a violation of either sections 2 or 3, it should not give to the defendants the alternative of removing the discrimination or preference by either increasing intervener's charges or decreasing the charges of complainant. If an order of this sort is entered, the carriers will probably increase intervener's charges. This will not help complainant any and will only create a new discrimination. If the order related to the charges now received by the Union Stock Yards & Transit Company, an alternative order would probably require intervener to pay yardage charges on live stock where no yardage, weighing, watering, feeding, unloading, driving and/or other handling was rendered and where intervener, at its own expense, had performed for itself all this service. Such a procedure would be both unreasonable and discriminatory as no other shipper of live stock is required to pay for services it does not receive.

If the order related to the charges which are made by the Chicago Junction Railway Company, an alternative order would probably cause the defendants to charge intervener an amount equal to the Chicago Junction switching charge, less $2.70 per car, or $9.30 per car. This would cause intervener to pay the Chicago Junction switching charge when no switching was performed for intervener by the Chicago Junction.

To require intervener to pay the additional amount of $9.30 per car ($12.00 minus $2.70) would certainly unduly prejudice intervener and discriminate against it when the seventeen packers located in the stock yards district receive their live stock at the chutes of the Union Stock Yards & Transit Company without any charge above the Chicago rate except the $2.70 per car terminal charge. Intervener now pays this terminal charge although it makes no use of the rails of the Chicago Junction. An order which would permit an increase in intervener's rates, without a corresponding increase in the rates to the stock yards, would also be in direct conflict with the decision of the Commission in *Omaha Packing Company* v. *C. M. & St. P. Ry. Co.*, 37 I. C. C. 378, where the Commission prescribed the present rates to intervener's plant. In that case intervener sought the Chicago rate, without the terminal charge. The defendants contended that the terminal charge should be added "to avoid discrimination against complainant's competitors in the stock yards district." The Commission added the terminal charge to the Chicago rate, thus recognizing that the rates to intervener's plant and the unloading chutes of the Union Stock Yards & Transit Company should be on a parity. An alternative order in this proceeding would probably destroy that parity and create a new discrimination.

CONCLUSION.

We believe we have shown the lawfulness of the present rates to intervener's plant, and that there has been no proof that the existence of these rates violates sections 2 and 3. Therefore, the Commission should find that the allegations in respect to said sections 2 and 3 have not been sustained.

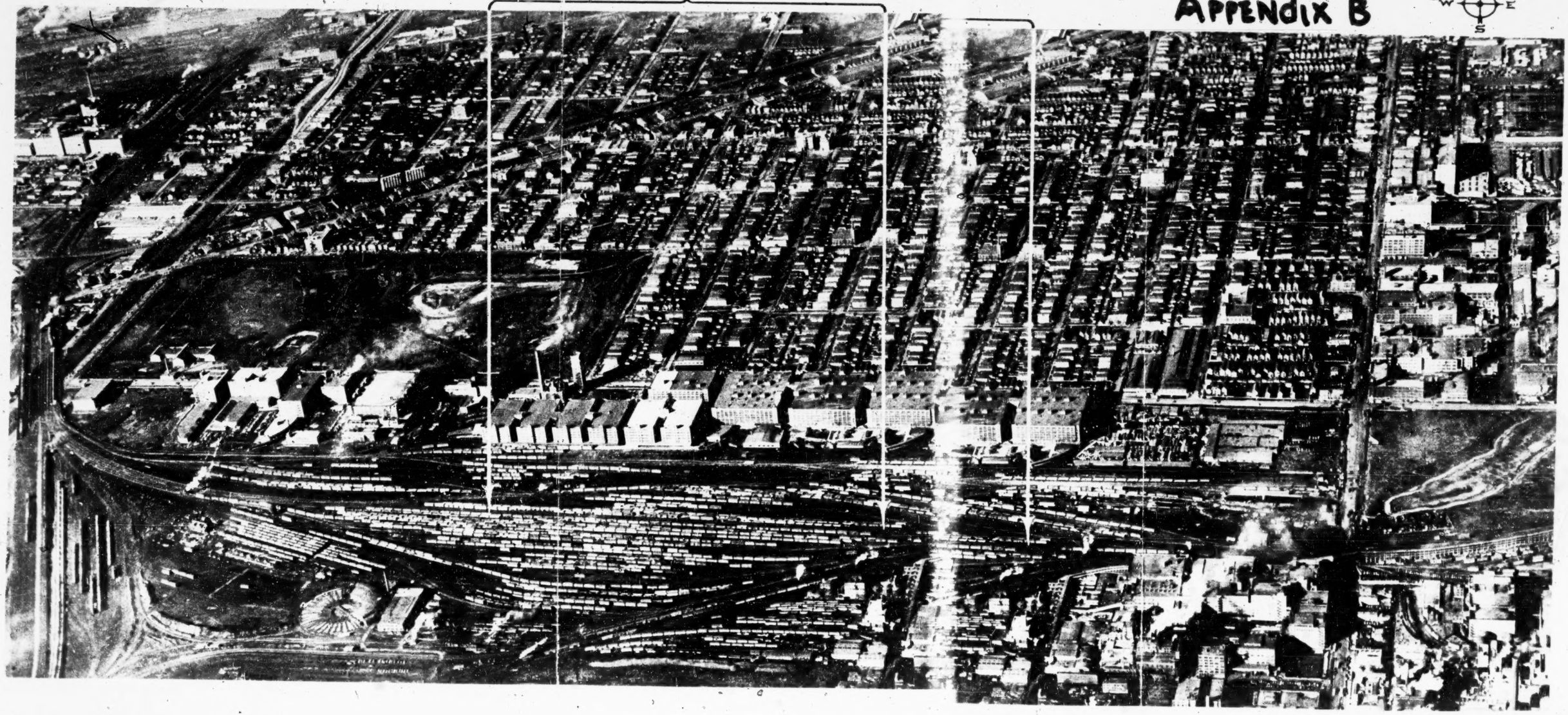
Respectfully submitted,

ROSS DEAN RYNDER,
WILLIAM N. STRACK,
Attorneys for Intervener,
4015 Packers Avenue,
Chicago, Illinois.

March 12, 1932.

EASTBOUND RUNNING TRACK
TO PUBLIC STOCK YARD

APPENDIX B



LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
FEB 27 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, *Appellant,*

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees.*

Appeal from the United States District Court for the Northern District of Illinois.

BRIEF FOR THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, INTERVENER-APPELLEE.

GUY A. GLADSON,
BRYCE L. HAMILTON,
1400 First National Bank Bldg.,
Chicago 3, Illinois,
Counsel for said Appellee.

WINSTON, STRAWN, BLACK & TOWNER,
Of Counsel.

R. R. DONNELLEY & SONS CO., CHICAGO

INDEX

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
Business of Yard Company	4
The Union Stock Yards	4
History of Union Stock Yards and Junction	7
Deliveries of livestock on the Junction	10
Importance of good railroad service to Union Stock Yards	13
Effect of grant of Swift demand on transportation of livestock to Union Stock Yards	14
Rate bases on livestock to Chicago	16
Terminal services on shipments to Union Stock Yards and packing plants on the Junction	17
Deliveries at Union Stock Yards	17
Deliveries at packing plants	18
Scope of this brief	20
ARGUMENT	21
I. Immediate and ultimate purposes of Swift's demand for private sidetrack delivery at line-haul rates	21
II. The long established practice of the line-haul railroads in making centralized delivery at the Union Stock Yards is a reasonable practice	25
III. The rule of the Yard Company prohibiting cars of dead freight from blocking its chutes was not in issue and is not unlawful	31
IV. The trackage arrangements in effect on the Chicago Junction Railway are not unlawful	32
V. The Commission did not give effect to the covenant between the Yard Company and the New York Central	37
CONCLUSION	44

AUTHORITIES CITED

Cases

	PAGE
Adams v. Mills, 286 U.S. 397	6
Atchison, T. & S. F. Ry. Co. v. United States, 295 U.S. 193	4, 6, 13, 26, 27
Baltimore & Ohio R. Co. v. Chicago Junction Ry. Co., 156 F. 2d 357	9
Cattle Raisers' Assn. v. Ft. W. & D. C. Ry. Co., 7 I.C.C. 513	6, 7
Chicago & Eastern Illinois R. Co. v. Doyle, 256 Ill. 514	38
Chicago Junction Case, 71 I.C.C. 681	7, 9, 27, 34, 37, 41
Chicago Junction Case, 150 I.C.C. 32	9
Chicago Live Stock Exchange v. A. T. & S. F. Ry. Co., 219 I.C.C. 531	6, 7, 36
Great Northern Ry. Co. v. Delmar Co., 283 U.S. 686	38
Hygrade Food Products Corp. v. A. T. & S. F. Ry. Co., 195 I.C.C. 553	6, 12, 27, 36
Illinois Central R. Co. v. Interstate Commerce Commission, 206 U.S. 441	44
Live Stock Loading and Unloading Charges, 52 I.C.C. 209	6, 7
Livestock-Western District Rates, 176 I.C.C. 1	36
Livestock-Western District Rates, 190 I.C.C. 611	36
Oregon R. & N. Co. v. Fairchild, 224 U.S. 510	32
Phillips v. Grand Trunk Western Ry. Co., 236 U.S. 662	43
Smith v. Hoboken R. Co., 328 U.S. 123	33, 43
Swift & Co. v. Alton R. Co., 238 I.C.C. 179	6, 26, 28
Swift & Co. v. A. T. & S. F. Ry. Co., 274 I.C.C. 557	1
Swift & Co. v. United States, 316 U.S. 216	4, 6, 12, 18, 24, 28, 37, 39
Texas v. United States, 292 U.S. 522	35
Thompson v. Texas Mexican R. Co., 328 U.S. 134	33, 43
Union Stock Yard & Transit v. United States, 308 U.S. 213	4, 7, 37, 39
United States v. Baltimore & Ohio R. Co., 333 U.S. 169	41
United States v. Lowden, 308 U.S. 225	34, 35
United States v. Union Stock Yard & Transit Co., 226 U.S. 286	7

Cases, Continued

Statutes

PAGE

Interstate Commerce Act:
Sec. 1(4), 49 U.S.C.A. Sec. 1(4) 3
Sec. 1(18), 49 U.S.C.A. Sec. 1(18) 43
Sec. 5(2), 49 U.S.C.A. Sec. 5(2) 34, 43
Judicial Code, 28 U.S.C.A. Secs. 1253 and 2101(b) 2
Twenty-Eight Hour Law, 45 U.S.C.A. Sec. 71 ..... 14, 15, 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, *Appellant*,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION ET AL., *Appellees*.

Appeal from the United States District Court for the Northern District of Illinois.

BRIEF FOR THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, INTERVENER-APPELLEE.

MAY IT PLEASE THE COURT:

This brief is filed on behalf of The Union Stock Yard and Transit Company of Chicago, owner and operator of the Union Stock Yards in the City of Chicago, Ill. This Company, which will be referred to as "the Yard Company," was an intervener in the proceedings before the Interstate Commerce Commission, and is also an intervener in the present action. (R. 59, 124, 250.)

OPINIONS BELOW.

No opinion was written by the District Court, but its findings of fact and conclusions of law appear in the record. (R. 197-209.) The report of the Interstate Commerce Commission appears in the record (R. 57-81.), and is reported in the Commission's published reports. *Swift & Co.* v. *A. T. & S. F. Ry. Co.*, 274 I.C.C. 557.

JURISDICTION.

The jurisdiction of this Court to review the judgment of the District Court is based on 28 U.S.C.A. Secs. 1253 and 2101(b). This Court noted probable jurisdiction on October 15, 1951. (R. 228.)

STATEMENT OF THE CASE.

The proceedings before the Interstate Commerce Commission embraced two separate cases which were consolidated for hearing and covered by one report. (R. 58–9.)

One of these cases was a complaint filed by Swift & Company charging that the interstate through rates on livestock to its plant in the Stockyard District of Chicago, Ill.—each of which is a combination of the line-haul rate to Chicago and a switching charge—were unjust and unreasonable, unduly prejudicial to Swift at Chicago and preferential of competitors at other points, and unduly prejudicial to livestock as a commodity. (R. 50-5.) The prayer of the complaint, as amended, asked for the establishment of just and reasonable rates, rules and practices, including joint through rates, under which the defendant rail carriers would afford delivery of interstate shipments of livestock upon an industrial sidetrack serving Swift's plant at the flat line-haul rates to Chicago. (R. 55–6.) A reading of the complaint and the amendment thereto would indicate that the plant referred to therein was in existence; but it appeared at the hearing that the place where Swift wants delivery is a site in the vicinity of its present plant at which it proposed to construct a new plant, unloading facilities and pens.* (R. 267–9, 455–6, 931–3, 1033–4.)

The other case before the Commission was an investigation and suspension proceeding involving a tariff amendment by

* Appendix B to the Swift brief shows *proposed* buildings, switch tracks and pens indicated on Exhibit 1 before the Commission. (R. 267; Ex. 1, R. 389, 1040.)

which The Chicago River and Indiana Railroad Company, lessee and operator of the terminal switching railroad in the Stockyard District of Chicago known as the Chicago Junction Railway, proposed to cancel the application of its switching charges to shipments of livestock, except on movements to and from the Union Stock Yards in Chicago. (R. 59.) The issue presented by the proposed tariff amendment was whether, in view of the operating conditions on the Junction, a request for switching service on livestock to and from private sidetracks on its rails was a "reasonable request" within the meaning of Section 1(4) of the Interstate Commerce Act, which imposes upon common carriers by railroad the duty "to provide and furnish transportation upon reasonable request therefor." (49 U.S.C.A. Sec. 1(4).)

In its report made on July 6, 1949, the Commission concluded (1) that the combination of line-haul rates and switching charge "will not be unreasonable or otherwise unlawful" on shipments of livestock consigned to the proposed new plant, (2) that the establishment of joint through rates to Swift's sidetrack "is not necessary or desirable in the public interest," and (3) that the proposed tariff amendment "is not just and reasonable." An order was entered dismissing Swift's complaint and requiring cancellation of the suspended tariff amendment. (R. 81.)

The order entered in the complaint proceeding is attacked by the complaint filed by Swift in the District Court. (R. 1.) No challenge has been made by any party to the order entered in the investigation and suspension proceeding.

The Union Stock Yard and Transit Company of Chicago—the Yard Company—was an intervener in support of the carriers in the proceedings before the Commission, and was given leave by the District Court to intervene as a defendant in the present case. (R. 59, 124, 250.) The position of the Yard Company is that the judgment of the District Court dismissing Swift's complaint should be affirmed. (R. 210.)

Business of Yard Company.

The Yard Company owns and operates the Union Stock Yards in Chicago. At this stockyard the Yard Company furnishes various stockyard services, and also unloads inbound and loads outbound livestock by rail. (R. 423–7, 470–1, 955–6, 985–8.) In rendering stockyard services, the Yard Company is a stockyard owner subject to the Packers and Stockyards Act, 1921, and in the performance of its loading and unloading services it is a common carrier subject to the Interstate Commerce Act. (R. 926–7.) *Atchison, T. & S. F. Ry. Co.* v. *United States,* 295 U.S. 193, 195; *Union Stock Yard & Transit Co.* v. *United States,* 308 U.S. 213, 217–22; *Swift & Co.* v. United *States,* 316 U.S. 216, 232.

The Union Stock Yards.

The Union Stock Yards in Chicago is the largest public market for livestock in the world, and occupies the greater part of a half section of land on the south side of the City of Chicago. (R. 719, 811, 919; Ex. 2, R. 389, 1041.) The stockyard is located on the rails of a terminal switching carrier known as the Chicago Junction Railway, and is connected, directly or indirectly, through the rails of the Junction with all of the trunk-line railroads entering Chicago. (R. 436; Ex. 9, R. 389, 1046; Ex. 13, R. 472, 1091.)

Livestock is consigned to the Union Stock Yards from nearly all sections of this country and from points in the Dominion of Canada. The major part comes from the livestock producing areas in the West and Southwest. (R. 741, 831; Ex. 43, R. 769, 1678–9.) In recent years, the total receipts of livestock of all species have ranged from more than 7 to more than 10½ million head per year. (Ex. 46, R. 845, 1848.) Approximately one-half of the receipts move into the Yards by rail and the remainder by truck. (R. 796, 997; Ex. 46, R. 845, 1843–8.) Livestock which arrives by truck comes for the most part from an area

within 175 to 200 miles from Chicago. (R. 760.) Shipments of livestock consigned to the Yards fall into two groups: (1) shipments consigned for sale on the public market at the Yards, which are commonly called "market" shipments, and (2) shipments purchased outside of Chicago by packers for slaughter in Chicago, which are known as "direct" shipments. (R. 263, 717–18.)

The Union Stock Yards is also an important shipping point for livestock. Animals are shipped from the Yards to the country for further finishing, and to packinghouses in the East and Southeast. (R. 713–4, 789–95, 818, 927–8; Ex. 43, R. 769, 1680.) The annual volume of outbound shipments in recent years has ranged from more than 1½ to more than 2 million head. The outbound movement is principally by rail. (Ex. 43, R. 769, 1680; Ex. 46, R. 845, 1849, 1853.)

In the course of a year, several hundred thousand livestock producers ship animals to the Union Stock Yards for sale. (R. 743.) Livestock is purchased at the Yards by approximately 50 packers in Chicago, by livestock feeders, by dealers, and by more than 900 packers in the East and Southeast. (R. 730–1, 789, 927, 946.) Any kind of a meat animal can be sold or purchased on the market. (R. 717, 920.)

All of the larger meat-packing plants, including the plant of Swift, and many of the smaller packing plants are located immediately west of the Union Stock Yards in a highly congested section of the Stockyard District of Chicago known as Packingtown. Other packing plants are located south, east and north of the Yards. (Ex. 2, R. 389, 1041; Ex. 21, R. 553, 1106; Ex. 34, R. 628, 1159.) There are 13 slaughterhouses on the Junction which have private sidetrack connections with its rails. (R. 444–5, 540.) Many of the smaller packers have no slaughtering facilities, but have their animals slaughtered under a custom killing basis at one of the abattoirs located near the

Yards. (R. 946.) An extensive system of alleys, overhead viaducts and tunnels owned by the Yard Company extends from the Yards to the packing plants or to public and private passageways leading thereto. These alleys, viaducts and tunnels are used in moving animals from the Yards to the packing plants. (R. 325–6, 429–33, 561, 983–4; Ex. 61, not printed.)

Throughout the years, the Union Stock Yards has been recognized by the railroads and the livestock industry as the livestock terminal of the trunk-line railroads in the Stockyard District of Chicago (R. 829, 839, 924); and it has also been so recognized by the Interstate Commerce Commission and by this Court. See, *e. g.*, *Cattle Raisers' Ass'n* v. *Ft. W. & D. C. Ry. Co.*, 7 I. C. C. 513, 523; *Live-Stock Loading and Unloading Charges*, 52 I. C. C. 209, 219–20, 224; *Hygrade Food Products Corp.* v. *A. T. & S. F. Ry. Co.*, 195 I. C. C. 553, 554; *Chicago Live Stock Exchange* v. *A. T. & S. F. Ry. Co.*, 219 I. C. C. 531, 545; *Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179, 181; *Adams* v. *Mills*, 286 U.S. 397, 409; *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U.S. 193, 195; *Swift & Co.* v. *United States*, 316 U.S. 216, 225–7. Livestock is transported to and from the chutes in the Yards by the line-haul carriers, which operate with their own power and crews over the rails of the Junction directly to and from the chutes. (R. 839, 920.)

Most of the livestock consigned to Chicago by rail is delivered at the Union Stock Yards. The volume varies from year to year; but during the years 1943 through 1947, the last five-year period shown of record, it averaged about 77,000 cars per year, of which approximately 31,000 were direct shipments and 46,000 market shipments. (R. 428, 836; Ex. 28, R. 607, 1117; Ex. 43, R. 769, 1639.) Some shipments—approximately 1500 per year—are delivered on public team tracks of five of the line-haul carriers; and approximately 6500 cars per year are delivered at the facilities of the Omaha Packing Company, a wholly-owned subsidiary of Swift, located on the rails of the

Burlington several miles north of the Yards. (R. 262, 282; Ex. 9, R. 389, 1046; Ex. 17, R. 536, 1101.)

History of Union Stock Yards and Junction.

The history of the Union Stock Yards and of the Junction appears in *Chicago Live Stock Exchange* v. *A. T. & S. F. Ry. Co.*, 219 I. C. C. 531, and in *Chicago Junction Case*, 71 I. C. C. 631, referred to at the hearing before the Commission.* (R. 388, 841, 914–27.)

The Yard Company is a corporation created by and existing under a special act passed by the General Assembly of the State of Illinois in 1865. (Ill. Laws 1865, vol. 2, p. 678.) At that time, four separate stockyards were maintained by individual railroads in the Chicago district. The maintenance of these yards was burdensome to the owning railroads, and their widely separated locations were unsatisfactory to the livestock industry and the railroads. The Yard Company was organized to replace the four separate yards with a union stockyard which would provide a livestock terminal for the railroads and a central market for livestock. The original stockholders of the Yard Company were the nine railroads then serving the Chicago district, but during the following decade they sold their holdings to other interests. (219 I. C. C. at 533; R. 769, 914–18.)

The special charter of the Yard Company authorized it (1) to construct and operate, upon land south of the southerly limits of the City of Chicago as they then existed, a general union stockyard for livestock; (2) to construct a railroad to connect the stockyard with the lines of all railroads terminating in Chicago; and (3) to operate the railroad constructed by it or

* Other cases containing a history of the Union Stock Yards and the terminal railroad known as the Junction are: *United States* v. *Union Stock Yard & Transit Co.*, 226 U.S. 286, 296–300; *Union Stock Yard & Transit Co.* v. *United States*, 308 U.S. 213, 215–16; *Cattle Raisers' Ass'n* v. *Ft. W. & D. C. Ry. Co.*, 7 I. C. C. 513, 521–3; *Live Stock Loading and Unloading Charges*, 52 I.C.C. 209, 210–13.

enter into operating contracts with the various connecting railroad companies. (Ill. Laws 1865, vol. 2, pp. 679–80.) The company acquired the necessary land in the open prairies south of the city, and constructed the Union Stock Yards and 30 miles of railroad connecting the Yards with the trunk-line railroads. The other four stockyards in Chicago were then abandoned. (219 I. C. C. at 533; R. 916–7, 921.)

Construction of the Union Stock Yards and of the terminal railroad was completed by December 25, 1865. During the remaining days of the year 19,810 head of livestock were received at the Yards, and more than 1½ million head were received at the Yards the following year. (R. 918; Ex. 46, R. 845, 1847.) Due to its strategic location at the junction of the termini of the western and eastern railroads, good transportation service, the rigid enforcement of honest trading practices, and high standards of service, the Union Stock Yards became, and still is, the largest and most important livestock market in the world and the price-determining market of the United States. (R. 717, 719, 722–3, 754, 770–1, 783, 806–7, 811–2, 915, 918–20.)

The 30 miles of terminal railroad constructed by the Yard Company in 1865 were the nucleus of the present Chicago Junction Railway. (71 I. C. C. at 633.) In the early days of its existence, the facilities of the terminal railroad were expanded from time to time with the growth of industries and the construction of additional railroads into Chicago. (R. 922, 925–6; Ex. 3, R. 389, 1042.) At the beginning, the road was used almost exclusively for the transportation of livestock to and from the chutes at the Union Stock Yards. (R. 921.) The trunk-line carriers were given permission by the Yard Company to operate over its tracks with their own engines and crews for that purpose, and this practice has continued throughout the years. (71 I. C. C. at 633; R. 469, 839, 920.)

Commencing about 1870, packing plants were constructed in the vicinity of the Yards, and the line-haul railroads were then

given permission by the Yard Company to carry dead freight over its terminal railroad. Lack of central control over the operations of the individual railroads on the terminal railroad resulted in unsatisfactory operation and service, and from 1887 to 1893 the road was operated first by one and later by another association controlled by the railroads. In 1893 the Yard Company acquired locomotives and commenced the handling of dead freight itself. (71 I. C. C. at 633; R. 922–3.)

In 1897 the Yard Company leased its terminal railroad to Chicago & Indiana State Line Railroad Company, and during the following year the lessee and the Chicago, Hammond & Western Railroad Company were consolidated into a corporation known as Chicago Junction Railway Company. The former Chicago, Hammond & Western properties were sold by the Junction Company in 1907 to the Indiana Harbor Belt Railroad Company. A new lease of the terminal railroad was made in 1913 by the Yard Company to the Junction Company. In 1922, pursuant to authorization given by the Interstate Commerce Commission in *Chicago Junction Case*, 71 I. C. C. 631,* the Junction Company subleased the terminal railroad to The Chicago River and Indiana Railroad Company (the River Road), a wholly-owned subsidiary of The New York Central Railroad Company,** and the Junction has since been operated by the River Road, as lessee, under the name "Chicago Junction Railway (C. R. & I. R. R. Co., Lessee)." (71 I. C. C. at 633; 219 I. C. C. at 533; R. 436, 923; Ex. 57, R. 1039, 1961.) As was pointed out in *Baltimore & Ohio R. Co.* v. *Chicago Junction Ry. Co.*, 156 F. 2d 357, 358 (C.A. 7th), since the lease of 1922, the Chicago Junction Railway Company has been

* In a supplemental report, 150 I.C.C. 32, one of the conditions prescribed in the original report, not here material, was modified.

** The order authorizing the River Road to lease the Junction properties also authorized the New York Central to acquire control of the River Road by purchase of its capital stock. *Chicago Junction Case*, 71 I.C.C. 631, 650.

"a non-operating, lessor railroad corporation," and the River Road "has been the sole operator of [the Junction railroad] under the name of Chicago Junction Railway, Chicago River and Indiana Railroad Company, Lessee."

After the construction of the first packing plants about 1870, the area in the vicinity of the Union Stock Yards began to develop industrially. By 1874 there were 15 packing plants. (R. 922.) In 1889 the Stockyard District was annexed to the City of Chicago. Annexation gave impetus to the opening up of public streets around the Stockyard District. Industrial development was rapid, and by 1907 the entire area in the vicinity of the Union Stock Yards was built up almost solid with permanent buildings owned by various industries, principally those engaged in the handling of meats, meat products, and by-products of the packing industry. In later years, many manufacturing and other industries located along the lines of the Junction. Industrial development also resulted in the construction of housing in areas in the vicinity of the Junction for the employes of the industries. (R. 501, 523–4, 924–6; Ex. 15, R. 502, 1094; Ex. 19, R. 553, 1104; Ex. 20, R. 553, 1105; Ex. 21, R. 553, 1106; Ex. 34, R. 628, 1159; Ex. 61, not printed.) There are now 499 industries with 645 private sidings served by the Junction, and the great majority of them are located in the Stockyard District or in the vicinity thereof. (R. 61, 443; Ex. 2, R. 389, 1041; Ex. 13, R. 472, 1091; Ex. 34, R. 628, 1159.)*

Deliveries of Livestock on the Junction.

The unimpeded and prompt delivery of inbound livestock is a *sine qua non* to the successful operation of a large central

* The River Road also has a number of industries with private sidetracks on its own rails to the west of the Stockyard District of Chicago. The two switching railroads (Junction and River Road proper) now operated by the River Road together have a total of 653 industries with 823 sidetracks. (R. 61, 436.)

livestock market. Ever since the original tracks of the Junction were constructed in 1865, the trunk-line railroads have been permitted to carry livestock to the Union Stock Yards over the terminal railroad with their own power and crews. Although this practice was inaugurated at a time when the Yard Company was controlled by the railroads, no change was ever made in the practice by the Yard Company after the railroads sold their holdings of its capital stock. The practice was continued by the Chicago & Indiana State Line Railroad Company and by the Chicago Junction Railway Company; and since the lease of 1922, has also been continued by the River Road, as lessee of the Chicago Junction Railway. (R. 469, 483, 493, 839, 920.)

At no time in the long history of the Union Stock Yards has livestock ever been delivered to private sidetracks of the packers. (R. 354, 471, 483, 829, 838–9, 924.) The only services which the Junction has ever rendered on inbound shipments of livestock are the switching of cars of ordinary livestock to the unloading chutes at the Yards in isolated emergency situations and the switching of cars of exhibition stock to the International Amphitheatre in the Yards. (R. 354, 429, 519–20, 530; Ex. 46, R. 845, 1846.)

Prior to the request by Swift for plant siding delivery at the flat Chicago rates,* which was made shortly before the filing of its instant complaint with the Commission, none of the large packers in Chicago had ever made any similar request. (R. 354, 838–9; Ex. 10, R. 389, 1047.) About 1890 Swift and two other packers acquired some property near the Union Stock Yards on which they constructed facilities for the receipt and holding of livestock; and in 1891 they made demands upon the Yard Com-

*This request was "that the line haul carriers accord us [Swift] direct delivery of livestock at our Chicago plant at rates no higher than those assessed by the line haul carriers for delivery at the pens of the U.S.Y. & T. Company." (Ex. 10, R. 389, 1048.) All carriers addressed denied the request. (Ex. 10, R. 389, 1049–52, 1073.)

pany that it permit the line-haul carriers to transport livestock over its terminal railroad direct to this location, which was designated as the Central Stock Yards. Upon the refusal of these demands by the Yard Company, the packers instituted suits in an Illinois state court for writs of injunction requiring the Yard Company to deliver livestock at the Central Stock Yards or to permit the line-haul carriers to make such deliveries. (R. 924; Ex. 42, R. 907, 1203–58.) On January 15, 1892, a compromise agreement was entered into, and the suits were thereafter dismissed. (R. 924; Ex. 42, R. 907, 1177–88, 1304–6.) The demands made in these suits, it should be noted, were not for plant siding delivery. The historical facts just reviewed were the subject of discussion in the opinion of this Court in *Swift & Co.* v. *United States*, 316 U.S. 216, 228–9.

In 1931 Hygrade Food Products Corporation, a small packer whose plant is located near the Union Stock Yards, filed a complaint with the Commission in which it alleged, *inter alia*, that the Junction's switching charge was inapplicable to shipments of livestock which might be placed at Hygrade's plant sidings, and, if applicable, was unreasonable, unjustly discriminatory, unduly prejudicial to Hygrade, and unduly preferential of the Omaha Packing Company, a subsidiary of Swift. The Omaha Packing Company, appearing by two of the counsel who here represent Swift, opposed parts of this claim, and the Commission found it without merit. *Hygrade Food Products Corp.* v. *A. T. & S. F. Ry. Co.*, 195 I. C. C. 553, 554, 558. In its report, at page 554, the Commission stated that no livestock had ever moved by rail to or from Hygrade's private tracks. This is the only case, prior to the present litigation, in which any packer in the vicinity of the Union Stock Yards has ever attempted to obtain private sidetrack delivery on the rails of the Junction at the line-haul rates. The Hygrade Corporation acquiesced in the decision of the Commission, and, as previously stated, the Junction has never been called upon to perform any switching serv-

ice on shipments of ordinary livestock except in emergencies, and then only to the Union Stock Yards.

A part of the Commission's order in the *Hygrade* case, not pertinent to the present discussion, was set aside at the suit of the defendant railroads in *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U.S. 193. In its opinion in that case, at page 195, this Court stated:

> "*** the Hygrade Company elects, as did its predecessors, to have all livestock intended for slaughter at the plant shipped to the [Union] stockyards. These yards are livestock terminals of the carriers and are served by trains operated by them over the tracks of the Junction Railway."

This observation with respect to Hygrade applies equally to all other packers which have had livestock consigned to the Stockyard District of Chicago.

Importance of Good Railroad Service to Union Stock Yards.

The public livestock market at the Union Stock Yards is dependent upon good railroad service for the continuance of the large supply of livestock which is essential to the maintenance of a sustained buying demand. (R. 716–7, 719, 722–3, 783, 791, 808–9, 816, 928.) Delay in the transportation of livestock results in shrinkage and adversely affects its appearance. Shrinkage results in loss to the producer, and appearance has an important bearing on the price which prospective purchasers will pay. (R. 721–2, 745, 771–2, 780–2, 920–1, 943–4.) Transit time is therefore an important factor in determining the outlet to which a producer will ship. (R. 722–4, 782–3, 817, 991.) Good railroad service has been a most important factor in making the Union Stock Yards the world's largest market for livestock and the price-determining market of the United States. (R. 722–3, 791–2.)

The market at the Union Stock Yards opens about 7 A.M., and the earlier trading hours are generally the more favorable because competition during those hours is usually more intense. (R. 720, 776–7, 780, 792.) Livestock which does not arrive in time for the early morning market may have to be held over until the following day. (R. 780.) The schedules of the line-haul carriers are, for the most part, set up for arrival at the Yards between midnight and 6 A.M., so that the animals can be watered, fed, rested and classified for sale before the opening of the market. (R. 719–21, 775–6, 809.) The western railroads now have schedules under which delivery is made at the Union Stock Yards within 36 hours from points as far west as Jamestown, N. Dak., Aberdeen, S. Dak., Grand Island, Neb., Dodge City, Kans., and Oklahoma City, Okla., without a stop in transit for feed, water and rest. (R. 697, 705–6, 722, 725–6.)*

Effect of Grant of Swift Demand on Transportation of Livestock to Union Stock Yards.

The grant of the Swift demand for plant delivery of livestock at the flat Chicago rates would have a serious effect on the transportation of livestock consigned by several hundred thousand producers to the Union Stock Yards. In its report the Commission found:

> "* * * it is our best judgment, and we, therefore, so find and conclude, that, if complainant's [Swift's] demand for the [plant] delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants [railroads] to render like delivery service in an amount and volume which together with such service rendered complainant *would seriously interfere with, delay, and disrupt defendants' terminal operations*

* Under the Twenty-Eight Hour Law, the period of confinement may be extended from 28 to 36 hours upon written request of the owner or person in custody of the animals. (45 U.S.C.A. Sec. 71.)

in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction's lines.

"Interferences with the movement of livestock to the stockyards is a serious concern not only of defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and *continued functioning of the public market* in a manner that is adequate for their needs." (R. 76–7; emphasis supplied.)

The congestion and consequent delays which would result from the Swift demand are so great that, even if plant delivery were otherwise practicable, the Junction would have to insist that all cars of livestock have eight hours of unexpired confinement time under the Twenty-Eight Hour Law at the time they were delivered in the Ashland Avenue South Yard. (R. 484, 522, 542–3, 561–2.) An ample margin is necessary because the operating officials of the Junction would not be able to advise the line-haul carriers, prior to the departure of a train of livestock from their outer yards, what amount of time the Junction would require to move any particular car from the receiving tracks in the Ashland Avenue South Yard to the consignee's siding. (R. 522, 562, 642, 678.)

The demand of the Junction for a safe margin of unexpired confinement time on cars of livestock consigned direct to packing plants and the congestion on its rails from the handling of such livestock would adversely affect the handling of shipments of livestock—market as well as direct—by the line-haul carriers, and the inevitable result would be a substantial increase in the overall time in transit. Additional stops for feed, water and rest would be required on shipments from more distant areas. (R. 642–3, 680–1, 702–3.) A stop for feed, water and rest always adds five hours to the running time because of the requirement of the Twenty-Eight Hour Law that the animals be given at least five consecutive hours of rest. (R. 656–7.) The actual delay may be longer because the next

train which could pick up the animals may not arrive at the stopping point until more than five hours after the animals were unloaded. (R. 785.) The making of a stop for setting out of cars of livestock also results in delay to other cars of livestock in the same train which do not have to be set out. (R. 644, 656–7.) The congestion on the rails of the Junction which would result from the handling of livestock direct to packing plants would increase the running time of the line-haul carriers from their outer yards to the Union Stock Yards by at least an hour. (R. 624, 642, 678–9, 682, 702–3.) The necessity of segregating livestock consigned direct to packing plants from other livestock in the same train would result in additional delays in the outer yards of the line-haul carriers estimated at about one hour per train. (R. 620, 623, 640–1, 657, 699–700.)

Rate Bases on Livestock to Chicago.

There are two bases of rates on livestock consigned to points in the City of Chicago. One basis, the flat line-haul rate, applies to public team tracks and industrial sidings on the rails of the line-haul carriers, and also to the Union Stock Yards, which, in legal effect, is on the rails of the line-haul carriers because they have running rights for the carriage of livestock over the rails of the Junction to the unloading chutes at the Yards. (R. 286, 375–6, 834–5, 839–40.) The other rate basis is the line-haul rate plus a switching charge, which at the time of hearing before the Commission was $28.80 per car. This rate basis applies to private sidetracks of all packers on the rails of the Junction; but it is a basis which has never been used. (R. 288–9, 354, 483, 838–9.)

Both rate bases, it will be noted, apply to deliveries on the Junction in the Stockyard District of Chicago. The line-haul rates apply where delivery is made at the Union Stock Yards by the line-haul carriers operating over Junction tracks with

their own power and crews. The line-haul carriers have no running rights to transport freight of any kind over the Junction direct to the private sidetrack of an industry. For this reason, any livestock consigned to the private sidetrack of a packer must be interchanged by the line-haul carriers to the Junction on the receiving tracks in the Ashland Avenue South Yard. (R. 497, 527, 539–40, 543, 840.) The switching charge would be assessed for the service of the Junction in handling the loaded car from the Ashland Avenue South Yard to the plant of the consignee, and thereafter returning the empty car to the line-haul carrier.

Terminal Services on Shipments to Union Stock Yards and Packing Plants on the Junction.

The terminal service required for deliveries of livestock under the rate basis applicable to private sidetracks at the packing plants on the Junction would be materially greater than the terminal service performed under the rate basis applicable on shipments delivered at the Union Stock Yards. The differences in terminal service explain the difference in the two rate bases.

Deliveries at Union Stock Yards

Livestock consigned to the Union Stock Yards is transported direct to the unloading chutes in the northern section of the Yards over the rails of the Junction by the 22 line-haul carriers with their own power and crews. (R. 439, 452–3, 469, 543; Ex. 46, R. 845, 1846.) There are 10 of these chutes with a total capacity of 350 cars. (R. 439, 475.) The train is moved onto a chute track adjacent to an unloading platform of the Yard Company. While the cars are being unloaded by the Yard Company, the engine runs around the train, and when the unloading is completed the engine takes the empty livestock cars back to the outer yards of the railroad from which they came. (R. 470–1, 474–6, 479–80, 539, 632, 660, 950.) The receiving

and delivering yards of the Junction are thus not burdened with livestock cars, either loaded or empty. (R. 469.)

Witness C. B. Heinemann, who had had many years of experience in the livestock industry and had studied the operations at terminal markets throughout the United States (R. 908–14, 945.), described the operations at the Union Stock Yards in Chicago as follows:

> "* * * you have a situation at Chicago that is unparalleled in any terminal of the world, and I think I have studied a lot of them. In this livestock traffic, as it comes to the chutes of the Union Stock Yards, you have solid trains, whether they consist of one car or 60 cars. The trains move directly to the chutes, and while the engine is cutting off and running around the train, the cars are being unloaded; and in tests that we made out there on solid trains, we found cases where they averaged 55 seconds per car in unloading this livestock." (R. 945.)

Deliveries at Packing Plants

Shipments of livestock consigned direct to packing plants, as previously stated, would have to be interchanged to the Junction in the Ashland Avenue South Yard. Because of the Twenty-Eight Hour Law and the nature of the commodity, shipments of livestock would have to be given priority in handling over other freight. *Swift & Co.* v. *United States*, 316 U.S. 216, 227.

Shipments of dead freight are classified in the Ashland Avenue South Yard for further movement to base yards serving the various operating districts. After arrival at the base yards, the cars are again classified for movement to the industries to which they are destined, and are thereafter switched to those industries. (R. 466, 476–7, 480, 557–8, 559–60.) The average time required to handle a shipment of dead freight from the time it is received at the Ashland Avenue South Yard until it is placed for delivery at an industry is 23½ hours in the case of

perishable freight and nearly 32 hours in the case of non-perishable freight. (R. 471, 511, 559–60.) It is thus obvious that shipments of livestock consigned direct to packing plants would have to be specially handled by the Junction.

Cars of livestock delivered to the Junction in the Ashland Avenue South Yard would inevitably be mixed with cars of dead freight on the receiving tracks in the yard. (R. 495–6, 528–30, 545–7, 659, 700.) Junction employes would have to segregate the livestock cars from the dead freight. This would require that inspection and other work incident to interchange be promptly performed. Engines would have to be made available to segregate the cars of livestock and return the cars of dead freight to the receiving tracks for subsequent handling by breakup crews. (R. 469–70, 496–7, 500–1, 539–40, 544–6, 639, 659.)

There are no separate tracks available for the classification of livestock, and the work of classifying the cars for delivery to the various packing plants would have to be performed by the Junction on its present classification tracks in the Ashland Avenue South Yard. It is quite possible that some of the packing companies would demand delivery of the several species of animals at different locations; and if such demands were made, there would be additional classification work in the Ashland Avenue South Yard. (R. 470, 482–3, 544, 563, 699–700.) Since cars loaded with livestock cannot be kicked, all switching operations would have to be performed with the cars coupled to the engine, and this would greatly slow up the operations on the receiving and classification tracks. (R. 469, 482, 543–4, 728–9.)

Special engine assignments would have to be made by the Junction to handle the cars of livestock from the classification tracks in the Ashland Avenue South Yard to the various packing plants, which are located in seven operating districts. If

upon arrival at the consignee's siding it appeared that the engine had more cars of livestock than could be accommodated on the siding, the engine and crew would have to remain and perform whatever switching services were required to meet the situation presented. (R. 470, 483–4, 452–3.)

Plant siding delivery of livestock by the Junction would also necessitate the removal of the empty cars by it. These cars would have to be handled through the base yards to the outbound delivering yards, which are now badly congested—to the Ashland Avenue North Yard in the case of cars for most of the western lines, and to the Loomis Street Yard in the case of cars destined to other lines. After the cars had arrived in the outbound yards of the Junction, they would have to be classified for return to the various line-haul railroads, and would subsequently have to be picked up by transfer crews of those railroads. (R. 466, 470, 477–8, 498–9, 505–6, 542, 547–8, 558, 563, 660, 700–1.)

Scope of this Brief.

Since the findings of the Commission and the evidence relating to the lawfulness of the present combination through rates on livestock to Swift's private sidetrack will undoubtedly be discussed in the briefs filed by the Government, Commission and railroads, we shall not attempt to duplicate the work of the able counsel who represent those parties. It is the position of the Yard Company that the long-established practices and rate bases affecting the transportation of livestock to points of delivery on the Junction in the Stockyard District of Chicago are not unreasonable or otherwise unlawful; that the findings and conclusions of the Commission are fully supported by the evidence; that the Commission did not commit any error affecting Swift; and that the judgment of the District Court should be affirmed.

ARGUMENT.

I.

Immediate and Ultimate Purposes of Swift's Demand for Private Sidetrack Delivery at Line-Haul Rates.

Swift's complaint and the argument advanced in its brief are directed to securing plant delivery of direct shipments at the flat Chicago rates applicable to the public livestock terminal of the railroads. Since it is obvious that, if Swift should prevail in this effort, other packers in the Stockyard District of Chicago would demand and be entitled to like treatment on their direct shipments,* and since Swift's competitive position would not be improved if Armour, Wilson and other packers could obtain plant delivery at the same rates as Swift, the immediate purpose of Swift's complaint must necessarily be to obtain an advantage over market stock purchased by its competitors at the Union Stock Yards. The ultimate purpose of Swift's effort to obtain an advantage over market stock is the destruction of the public market at Chicago as the price-determining market of this country. This conclusion is fully warranted by the record.

Since Swift was forced by a decree of the Supreme Court of the District of Columbia to divest itself of the extensive and substantial interests which it formerly had in various public stockyards, and was perpetually enjoined from owning, directly or indirectly, any interest in any public stockyard company in the United States, it has established a number of buying stations in the country to purchase livestock directly from the producer, and has consigned substantially all of the animals so purchased for its Chicago slaughterhouse to the facilities of its wholly-owned subsidiary, the Omaha Packing Company. (R. 391; Ex. 29, R. 707, 1118–21; Ex. 42, R. 907, 1458–76, 1610A–36.) Only a small part of Swift's requirements at Chi-

* This was the judgment of the Commission, and it is supported by the opinions of well qualified witnesses. (R. 76, 928, 988–9.)

cago are purchased on the public market. (R. 410–11, 1012–13, 1019.) At the hearing before the Commission Swift's counsel referred to public stockyards as "a sort of a fungus growth" and "parasitic." (R. 587, 593.) The handling of livestock by the Junction to packing plants on its line, as Swift well knows, would seriously disrupt and delay the handling of market stock to the Union Stock Yards; and the deterioration in transportation service to the Yards, as Swift also well knows, would inevitably result in the destruction of the market.

The effect of the granting of the Swift demand upon the public market at the Union Stock Yards was described by well qualified witnesses.

The Traffic Manager of the Chicago Live Stock Exchange testified as follows:

> "Q. If the Swift demand were granted and there was this interference with railroad operation resulting therefrom to which the railroad witnesses have testified, would that adversely affect the market?
>
> A. I would say * * * it would crucify the Chicago market if things came to pass as has been depicted here by these railroad witnesses, It would crucify the Chicago market." (R. 722.)

A witness who was Executive Vice President of the National Independent Meat Packers Association and Secretary of the Eastern Meat Packers Association expressed the following opinion:

> "Q. What, in your opinion, would be the effect of granting the relief that is prayed for by Swift in this case?
>
> A. Based on my experience and observation out in that [stockyard] area, I am convinced that if even a measure of the delay is encountered as has been testified to [by] previous witnesses, it would effect the serious impairment of the Chicago market and its eventual destruction." (R. 928.)

The General Manager of the Yard Company concluded his testimony with respect to the effect of the granting of the Swift demand by saying:

> "Carried through to its logical conclusion, the loss of its packer directs and a resulting reduction in open market receipts, will bring about a vicious cycle of higher and higher marketing costs per animal and lighter and lighter receipts. The result can be only one thing. As the net earnings of the Stock Yard Company become smaller and smaller, so as to yield little or no profit, the owners of the property will probably have to find some other use for it than as a livestock market, and the great Chicago livestock market would then become a thing of the past." (R. 992.)

The destruction of the Chicago market as the price-determining market of the country would put Swift in a more advantageous position in dealing directly with the livestock producers, who in general, as one of the foremost authorities* in the field of livestock marketing testified, do not have the training and experience to sell their livestock to the best advantage, and who must deal with carefully selected and thoroughly trained buyers employed by the packers.** (R. 814–15.) The

---

* Dr. A. C. Ashby, Professor of Livestock Marketing, University of Illinois College of Agriculture, and at one time District Livestock Market Supervisor for the Packers and Stockyards Administration of the Department of Agriculture in Chicago, Cincinnati and Indianapolis. (R. 810.)

** Compare the following excerpt from Swift's Year Book for the year 1947:

> "The steaks that sold for $1 a pound in New York City on September 10 came from cattle dressed ten days to two weeks earlier. Although this meat could have come from many markets, let's assume that it came from Chicago.***
>
> "The farmer who produced the choice steer sent it to the Chicago market consigned to *an experienced commission agent.* The steer was displayed in a pen and *the commission man sold it for the highest price he could get from any of a large number of buyers* representing meat packing companies in Chicago and elsewhere." (Ex. 11, R. 397, 1078; emphasis supplied.)

prices at the Chicago market are now the principal guide of the producers as to the value of their livestock. (R. 717, 770–1, 818.) If Swift can destroy the Chicago market as the price-determining market, it will also be able to improve its competitive position over many of the smaller packers in Chicago, which do not have, and probably could not afford to establish, buying stations and organizations in the country.

The importance of the public market to the producer of livestock was recognized by Swift in its Year Book for 1947, from which the following is taken:

> "The meat packer who did not bid the market price for livestock would find that his competitors were getting increased volume while he would be unable to keep his plants operating and his customers supplied.
>
> "Anybody in the meat business who stays below the market quickly finds himself out of business. * * *
>
> "Meat and livestock, therefore, are just naturally going to be sold to those who bid market prices.
>
> "Competitive market prices of livestock and meat are among the most flexible in our entire economy. They must change quickly and with delicate precision to make possible the fair and efficient marketing of a perishable product whose supply varies weekly and daily." (Ex. 11, R. 397, 1076–7.)

The importance of the part played by the Chicago Union Stock Yards in the livestock industry was recognized by this Court in *Swift & Co.* v. *United States*, 316 U.S. 216, where, at page 226, the Court declared:

> "Neither the railroads nor the Stock Yards exist for the benefit of the packers alone. *** The Stock Yards are not only a facility for the transportation of direct shipments from points of country origin to the packers; they also are an important factor in the entire animal industry of the United States."

In pointing out the immediate and ultimate purposes of the Swift complaint, we have not overlooked the fact that it is not the function of the Commission to pass upon the relative merits of the two different methods of buying livestock, or to the fact that Swift has the legal right—provided it keeps its buying practices within the limitations of the Anti-Trust Laws—to employ either method in purchasing its requirements of livestock. The Commission, however, is concerned with the transportation rights of producers who ship their livestock to the Chicago market, as well as with the transportation rights of Swift. The decision of the Commission is based upon the rate standards of the Interstate Commerce Act, and those standards require a higher rate basis for private sidetrack delivery by the Junction at the various packing plants on its tracks than for centralized delivery by the line-haul carriers at the Union Stock Yards.

II.

The Long Established Practice of the Line-Haul Railroads in Making Centralized Delivery at the Union Stock Yards Is a Reasonable Practice.

Swift's complaint before the Commission was, in essence, an attack against the long established practice of the railroads—concurred in by Swift and other packers—of making centralized delivery of livestock at the Union Stock Yards. Since 1865, the Union Stock Yards has been the livestock terminal of the line-haul carriers in what is now the Stockyard District of Chicago, and Swift and other packers have concurred in the practice of the railroads since 1892. (See Statement, *supra*, pp. 6, 11–12.)

The yards and tracks of the Junction were not laid out for the handling of livestock to packing plants. The original plan of the railroads which were instrumental in bringing about the organization of the Yard Company was to make the Union Stock Yards their livestock terminal. There has never been any

departure from the original plan, and for 86 years the Union Stock Yards has been the only livestock terminal for the delivery of livestock on the rails of the Junction. It may safely be assumed that Swift and other packers have long had knowledge of this practice. *Atchison, T. & S. F. Ry. Co.* v. *United States*, 295 U. S. 193, 199. At no time prior to the demands made by Swift which preceded its present complaint to the Commission had any large packer ever made a request for private sidetrack delivery at the line-haul rates. (See Statement, *supra*, pp. 11–13.)

The demands made in 1891 were for delivery at a private stockyard established by Swift and two other packers; and the suits which were filed to enforce those demands resulted in the compromise agreement of 1892, pursuant to which the suits were dismissed. During the period following the dismissal of these suits the area in the vicinity of the Union Stock Yards became so closely built up as to preclude expansion of the yards and other facilities of the Junction. (See Statement, *supra*, pp. 10–12.)

Speaking in 1940, the Commission said in *Swift & Co.* v. *Alton R. Co.*, 238 I. C. C. 179:

> "For many years the packers, including complainant [Swift], *made the practice of which they now complain their own practice*. They gave up their own terminal facilities at the Central Stock Yards for a substantial consideration, and, by their covenants with the Yard Company, *made the Union Stock Yards their own terminal facilities in Chicago*." (238 I. C. C. at 188; emphasis supplied.)
>
> * * * * *
>
> "The packers, including complainant [Swift] and intervener [Armour], not only acquiesced in the usage and practice but, in addition * * * *have concurred in the practice and have made it their own*." (238 I. C. C. at 196; emphasis supplied.)

The evidence on which these findings were based was introduced in the present proceeding before the Commission as Ex-

hibit 42 (R. 907, 1174-1638), and there is no countervailing evidence.

Throughout the years, the Junction had no reason to anticipate that it would ever be called upon to handle livestock to packing plants, and no provision for the necessary facilities was made while it was still possible to do so. Except for the elevation of the tracks, the Ashland Avenue Yards are substantially the same today as they were in 1907, and there is now no room for expansion. (R. 461, 544, 563, 925-6.) As the Commission found in the present case:

> "There is no land available for the expansion of those [Ashland Avenue] yards or the building of additional facilities nearby for interchange and classification of traffic." (R. 60.)*

The present case is the third effort made by packing interests to destroy the Union Stock Yards by an attack upon the practice of making centralized delivery of livestock, which, under the circumstances obtaining, is an essential element of its continued operation. In the two earlier cases the practice was upheld by this Court.

In *Atchison, T. & S. F. Ry Co.* v. *United States*, 295 U.S. 193, it was held that the transportation of livestock consigned direct to the Hygrade Food Products Corporation, a packer whose plant was near the Union Stock Yards, did not include delivery within the packing plant by means of facilities of the Yard Company. The order under review had been entered by the Commission in *Hygrade Food Products Corp.* v. *A. T. & S. F. Ry. Co.*, 195 I. C. C. 553. The Commission had held that the packing company was entitled, as a part of the service

---

* In *Chicago Junction Case*, 71 I.C.C. 631, 634, the Commission had previously (1922) found: "The Junction properties are incapable of expansion so as to afford adequate facilities for interchange and classification, since the district in which they lie is highly developed and intensively used,***."

covered by the line-haul rates, to use the properties of the Yard Company, including an overhead runway, to remove its animals from the unloading pens in the Yards to its plant. In holding that transportation did not include the use of the properties of the Yard Company for egress, or delivery within the consignee's plant, this Court, at pages 200-1, said:

> "Long continued practice and special conditions made unloading at these [Union Stock] yards a transportation service to be performed by the carrier. *Adams* v. *Mills, supra*, 410. So the long established and uniform practice to provide a route via the overhead runway to the Hygrade plant distinguishes the use of the Yards Company's properties for this service from mere egress such as is included in transportation of livestock to destinations other than public yards. Plainly there is an essential difference between the route from unloading pens to consignee's plant and a mere way out to the public highways. Transportation does not include delivery within the Hygrade plant or the furnishing of the properties, overhead runway and all, that are used for that purpose. Usage and physical conditions combined definitely to end transportation, at least in respect of these shipments, with unloading into suitable pens as is now required by § 15(5)."

More recently, in *Swift & Co.* v. *United States*, 316 U.S. 216, this Court upheld the order entered by the Commission in *Swift & Co.* v. *Alton R. Co.*, 238 I.C.C. 179. In that case Swift, supported by Armour, asked for an order requiring the railroads serving the Union Stock Yards to afford egress for direct shipments of livestock from the unloading pens at the Yards to a public street without charge in addition to the line-haul rates. The final conclusion of the Commission was that the transportation of direct shipments ended when they were unloaded into the unloading pens at the Yards; and in reaching this conclusion the Commission relied heavily upon the practice which had obtained and the acquiescence of the packers therein. The conclusions of the Commission were held

by this Court to be amply supported by the evidence, and were accordingly sustained.

At page 226, this Court made the following pertinent observations:

> "Neither the railroads nor the Stock Yards exist for the benefit of the packers alone. Their [packers'] patronage is large and important, but neither in the regulation of the carriers nor in the regulation of the Stock Yards are they [packers] entitled to facilities or treatment that will ignore the existence of other interests."

The Court, at page 227, directed attention to certain important considerations, saying:

> "The interests of the public and of the community are entitled to consideration. This transportation is of a special kind of property on the hoof, which calls for special handling in the interests of economy, safety, sanitation, and health. The Commission has found that 'the evidence fails to disclose how, as a practical matter, an annual volume of 30,000 carloads of livestock could be discharged into and handled through the public streets of Chicago.' "

In the course of its opinion, at pages 230–1, this Court further stated:

> "It was the packers themselves who suppressed the competitive yards and alternative facilities for unloading their stock. The Commission, however, has not held the packers to be estopped by their conduct. It has only considered the practice and usage of the packers as bearing on the suitability of the Yard Company's unloading pens as a point of termination of the carriers' responsibility. The Commission has held it to be a reasonable practice that the railroads' responsibility for transportation of such direct shipment consigned by the packers to themselves at the Union Stock Yards ends with unloading into the unloading pens, which it found to be suitable, and that the carriers' failure to negotiate or purchase free egress for such shipments from the unloading pens has not resulted and does not result in an unreasonable practice."

After pointing out that the Union Stock Yards was named in the railroads' tariffs as a station to which the line-haul rates on livestock were applicable, that the Yard Company's unloading service was subject to regulation by the Interstate Commerce Commission, and that the stockyard services of the Yard Company were under the jurisdiction of the Secretary of Agriculture, the Court said at pages 232–3:

> "The Union Stock Yards are a public utility. The decision of the Commission that the transportation ends with unloading leaves the stock in the hands of a public utility—the Union Stock Yards—for delivery to the consignee. Neither the Interstate Commerce Commission nor this Court can assume that the charges or practices of that utility are unfair or unreasonable, that it is charging for services that are not performed or facilities not used, or that it is imposing on consignees unnecessary services."

In the present case, the Commission has not held that Swift is estopped by its adoption of the railroads' practice of making the Union Stock Yards their livestock terminal in the Stockyard District of Chicago, and has not denied Swift the right to have private sidetrack delivery of livestock. The Commission, however, could not ignore the fact that the practice of making centralized delivery—concurred in by Swift and other packers—had resulted in a physical plant and methods of operation which would make private sidetrack delivery both difficult and expensive. As the Commission said:

> "We have indicated generally the difficulties which would confront defendants if required to make delivery of livestock at complainant's plant, *the basic difficulty being that such method of delivery is not adapted to defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago.* For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of

livestock to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, *the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described*, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays." (R. 72; emphasis supplied.)

The Commission outlined in detail the special services and handling which would be required to make private sidetrack delivery of livestock, and concluded that the assessment of the published switching charge of the Junction in addition to the line-haul rates would not be unreasonable or otherwise unlawful for private sidetrack delivery. (R. 72-81.) The findings of the Commission—all of which are fully supported by the record—plainly show that the line-haul rates prescribed for centralized delivery of livestock are not adequate for the expensive, specialized service involved in making plant delivery.

III.

The Rule of the Yard Company Prohibiting Cars of Dead Freight from Blocking Its Chutes Was Not in Issue and Is Not Unlawful.

Counsel for Swift argue (Brief 26-7, 44, 112) that the operating rule of the Yard Company which prevents cars of dead freight from being pulled into its chutes causes obstruction to the flow of traffic which the Commission should have noticed and remedied. It is asserted (Brief 112) that this rule, "which prevents even a single car of dead freight from resting on its [Yard Company's] tracks, is obviously designed to facilitate shipment of livestock to its own chutes and to burden such shipments destined elsewhere* * *."

This rule was not placed in issue by Swift's complaint before the Commission, and the Yard Company was not named as a defendant in that complaint. (R. 50–5.) The Commission properly confined its decision to the issues before it. *Oregon R. & N. Co.* v. *Fairchild*, 224 U.S. 510, 526.

The purpose of the rule is to prevent the blocking of the unloading chutes. (R. 664.) There is no evidence that the rule adversely affects the operations of any railroad except the Rock Island, which reaches the Union Stock Yards from the east, and has to operate through the Yards in order to get to the Ashland Avenue Yards. (R. 650.) The chute tracks of the Yard Company are adjacent to the running tracks of the Junction. (R. 650.) The Yard Company obviously could not permit the heavy flow of livestock to its public stockyard to be delayed by the blocking of its chutes with cars of dead freight any more than Swift could permit the loading and unloading of its freight upon its private sidetracks to be interfered with by even a temporary use of those tracks in connection with the handling of cars for other industries.

IV.

The Trackage Arrangements in Effect on the Chicago Junction Railway Are Not Unlawful.

Swift criticizes (Brief 26, 44, 112–13) the trackage arrangements on the Junction whereby the line-haul carriers are permitted to operate over its rails with their own power and crews for the purpose of handling livestock to and from the Union Stock Yards, but are not authorized to handle livestock to private sidetracks on the Junction. These arrangements date from 1865, and their validity cannot be doubted.

As a part of the original plan of establishing at one place a railroad livestock terminal and a central market for livestock, the railroads were given permission by the Yard Company,

which was then controlled by them, to use the terminal railroad now known as the Junction as a means of access to the union livestock terminal. This permission was continued by the various lessees of the terminal railroad, and is now extended by the River Road. One of the important purposes of the trackage privilege has been to enable the line-haul railroads to make delivery of livestock at the same place in order to avoid the necessity of switching livestock from one railroad terminal to another. (See Statement, *supra*, pp. 7–8, 11.) Livestock which comes in over one of the western roads is often reshipped to the east via one of the eastern roads; in fact, an average of about 300 carloads of livestock is so reshipped daily. (R. 795.)

There is no written agreement covering the use of the running tracks of the Junction by the line-haul carriers for the handling of livestock; but the practice is, and since 1865 has been, for the line-haul carriers to use those tracks as a means of ingress to and egress from the chutes at the Union Stock Yards. This service is one which the Junction itself would have to render if it were not performed by the line-haul carriers.

Private sidetrack delivery of livestock was never contemplated by any of the railroads. Their plan for a union terminal for livestock in what is now the Stockyard District of Chicago contemplated that all livestock would be delivered at one place, and that they would have running rights over the terminal railroad for the handling of livestock to and from the union livestock depot. (See Statement, *supra* pp. 7–8.) That privilege was given, and is still accorded, to them. The operations of the line-haul carriers over the Junction to and from the Union Stock Yards could not be discontinued without the approval of the Commission based upon a finding that public convenience and necessity permit the abandonment of such operations. *Smith* v. *Hoboken R. Co.*, 328 U.S. 123, 130; *Thompson* v. *Texas Mexican R. Co.*, 328 U.S. 134, 144–7.

In *Chicago Junction Case*, 71 I. C. C. 631, the Commission, in authorizing the sublease of the Junction railroad to the River Road, stated at page 633:

> "The movement of live stock in and out of the Junction yards is essentially different from the method of handling the dead freight, in that each [line-haul] carrier moves its trains to the unloading chutes [at the Union Stock Yards] with its own power, and goes into the pens [at the Union Stock Yards] for outbound stock destined for its own line. All parties concede that *that is the only practical method of handling that traffic.*" (Emphasis supplied.)

The Commission in *Chicago Junction Case, supra*, also imposed, as condition No. 3, the following requirement:

> "The present traffic and operating relationships existing between the Junction and River Road and all carriers operating in Chicago shall be continued, in so far as such matters are within the control of the [New York] Central." (71 I. C. C. at 639.)

This condition requires, among other things, that the New York Central and its wholly-owned subsidiary, the River Road, shall continue to permit the line-haul carriers to handle livestock over the tracks of the Junction to the Union Stock Yards. The power of the Commission to attach this condition cannot be doubted. *United States* v. *Lowden*, 308 U.S. 225, 229–30, 238.

Trackage rights could not be granted to the line-haul carriers for the handling of livestock to private sidings without the approval of the Commission under Section 5(2) of the Interstate Commerce Act; and that section requires, as a condition to approval, that the Commission shall find that the proposed transaction "will be consistent with the public interest." (49 U.S.C.A. Sec. 5(2)(a) and (b).) The standard of "public interest," as this Court has said, "has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of

transportation facilities." *Texas* v. *United States*, 292 U.S. 522, 531; *United States* v. *Lowden*, 308 U.S. 225, 230, 238. It would be physically impossible for the 22 line-haul carriers to transport shipments of livestock over the rails of the Junction to the private sidetracks of the packers.

The fact that the running rights of the line-haul carriers are not broad enough to enable them to carry livestock to the private sidetracks of Swift and other packers on the Junction is legally immaterial. Private sidetrack delivery is now offered by the Junction itself; and it must be presumed that it will perform the service to the limited extent that it may be requested so to do.

The proposal of the Junction to withdraw its holding out to perform private sidetrack delivery on livestock was not upheld by the Commission. In its report the Commission found:

> "The proposed complete exemption of livestock from transportation by the Junction under any circumstances is not justified." (R. 77.)
>
> * * * *
>
> "The published switching charge is appropriate for any switching that may occur of cars of livestock to complainant's proposed plant. It does not appear that the maintenance of a switching charge for livestock will have any detrimental effect upon terminal operations." (R. 80–1.)

The Commission presumably was of the opinion that the Junction should continue its switching charge on livestock in effect to enable the packers to obtain plant delivery by rail whenever some unusual situation, such as a strike of truck drivers or employes of the Yard Company, might make it necessary for the packers to use that kind of service.*

* A Swift witness, when asked why Swift sometimes took delivery of its direct shipments at the Union Stock Yards, stated there were times when trucks break down, truck drivers are not working, or the facilities at the plant of the Omaha Packing Company are overtaxed. (R. 410–11.)

This is not a case where trackage arrangements cause undue preference or prejudice. Swift may take delivery of its livestock at the established livestock terminal of the line-haul railroads at the same through rates paid by others who take delivery at that place; and it also may have plant delivery at the same through rates published for application to the private sidetracks of all other packers on the Junction. The higher rate basis for private sidetrack delivery is due to the much greater and more expensive terminal service required. (See Statement, *supra*, pp. 17–20.)

The through rates published from western origins to the Union Stock Yards were originally prescribed by the Commission in *Livestock-Western District Rates*, 176 I.C.C. 1, 190 I.C.C. 611. (R. 831.) As the first report in that case shows (176 I.C.C. at 122), the terminal operations at Chicago there considered were those of the line-haul carriers in making deliveries at the Union Stock Yards.* In *Chicago Live Stock Exchange* v. *A. T. & S. F. Ry. Co.*, 219 I.C.C. 531, the terminal operations at Chicago under consideration were also those involved in making deliveries at the Union Stock Yards. (219 I.C.C. at 538–9.) As the Commission stated in its report in the present case, "we did not there [in the *Chicago Live Stock Exchange* case] consider what the services would be in connection with deliveries of livestock by the Junction on private industrial tracks." (R. 79.) The switching charge for private sidetrack delivery at packing plants on the Junction, then $12 per car, was found not unreasonable or otherwise unlawful in *Hygrade Food Products Corp.* v. *A. T. & S. F. Ry. Co.*, 195 I.C.C. 553, 558, a case in which the Omaha Packing Company, Swift's wholly-owned subsidiary, was an intervener. (R. 77.) Again in the present

* A witness who participated in *Livestock-Western District Rates* testified that no evidence was offered therein relating to private sidetrack deliveries at packing plants in the vicinity of the Union Stock Yards in Chicago. (R. 765–6.)

case, the Commission found that the rate basis for private sidetrack delivery was not unreasonable or otherwise unlawful. (R. 80–1.)

V.

The Commission Did Not Give Effect to the Covenant Between the Yard Company and the New York Central.

The effect of the decision of the Commission, Swift argues at length (Brief 117–34), is to give effect to a covenant by which the River Road, a wholly-owned subsidiary of the New York Central, is to operate the Junction railroad in a manner which will discriminate in favor of the business conducted at the Union Stock Yards. That business is the operation of a union railroad terminal and public market for livestock—a public utility business in both of its aspects. *Union Stock Yard & Transit Co.* v. *United States*, 308 U.S. 213, 217–22; *Swift & Co.* v. *United States*, 316 U.S. 216, 232. The argument of opposing counsel is advanced notwithstanding the statements of the Commission in its report that the operation of the Junction by the River Road under the control of the New York Central is subject to the requirements of the Interstate Commerce Act, and also to conditions imposed in *Chicago Junction Case*, 71 I.C.C. 631, 639–41, which "were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards." (R. 80.)

The covenant to which Swift has reference is one in the lease of December 1, 1913, whereby the Yard Company leased the Chicago Junction Railway in perpetuity to Chicago Junction Railway Company, and the Junction Company agreed, among other things, "to conduct, manage, and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards." By an indenture of May 19, 1922, the Junction Company sub-

leased the terminal railroad to the River Road, and in that lease the River Road and the New York Central undertook to perform the above-quoted covenant of the Junction Company in the 1913 lease. (Ex. 57, R. 1039, 1961.)

The covenant is not an unqualified undertaking by the New York Central companies to operate the terminal railroad in such manner as will tend to benefit the Union Stock Yards, but is merely a covenant by which they undertook "in so far as possible" to so operate the demised railroad. This qualifying phrase requires the New York Central companies to do no more than is *physically* and *legally* possible. Contracts are not construed as requiring a violation of law if any other reasonable interpretation can be placed upon them. *Great Northern Ry. Co.* v. *Delmar Co.*, 283 U.S. 686, 691; *Chicago & Eastern Illinois R. Co.* v. *Doyle*, 256 Ill. 514, 519.

It should be borne in mind that the terminal railroad known as the Junction was originally constructed to connect the line-haul railroads with the Union Stock Yards, and that the Union Stock Yards was designed and constructed to provide a railroad terminal for the line-haul carriers and a public market for livestock. (See Statement, *supra*, pp. 6–8, 11.) This historical background explains the covenant, which does no more than require the New York Central companies to operate the demised railroad, to the extent they are legally and physically free so to do, in such manner as will tend to the benefit of the public market and livestock terminal at Chicago. The covenant does not require that the Junction railroad be operated or managed in any way contrary to federal or state law.

The covenant has operation only in those limited areas in which the New York Central companies are free to determine policy. The Union Stock Yards is a public livestock terminal and market which has an important and direct relation to the transportation of livestock. The unloading service performed

by the Yard Company is legally a part of the transportation service. *Union Stock Yard & Transit Co.* v. *United States*, 308 U.S. 213, 217–22. Although the services rendered after unloading are subject to the jurisdiction of the Secretary of Agriculture,* they are to a large extent services which the railroads would have to furnish if delivery were made at a terminal owned and operated by them. At such a terminal, the animals would have to be placed in pens and cared for until the consignees called for them, and egress would have to be provided to a public street. The cost of furnishing these terminal services would be reflected in the rates charged by the railroads. Even a packing company which took private sidetrack delivery would have to provide pens, because it obviously could not slaughter the animals as they came in, but would have to hold and care for them until it was ready to move them into the slaughterhouse.

The relationship of the business of the Union Stock Yards to the transportation of livestock and to the livestock industry of the country was pointed out by this Court in *Swift & Co.* v. *United States*, 316 U.S. 216, as follows:

> "The Stock Yards are not only a facility for the transportation of direct shipments from points of country origin to the packers; they also are an important factor in the entire animal industry of the United States." (316 U.S. at 226.)
>
> * * * * *
>
> "The Union Stock Yards are a public utility. The decision of the Commission that the transportation ends

---

* "Neither the Interstate Commerce Commission nor this Court can assume that the charges or practices of that utility [the Yard Company] are unfair or unreasonable, that it is charging for services that are not performed or facilities not used, or that it is imposing on consignees unnecessary services. Nor can the Commission or this Court assume that, if unreasonable practices or charges are imposed by this utility, the Secretary of Agriculture would fail to correct them upon an appropriate complaint ***." *Swift & Co.* v. *United States*, 316 U.S. 216, 232–3.

with unloading leaves the stock in the hands of a public utility—the Union Stock Yards—for delivery to the consignee." (316 U.S. at 232.)

The argument concerning the covenant of the New York Central companies presents a false issue which Swift attempted to inject in the proceeding before the Commission. The Yard Company did not ask the Commission to enforce the covenant, and the River Road and the New York Central did not plead or urge it by way of defense. The Commission, moreover, did not in any way attempt to enforce or give effect to the covenant. Its decision is based solely on the transportation standards of the Interstate Commerce Act.

In its report, the Commission said:

> "The effect of the leases was to completely divest the Union Stock Yards of operation and control of the terminal railroad, the Court [in *Union Stock Yard & Transit Co.* v. *United States*, 308 U.S. 213, 216–17] saying that by ceasing to operate or control its railroad directly or indirectly, the Union Stock Yards restricted its transportation service to the loading or unloading of livestock as specified in its tariff. The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the *Chicago Junction Case, supra*. Those conditions *** were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards." (R. 80.)

There is nothing in the report of the Commission which warrants any charge that its conclusions were influenced in the slightest degree by the covenant of the River Road and the New York Central; on the contrary, the passage just quoted from its report plainly shows that the Commission would not permit operation of the Junction by the New York Central companies "to the special advantage and interest of the Union Stock Yards." At the hearing before the Commission,

counsel for Swift solicited and obtained from counsel for the New York Central companies a stipulation "that the Chicago Junction is being operated or leased, whatever you want to call it, under and in accordance with the terms and conditions set by the Commission in the *Chicago Junction Case*, 71 I.C.C. 631." (R. 388.) In view of this stipulation, it must be assumed that the conditions imposed by the Commission have been and are being strictly observed, and Swift is not in position to make any charge to the contrary.

The decision in *United States* v. *Baltimore & Ohio R. Co.*, 333 U.S. 169, cited by counsel for Swift (Brief 118), is not pertinent. The track involved in that case was owned by the Cleveland Union Stock Yards Company, and was used by the New York Central under a trackage agreement which did not permit the railroad to use the track for the carriage of livestock to private sidetracks of the packers. None of the tracks of the Junction is closed to the handling of livestock; and Swift can have private sidetrack delivery of livestock at any time it wishes upon payment of a switching charge found reasonable by the Commission.

Attention is directed by Swift (Brief 121–2) to a letter written by counsel for the Yard Company to the General Counsel of the River Road and New York Central under date of September 4, 1947, in which counsel for the Yard Company stated that those carriers were obligated by the above-mentioned covenant to defend Swift's complaint and to take appropriate steps to raise the issues necessary for a determination of all the questions involved. It is then suggested (Brief 123) that the New York Central companies defended the Swift complaint only because counsel for the Yard Company wrote that letter.

The letter was put in evidence by counsel for Swift shortly before the close of the hearing before the Commission. (R. 1038–9; Ex. 57, R. 1039, 1961–2.) As the letter indicates, it was written because one of the officers of the New York Cen-

tral companies had advised counsel for the Yard Company during the week previous to the date of the letter (September 4, 1947) that they were not planning to take any part in the defense of Swift's complaint, even though most of the evidence necessary for defense and the power to raise the necessary issues for the determination of all questions involved were in the possession of the River Road. (R. 1961–2.)

Swift's complaint before the Commission was filed on July 29, 1947. (R. 1, 58.)* In August, the chief operating officers of the River Road were advised by its Vice President of the allegations of the Swift complaint and asked whether the Junction could handle livestock through the Ashland Avenue Yards. The operating officers replied that livestock could not be so handled without disrupting the operations of those yards. (R. 1039.) It was only shortly thereafter (the week previous to September 4) that one of the traffic officers of the New York Central Lines advised counsel for the Yard Company that Swift's complaint would not be defended. (R. 1961.)

What could have happened in this short period of time to cause the two carriers to decide not to defend a complaint which would result in the complete disruption of the operations of the Ashland Avenue Yards? A deposition taken by counsel for the Live Stock Exchanges, which gives the answer to this question, was held inadmissible by the District Court. (R. 140–5, 149.)

Counsel for the Yard Company presumably were fully aware of the natural reluctance of the management of any railroad to take the lead in the defense of a rate complaint filed by a large shipper against a number of railroads; and the letter undoubtedly was written because it was important to the Yard Company that the issues and evidence necessary to a

* The date shown at page 58 of the printed record is July 9, but this is a misprint. The correct date, July 29, is shown in paragraph 4 of Swift's court complaint. (R. 1.)

full understanding of the entire problem be presented to the Commission. The letter did no more than call upon the two New York Central companies—the only defendants in position to do so effectively—to lay before the tribunal established by Congress to hear rate complaints against railroads the evidence and the issues necessary to enable it to reach an informed judgment.* The fact, apparent throughout its brief, that Swift is chagrined because the chaotic operating conditions that would result from the granting of its demand were disclosed to the Commission does not give Swift any ground for complaint.

The suggestion is made by counsel for Swift (Brief 122–3) that the letter contained an implied threat that, if the Swift complaint were not defended, the lease of the Chicago Junction Railway to the River Road would be terminated and the property leased to a competitor of the New York Central. This suggestion has no warrant in the text of the letter. (R. 1961–2.) In making the suggestion, moreover, counsel for Swift would seem to have overlooked the pertinent provisions of the Interstate Commerce Act. The lease of 1922 could not be effectively terminated, even for breach, without a certificate from the Commission under Section 1(18) of the Interstate Commerce Act (49 U.S.C.A. Sec. 1(18)) that public convenience and necessity permitted the abandonment of operation by the River Road. *Smith* v. *Hoboken R. Co.*, 328 U.S. 123, 130; *Thompson* v. *Texas Mexican R. Co.*, 328 U.S. 134, 144–7. A new lease to another carrier would also require the approval of the Commission under Section 5(2) of the Interstate Commerce Act (49 U.S.C.A. Sec. 5(2)). *Thompson* v. *Texas Mexican R. Co.*, *supra*, 146-7.

---

* "The prohibitions of the statute against unjust discrimination relate not only to inequality of charges and inequality of facilities, *but also to the giving of preferences by means of consent judgments or the waiver of defenses open to the carrier.*" *Phillips* v. *Grand Trunk Western Ry. Co.*, 236 U.S. 662, 667; emphasis supplied.

CONCLUSION.

The decision of the Interstate Commerce Commission that the rate basis complained of is not unreasonable or otherwise unlawful has "the strength due to the judgments of a tribunal appointed by law and informed by experience." *Illinois Central R. Co.* v. *Interstate Commerce Commission*, 206 U.S. 441, 454. Counsel for Swift have not advanced any sound reason for disturbing the order of the Commission, and the judgment of the District Court upholding that order should be affirmed.

Respectfully submitted

GUY A. GLADSON,
BRYCE L. HAMILTON,
1400 First National Bank Bldg.,
Chicago 3, Illinois,
Counsel for The Union Stock Yard and Transit Company of Chicago, Intervener-Appellee.

WINSTON, STRAWN, BLACK & TOWNER,
Of Counsel.

February 25, 1952.

Office - Supreme Court, U. S.
FILED
FEB 27 1952
CHARLES ELMORE CROPLEY
CLERK

CORRECTED COPY

LIBRARY
SUPREME COURT, U. S.

Supreme Court of the United States

OCTOBER TERM, A. D. 1951

No. 282

SWIFT & COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION, et al.,
Appellees.

On Appeal from the United States District Court for the Northern District of Illinois.

BRIEF FOR CHICAGO LIVE STOCK EXCHANGE AND THE CHICAGO TRADERS LIVE STOCK EXCHANGE, APPELLEES.

ROBERT N. BURCHMORE,
JOHN S. BURCHMORE,
NUEL D. BELNAP,
2106 Field Building,
Chicago 3, Illinois.

Counsel for said Appellees.

WALTER, BURCHMORE & BELNAP,
Of Counsel.

BARNARD & MILLER 23 S. Market St., Chicago 6. FRanklin 2-0562

TABLE OF CONTENTS.

	PAGE
Opinions below	1
Jurisdiction	2
Questions presented	2
Statement	2
Purpose of statement	2
Appellant's complaint before the Commission	3
The services presently provided on livestock destined to deliveries at the Yards and the services which would be required upon the grant of the Swift demand	5
Injury to producers, and to the functioning of the public market and market agencies on which they rely, if the Swift demand were granted	7
Summary of Argument	11
Argument	17
I. With few exceptions, the issues argued by the appellant are not within the scope of judicial review of Interstate Commerce Commission orders under the Administrative Procedure Act	17
II. The Commission committed no error of law, either of omission or commission, in construing and applying the various provisions of the Interstate Commerce Act which deal with the justness and reasonableness of rates	21

PAGE

The unchallenged finding of the Commission that through routes to the Swift private siding with joint rates thereover on the flat Chicago basis are not necessary or desirable in the public interest adequately supports the Commission's conclusions that the rates assailed are not unjust and unreasonable in violation of section 1 of the Act..... 21

The Commission rightfully dismissed the Swift complaint because what it sought was against the public interest..... 25

Findings to show that the measure of an assailed rate or rate relation is justified by the cost of the services covered thereby are not required to support the validity of an order which dismisses a complaint upon a finding that the assailed rates are not shown to be unreasonable..... 28

The switching charge of the Junction on livestock is not a penalty charge, prohibitive or otherwise..... 31

III. The Commission committed no error of law, either of omission or commission, in construing and applying the various anti-discrimination provisions of the Interstate Commerce Act..... 33

The dismissal of the section 3(1) allegations of the complaint is supported by adequate findings and such findings are supported by substantial evidence..... 33

The refusal of the Commission to find a violation of section 2 of the Act is adequately supported by findings and said findings have the support of substantial evidence..... 36

PAGE

Appellant's complaint before the Commission involved no situation to which section 1(9) of the Act applies 39

IV. The instant case is neither like nor controlled by United States v. Baltimore & O. R. Co., 333 U.S. 169 40

V. The Swift complaint did not pray for relief with respect to the adequacy of facilities and service on the Junction and the fact the Commission issued no order to require additional facilities or services does not invalidate its order of dismissal of Swift's rate complaint 45

VI. The covenant in the lease given by the Yards Company to the Chicago River and Indiana Railroad Company, lessee and operator of the Junction, has no pertinency to any issue or question in the instant case 46

Conclusion 49

Appendix A 51

Pertinent statutory provisions 51

Table of Cases.

Citations:	Page
Alabama Great S. R. Co. v. United States, 340 U.S. 216	31
Automatic Gravel Prod. Co. v. Burlington M. & N. W. Ry. Co., 151 ICC 481	22
Ayrshire Collieries Corp. v. United States, 335 U.S. 573	31, 34
Baltimore & O. R. Co. v. United States, 298 U.S. 349	34
Barrett Co. v. Atchison T. & S. F. Ry. Co., 172 ICC 319	34
Barringer & Co. v. United States, 319 U.S. 1	38
Board of Trade v. United States, 314 U.S. 534	34
Crossfield Ice Co. v. Southern Ry. Co., 232 ICC 795	22
Fitchburg Gas & Electric Light Co. v. Boston & M. R., 147 ICC 145	22
Interstate Commerce Commission v. Illinois Central Railroad Company, 215 U.S. 452	17
Interstate Commerce Com. v. Louisville & N. R. Co., 227 U.S. 88	34
Interstate Commerce Com. v. Mechling, 330 U.S. 567	29, 30
Interstate Com. Com. v. Union P. R. Co., 222 U.S. 541	17
Louisiana Pub. Serv. Com. v. Texas & N.O.R. Co., 284 U.S. 125	31
Manufacturers R. Co. v. United States, 246 U.S. 457	18
Merchants Warehouse Co. v. United States, 283 U.S. 501	34
Mississippi Valley Barge L. Co. v. United States, 292 U.S. 282	17
Nashville, C. & St. L. R. Co. v. Tennessee, 262 U.S. 318	18
New York Cent. R. Co. v. United States, 99 F. Supp. 394	30
New York v. United States, 331 U.S. 284	31, 34
Palmer v. United States, 75 F. Supp. 63	30
Price Chemical Co. v. Louisville & N. R. Co., 215 ICC 365	22

PAGE

Reciprocal Switching at Richmond, Va., 222 ICC 783.. 22
Richmond Chamber of Commerce v. S. A. L. Ry., 44 ICC 455..... 38
Rochester Telephone Corp. v. United States, 307 U.S. 125 17
Seaboard Airline Railway Co. v. United States, 254 U.S. 57 .....37, 38
Standard Packing Co. v. South Omaha Term. Ry. Co., 229 ICC 479..... 22
Switching Charges on Crushed Stone, 186 ICC 322.... 22
Swift & Co. v. Atchison, T.&S.F.Ry. Co., 274 ICC 557.. 1
Swift & Co. v. Baltimore & O. R. Co,, 266 ICC 55..15, 35, 40
Tennessee Valley Authority v. United States, 96 F. Supp. 409..... 30
United States v. Baltimore and Ohio R. Co., 333 U.S. 169 .....15, 35, 40, 41
United States v. Berwind-White Coal Min. Co., 274 U.S. 564..... 34
United States v. Chicago Heights Trucking Co., 310 U.S. 344..... 18
United States v. Pierce Auto Freight Lines, 327 U.S. 515 27
Virginian R. Co. v. United States, 272 U.S 658.....18, 34

STATUTES:

28 USC 1253 and 2101(b)..... 2

INTERSTATE COMMERCE ACT:

Sec. 1.....3, 12, 18, 21, 23, 24, 27, 28, 30
Sec. 1(6)..... 43
Sec. 1(9).....14, 15, 33, 39, 40, 43
Sec. 2.....14, 18, 22, 33, 36, 38
Sec. 3(1).....3, 14, 18, 22, 24, 33, 34, 35, 42
Sec. 15(3).....4, 5, 12, 13, 18, 22, 23, 24, 27, 28, 51

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1951

No. 282

SWIFT & COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,

Appellees.

On Appeal from the United States District Court for the Northern District of Illinois.

BRIEF FOR CHICAGO LIVE STOCK EXCHANGE AND THE CHICAGO TRADERS LIVE STOCK EXCHANGE, APPELLEES.

OPINIONS BELOW.

The District Court entered findings of fact and conclusions of law (R. 197-209), but wrote no opinion. The report of the Interstate Commerce Commission (R. 57-89) is reported as *Swift & Co.* v. *Atchison, T.&S.F.Ry.Co.* at 274 ICC 557.

Jurisdiction.

The jurisdiction of this Court rests on 28 USC 1253 and 2101(b). Probable jurisdiction was noted on October 15, 1951. (R. 228).

QUESTIONS PRESENTED.

1. Did the Interstate Commerce Commission act rationally and within its authority in dismissing a complaint brought by appellant which assailed rates on livestock in carloads from interstate origins destined to a private sidetrack of the appellant on the Chicago Junction Railway near the Union Stock Yards in Chicago?

2. Does the report of the Commission dismissing said complaint contain adequate findings to show the reasons and basis for said dismissal?

3. When said findings are affirmative in form, are they supported by substantial evidence, and, when said findings are negative in form, do they fairly reflect the state of the record as to evidence on the point?

STATEMENT.

Purpose of statement.

These appellees intervened in the proceeding before the Commission in opposition to Swift, the complainant there and the appellant here, (R. 250), and they intervened as defendants in the Court below. (R. 131). They submit their Statement to state, with somewhat greater clarity and accuracy than is found in appellant's Statement, what the evidence shows (1) as to the operation of the carriers and the *quantity* of services involved in the terminal handling of livestock to Chicago, both present and upon the assumed issuance of an order in favor of Swift; and (2) how the deterioration in the *quality* of the railroad service provided

for producers' livestock sent to the public market for sale, which deterioration would inevitably result from the grant of the Swift demand, would disadvantage and injure the public market and the several hundred thousand producers who rely on its proper functioning. The evidence under (1) is essential to an understanding of the difference between the services covered by the rates to the Swift private sidetrack, which are assailed as unduly preferential, and the services covered by the rates to the unloading chutes at the Union Stock Yards, which are alleged to be unduly prejudicial and discriminatory. The evidence under (2) provides the basis for the Commission's conclusion that Swift was not entitled to rates on the level sought by it as a matter of justness, reasonableness, and desirability in the public interest. To avoid duplication, the statement of evidence showing the prospective deterioration in railroad service, which is the premise for the evidence under (2), is left to the briefs of other appellees.

Appellant's complaint before the Commission.

Appellant alleged before the Commission that the rates and charges on shipments of "direct[1]" livestock from interstate origins to its private sidetrack at its slaughter house at Union Stock Yards (hereinafter referred to as *the Yards*), Chicago, Illinois, are unreasonable in violation of section 1 of the Interstate Commerce Act, as well as unduly preferential and prejudicial in violation of section 3(1). (R. 50-55) By amendment, appellant prayed for an order requiring the defendant railroads to establish through routes and to apply thereover joint rates not in excess of those applicable to livestock destined to the unloading chutes of The Union Stock Yard & Transit Company (here-

[1] Shipments consigned directly to packers for slaughter and not shipped to the public market for sale thereon.

inafter referred to as *the Yards Company*) at Chicago,[2] (R. 55-56).

The rates assailed are made on combination, that is, the line-haul rate from origin to Chicago, plus the switching charge of the Junction ($28.80 per car at time of hearing) from its interchange with the line-haul railroad to the Swift delivery. The only rates on livestock published to private sidetrack deliveries served by the Junction are on this basis. However, the flat Chicago rate applies without the addition of any switching charge on livestock which is consigned to and delivered at the unloading chutes of Yards Company. While such chutes are on the rails of the Junction, that line does not participate in the service required in making such deliveries. Rather, such line-haul carriers have trackage rights over Junction rails to and from such chutes, and operate their own trains directly thereto from their outer yards.

What appellant demands by its complaint before the Commission is a through rate to cover the service of the line-haul carriers, *plus the switching service of the Junction* required in making delivery to appellant's private siding, on a basis the same as the through rate assessed for the service of the line-haul carriers alone in making delivery to the unloading chutes of the Yards Company. Such a rate basis is hereinafter referred to *as the flat Chicago rate or basis.*

Since appellant does not dispute the right of the Junction to compensation for its services, the Swift demand could be satisfied in only two ways: (1) by an order requiring the line-haul railroads and the Junction to establish through routes and to join in establishing thereover single factor

---

[2] This prayer sought the exercise by the Commission of the power conferred by section 15(3) of the Act, reproduced in Appendix A hereto.

rates on the flat Chicago basis;[3] or, (2) by an order directed *wholly at the line-haul carriers* which would require such carriers to absorb the separately published switching charge of the Junction out of their flat Chicago rates.

The services presently provided on livestock destined to deliveries at the Yards and the services which would be required upon the grant of the Swift demand.

The present method of handling livestock destined to delivery at the Yards is as follows (R. 62-63): The line-haul carriers at their outer makeup and breakup yards assemble trains containing cars to be delivered in the Yards area. Sixty-three percent of such trains contain livestock exclusively. These trains of the line-haul carriers proceed directly from the outer yards to the unloading chutes of the Yards Company where the cars are spotted for unloading. While the cars are being unloaded, the engine cuts off, passes around the train and couples on to the other end, and then hauls the empty cars to the line-haul carrier's home yard. The remaining 37 percent of the trains contain both dead freight and livestock, and are referred to as consolidated trains. In the consolidated trains the dead freight is assembled immediately behind the engine. When the consolidated train reaches the eastern end of the eastbound running track going to the unloading chutes of the Yard Company, the train is stopped on the main line, the dead freight is cut out and then set in on one of the receiving tracks in the Junction's Ashland Avenue south yard. The engine then returns, couples on to the livestock and completes the remainder of its run in the same fashion as an exclusive livestock train. There is no switching of the livestock over switching leads, in and out of yard tracks, or to

[3] This is the relief sought under section 15(3) of the Act by appellant's amendment to its complaint. (R. 55-56)

or from private sidings, in the case of either the exclusive livestock train or the consolidated train. Nor, as to the livestock in either train, is there any service other than the direct move by the line-haul carrier's engine from its outer yard to the unloading chutes of the Yard Company.

If the Swift demand were granted, the producers' livestock destined to the unloading chutes at the Yards would continue to be handled in the manner just described, subject, however, to the additional interference, delay, congestion on running tracks, lengthened line-haul schedules, etc., shown by the evidence as summarized in the briefs of other appellees.

As to the direct livestock consigned to Swift (and other packers), completely new services of two separate carriers would be required: (1) The line-haul carrier would bring the stock from its outer yard to the east end of the Junction's Ashland Avenue south yard and would carefully place the livestock cars on an appropriate interchange track in that yard. (2) After that, the Junction would be required to provide the special switching service from the interchange track and through its various yards, running tracks, switching leads, etc., to the private siding of Swift, and to handle the empty cars in a reverse move after the livestock is unloaded.

The foregoing facts are stated so that the Court may be clearly advised as to: (1) the *direct* handling by line-haul carriers of producers' livestock from outer yard to unloading chutes at the Yards, whether in exclusive or consolidated trains; and (2) the essentially different *quantity* of service that would be required if a complete switching service by the Junction were added to a line-haul-carrier service, the line-haul-carrier portion of such through service being the practical equivalent of the complete service required in making direct deliveries to the unloading chutes of the Yards Company.

Injury to producers, and to the functioning of the public market and market agencies on which they rely, if the Swift demand were granted.

The Chicago Live Stock Exchange is an association of livestock market agencies which has 225 members. These members are the consignees for the livestock which producers send to the public market for sale. They act as agents and factors for the producers. (R. 710-711). There is an exceedingly close community of interest between livestock market agencies and the producers whom they represent. Such producers are vitally interested in the preservation of a flourishing central market. (R. 716)

The Chicago Traders Live Stock Exchange is an organization of dealers and order buyers who buy and sell livestock in the public market. (R. 787). The order buyers represent 920 slaughterers to the east and south for whom the Chicago public market is an important source of supply. (R. 789).

The ability of the Chicago market to perform its proper function in the economy of livestock production and marketing—this in the interest of and to the benefit of the producer—is dependent upon the railroad service rendered to Chicago and the railroad terminal handling of the public market stock at Chicago. It is essential that the railroad service be good railroad service. (R. 716-7, 719, 722-3, 783, 791, 808-9, 928). The producers, farmers, feeders, and livestock marketing agencies in whose interests this brief is presented, are concerned with the public market as a place at which livestock of all grades and species is bought and sold, publicly and freely. They have no concern with the so-called "direct" livestock which the appellant and other packers ship in, and which does not choose to use the market facilities of the public yards. So long as the railroad service to and from the public market is not handicapped,

impeded, and interfered with, these appellees are not affected, whether such "directs" be received by appellant (1) at its Omaha Packing Company pens, or (2) through the unloading chutes and overhead driveways of the Yards Company or (3) on its private siding at appellant's slaughter house. However, they do become vitally concerned with the place and method of delivery for "direct" livestock when such place and method interfere with and impede the orderly, efficient, and prompt transportation service to and from the public market on which so many are dependent.

The evidence before the Commission as to the interference with, delay to, and disruption of the railroad terminal operations in handling public market stock at the yards which would result from the grant of the Swift demand, and the lengthened and unsatisfactory line-haul operations and schedules from country points to Chicago which would be compelled in such a case, is summarized in the briefs of other appellees and need not be repeated here. Below is summarized the evidence which shows the direct and immediate injury of serious proportions which would be suffered by the public market and the vast number of producers, farmers and feeders who are dependent on its efficient operations, if the consequences testified to by the defendant railroads came to pass.

Several hundred thousand, possibly one-half a million, producers ship livestock to Chicago for sale on the public market during the course of the year. (R. 743) That livestock is consigned to commission firms which are members of The Chicago Live Stock Exchange. (R. 710, 744) After that livestock is unloaded into unloading chute pens of the Yards Company, it is delivered to employees of a commission firm who drive it to sales pens where it is prepared for sale. The livestock is fed, watered, rested and, when necessary, sorted. It is sorted so as to suit the needs of purchasers who desire a particular weight, flesh or class of animals. (R. 710, 744)

After the stock is sorted so as to put up the best appearance and bring the highest sales price, it is shown to all buyers on the market. Everyone is given an equal opportunity to buy in a free and open market. (R. 775-776)

The ability of the public market at Chicago to perform its function in the economy of livestock production and marketing, is dependent upon the railroad service received. The livestock must arrive early in the morning in order to be available for sale and in a fit condition at the opening of the market. Most railroad schedules are set up so as to provide for delivery well ahead of the opening hour. When livestock is delayed, it suffers in appearance, loses weight, and deteriorates generally. When the arrivals are late, the livestock must often be carried over, resulting in some depreciation as well as added cost for feeding and handling. (R. 719-722, 786, 809) The time in transit to market bears directly upon the net return which the producer receives. The longer the time in transit, the less satisfactory is the condition of the livestock when offered for sale. Additionally, the livestock shrinks, that is, it suffers a loss in weight. (R. 771-772)

A substantial volume of salable livestock is essential to the proper functioning of a public market. The greater the volume, the more effective will be the handling of the temporary and seasonable surplus from all parts of the country, and the less violent will be the swing in prices. Anything which tends to decrease the volume of livestock shipped to the Chicago market or to slow up the action of that market would be detrimental to the public interest. (R. 808-809)

If it becomes necessary for trunk lines to lengthen their schedules so as to allow for time to handle the "directs" to private sidings at the plant of Swift or other packers, the area from which livestock is now brought in without

stopping for feed, water or rest will be shortened. The shortening of that area will reduce the volume of livestock which producers are willing to send to Chicago for sale. (R. 722-723)

If schedules are lengthened, it will also impose on shippers additional hazards in connection with market fluctuations and that, in turn, will discourage shipments to Chicago. (R. 724)

If schedules are lengthened, the expense to the shipper in connection with stops for feed, water and rest, where none are now required, will be increased. That will be another deterrent to the use of the Chicago market. (R. 725) Within the last few years this particular situation occurred as to schedules from Colorado and the result has been a decline in the volume of livestock shipped to Chicago from that state. (R. 782-783, 785)

Any delay in the handling of livestock within the Chicago area will seriously interfere with the proper functioning of the market, not only as to the condition and appearance of the livestock, but also as to prices received. (R. 724, 778-781)

Prompt, speedy and efficient railroad service is also essential to the functioning of the public market as a source of supply to packers located to the east and south thereof. Shipments of such livestock run as high as 500 cars per day and average about 300 cars. Such cars must be ordered by 1:30 P.M. if shipment is to be made the same day. That is not possible unless the livestock arrives early so that it may be purchased by the order buyer and the necessary arrangements made for reshipment. Whenever there is a delay or an interference with the inbound movement, the outbound movement is disorganized. (R. 792-793, 795-796)

SUMMARY OF ARGUMENT.

I.

The scope of judicial review of Interstate Commerce Commission orders under the Administrative Procedure Act and the cases both prior and subsequent to the passage of that act is limited to an inquiry as to whether there is a rational basis for the Commission's conclusion, whether there has been a full and impartial hearing and whether the Commission acted within its statutory authority. The appellants apparently lose sight of these restrictions upon the judicial function and seek to have this Court substitute its judgment for that of the Commission on the question of what rate would be just, reasonable, non-preferential, non-prejudicial and non-discriminatory upon all the evidence. They base their objections to the Commission order dismissing their rate complaint upon the assertion that the Commission gave inordinate weight to certain circumstances and insufficient weight to certain other circumstances. This Court should not and cannot entertain such a plea since to do so would be to impose upon a field which has been left by Congress to the absolute discretion of the Commission. These appellees will show that the Commission's report discloses a rational basis for its order of dismissal and that the reasons given therefore find support in substantial evidence of record.

II.

The Commission's construction and application of the provisions of the Interstate Commerce Act dealing with the justness and reasonableness of rates is sound and in accord with the law.

In the absence of a finding of unjust discrimination and undue prejudice the Commission has no power, by order directed against the line-haul carrier alone, to require such carrier to extend a rate published by it to Chicago, as a point on its line, to a delivery not on its line, that is, to require such carrier to absorb switching charges. The Commission found no such discrimination or prejudice. That subject is discussed under III below.

Under section 15(3) of the Act, the Commission does have the power to require the establishment of through routes and joint rates, that is, to require the line-haul railroads and the Junction to establish single factor rates on the flat Chicago basis from an interstate origin to Swift's private track, but such power can only be exercised when the through route and joint rate is necessary or desirable in the public interest. The Commission not only made the finding that the establishment of joint rates was not necessary or desirable in the public interest, but further held that appellant's proposal would be detrimental to or against the public interest. This finding was premised on the effect on livestock transportation services which would result from calling upon the line-haul carriers and the Junction to handle a large volume of "direct" livestock to packers through the Junction's Ashland Avenue south yard. The Commission found that the burden of handling such stock would seriously interfere with, delay and disrupt terminal operating conditions and the movement of livestock generally.

Swift offered no evidence on the question of public interest and neither in its complaint in the lower court nor its brief in this court does it assert that the findings of the Commission as to the matters of public interest fail to conform with the evidence. Under these circumstances the order of dismissal as to matters of justness, and reasonableness under section 1 of the act would appear to be incontestable.

Appellant argues that the Commission's order dismissing its complaint is invalid because the Commission made no finding that the cost of the service of the line-haul carrier plus the cost of the Junction to the Swift private sidetrack exceeded the cost of service of the line-haul carrier alone to the unloading chutes of the Yards company. Since the burden was on Swift as a complainant, it was not incumbent upon the defendant or the Commission to make any showing as to relative costs. Furthermore, this Court has repeatedly held that evidence and findings with respect to costs are not indispensable support for an order fixing rates and rate relations.

The validity of the Commission's order must be tested from the standpoint of whether its report contains adequate reasons supported by substantial evidence for refusing to require line-haul carriers to maintain in connection with the Chicago Junction, a rate basis to the Swift private siding no higher than that which the line-haul carriers maintain to the unloading chutes of the Yards company. It has already been demonstrated that the Commission correctly refused to require the line-haul carriers and the Junction to establish the through routes and joint rates desired by Swift under section 15(3) because of the adequately supported findings that such would not be necessary or desirable in the public interest. The important thing to note is that the validity of this latter finding being established, the only questions remaining relate to whether the higher combination of through rates on livestock destined to Swift's private siding than on the single factor rate of the line-haul carriers to the unloading chutes of the Yards, is justified by differences in transportation circumstances and conditions. This question is discussed under the next heading.

III.

In finding that the assailed rates did not violate either sections 3(1), 2, or 1(9) of the Act, the Commission acted rationally and upon substantial evidence. In dealing with the question of alleged unlawful rate relations, that is, undue preference, prejudice and discrimination, the issue turns on the matter of similarity or dissimilarity of the services involved.

The contention of appellant that section 3(1), which prohibits undue preference and prejudice, is violated because dead freight moves to the Swift private siding on the flat Chicago basis, whereas livestock is required to pay the combination of the line-haul carriers rate plus the switching charge of Junction, cannot be sustained for two reasons. In the first place, the Commission found affirmatively that there was a difference in the measure of the transportation services required, dead freight as compared with livestock. In the second place, there is no competitive relation between dead freight and livestock and consequently it cannot be said that dead freight is unduly advantaged merely because livestock pays a combination rate basis instead of the flat Chicago basis provided for dead freight.

As to the claimed violation of section 2 (which prohibits the exaction of different rates for like services in the transportation of like kinds of traffic under substantially similar circumstances and conditions), there is an affirmative finding by the Commission, adequately supported by evidence, that deliveries made at Chicago on the flat Chicago rate basis, such as those of the line-haul carriers at the unloading chutes of the Yards company, are substantially dissimilar from the private track delivery sought by Swift.

As to the alleged violation of section 1(9) of the Act (which deals with the operation of connections with private

sidetracks and with the furnishing of car service without discrimination), it is sufficient to say that the Commission correctly viewed that section as inapplicable to the case before it. This is because Swift's complaint to the Commission was directed to the lawfulness of rates and rate relations and not to the matter of physical operations and car service, the latter being the subject of section 1(9).

IV.

Appellant writes his entire brief as if this case were controlled by *United States* v. *Baltimore and Ohio R. Co.*, 333 U.S. 169, in which this Court sustained the order of the Interstate Commerce Commission in *Swift & Co.* v. *Baltimore & O. R. Co.*, 266 ICC 55. That case is completely dissimilar to the instant case. In the first place it involved exclusively the question of service, whereas the instant case involves a question of rates and rates only. In the second place, the services required to be performed in the case cited constituted a restoration of a practice of many years standing. In the instant case the rate basis sought by Swift and the method of handling livestock which would be followed under that rate basis is completely opposed to the practice of many years standing.

V.

Appellant contends that the Commission's order is invalid because it failed to require the Junction to equip itself with sufficient additional properties and additional facilities to take care of the handling of packer "direct" livestock to private sidings. But that cannot be so since the Swift complaint before the Commission was silent on such issues and prayed for no order to be issued requiring the Junction to do anything at all about its facilities and properties devoted to common carrier service.

VI.

The alleged illegal covenant in the lease of the Junction properties to the Chicago River and Indiana Railroad has no pertinency to any issue decided by the Commission and no pertinency to any question involved in the instant review of the Commission's order of dismissal. The Commission treated that covenant as having no bearing on either side of the case. Even if the covenant is an illegal covenant, it has no pertinency to any of the rates involved in the Swift complaint. It has no pertinency to the switching rate of the Junction considered independently of the through rates since that rate was found by the Commission to be reasonable in the light of the services covered thereby. The covenant has no pertinency to the refusal of the line-haul carriers to absorb the Junction switching charge since the covenant is not that of the line-haul carriers but is that of the switching line. Under such circumstances the Commission's failure to give weight to the covenant did not constitute action which was arbitrary or beyond its power.

ARGUMENT.

I.

With few exceptions, the issues argued by the appellant are not within the scope of judicial review of Interstate Commerce Commission orders under the Administrative Procedure Act.

The classic formulation of the proper scope of judicial review with respect to orders of the Interstate Commerce Commission was spelled out in detail more than 40 years ago, by Mr. Chief Justice White in *Interstate Commerce Commission* v. *Illinois Central Railroad Company*, 215 U.S. 452, 470 and by Mr. Justice Lamar in *Interstate Com. Com.* v. *Union P. R. Co.*, 222 U.S. 541, 547. Every word and every term which is used to define the scope of judicial review in the Administrative Procedure Act was anticipated, either in so many words or in substance, in the opinions just cited. In more recent cases the issues open to review have been specified somewhat more tersely, yet consistent with the requirements of the Administrative Procedure Act. In *Mississippi Valley Barge L. Co.* v. *United States*, 292 U.S. 282, 286-287, this Court said:

> . . . The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.

In *Rochester Telephone Corp.* v. *United States*, 307 U.S. 125, 140, this Court said:

> Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised.

The question of what rate is necessary to conform to the standard of reasonableness under section 1 of the Act; the question of whether through routes and joint rates are necessary or desirable in the public interest, the standard of lawfulness under section 15(3) of the Act; and the question of whether a particular rate relation is, or is not, a prohibited preference, prejudice or discrimination under sections 2 and 3(1), are solely questions of fact as to which the Commission, when acting within its authority, has the final say-so. *Manufacturers R. Co.* v. *United States*, 246 U.S. 457, 481; *Nashville, C. & St. L. R. Co.* v. *Tennessee*, 262 U.S. 318, 322; *United States* v. *Chicago Heights Trucking Co.*, 310 U.S. 344, 353; and *Virginian R. Co.* v. *United States*, 272 U.S. 658, 663.

Appellant rarely pays even lip service to the rule of the cases above cited. The preponderance of its argument is directed to this Court as if it were the administrator and as if it were the function of this Court to determine, *as a fact*, whether the rates assailed are in violation of the statute as alleged by appellant. In so arguing the case, appellant is consistent with the grounds recited in its complaint in the lower court for the alleged invalidity of the Commission's order. That complaint covers 44 numbered paragraphs and 50 printed pages in the record (R. 1-50); and in paragraphs 9(f), 11, 13, 15, 16, 18(c), 19, 20, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 37, 42 and 43 thereof, we find a direct charge *in so many words* that the error of the Commission consisted of "giving weight" to particular facts and findings. The other paragraphs in that complaint largely consist of allegations that the Commission erred because it failed to give weight to, and have its decision controlled by, this, that, or other isolated items of facts, which the Commission treated as not controlling to the extent claimed by the appellant upon its decision.

The only issues raised by appellant's complaint in the

lower court which are actually within the scope of judicial review, are first, whether the report of the Commission provides an adequate, that is, a rational, statement of reasons and basis for the order of dismissal; second, whether there is substantial evidence to support the reasons and basis for the dismissal recited in the report; third, whether the facts and circumstances relied upon by the Commission in dismissing the complaint were legally relevant, that is, entitled to consideration by the Commission as an administrator; and fourth, whether the Commission acted within its authority in refusing to rule in appellant's favor as to particular issues of unlawfulness raised by the appellant's complaint before the Commission and the proof adduced in support thereof. It takes a very careful search of appellant's brief to find a specification of an error which is within any one of the issues just listed, or to find any argument other than that which simply asks this Court to substitute its judgment for that of the Commission as to the questions of fact which are within the Commission's final say-so.

By way of illustration, we call attention to the following: Appellant argues that the addition of the switching charge in case of livestock delivered at Swift's private side track is unreasonable *per se*, and therefore illegal as a matter of law, just because other freight moves to private sidings on the Junction over through rates and at joint rates on the flat Chicago basis (I D, p. 60). All of appellant's point II, which deals with alleged discrimination growing out of the rates assailed, proceeds upon the theory that the alleged violations of the various sections of the Act cited are violations *as a matter of law*, and that, upon the facts, the Commission *was without power* to find otherwise (II pp. 63-89). In its point IV appellant not only goes out of the field of judicial review, but even leaves the case, because the argument there advanced is that the Commission erred in failing

to require improved operating conditions of the Junction (IV, pp. 105-116), a matter not remotely in issue. Likewise in point V, which involves what appellant alleges to be a discriminatory and an illegal covenant under which the New York Central agrees to operate the Junction for the "benefit, advantage, and behoof of the business and affairs" of the Yards Company, appellant completely departs from the issues before the Commission and the question of whether the Commission's report provides a rational explanation for its rulings on the issues. Rather, appellant contends, first, that the Commission should have found the covenant mentioned illegal, although no issue as to the covenant is raised by the complaint, and second, that upon such a finding the Commission, *as a matter of law*, should have found the assailed rates to be unreasonable and discriminatory. This is about as far removed as one can possibly get from the proper field of judicial review, because the Commission treated that covenant as without either significance or bearing on any issue decided by it. (R. 79-80)

There is nothing peculiar or unusual about the instant case which should lead this Court to test the validity of the Commission's order by other than the usual standards. Those standards are noted above and the only possible questions which can arise thereunder have been listed. Consequently, we confine the remainder of the brief of these appellees to alleged grounds of invalidity which fall within the range of issues open to review.

II.

The Commission committed no error of law, either of omission or commission, in construing and applying the various provisions of the Interstate Commerce Act which deal with the justness and reasonableness of rates.

Point I of appellant's argument (pages 48-62 of brief) challenges the action of the Commission in finding that the rates assailed are not unjust and unreasonable in violation of section 1 of the Act. Much of appellant's argument on this point is in the direction of asking this Court to substitute its judgment for that of the Commission as to the questions of fact involved. Since that portion of the argument deals with issues not within the scope of judicial review, it will not be noted. As to issues within the province of this Court to consider, we develop below under appropriate subheadings the fallacies in appellant's contentions and argument.

First, however, we develop under the two subsections which follow immediately, a rationale for the Commission's dismissal which appellant virtually ignores, i.e., the injury to the public interest which the evidence shows and the Commission found would result upon the grant of the Swift demand. That circumstance, standing alone, is sufficient to validate the Commission's ultimate conclusion that the rates assailed are not unjust and unreasonable in violation of section 1 of the Act.

The unchallenged finding of the Commission that through routes to the Swift private siding with joint rates thereover on the flat Chicago basis are not necessary or desirable in the public interest adequately supports the Commission's conclusions that the rates assailed are not unjust and unreasonable in violation of section 1 of the Act.

The Commission has no power by order directed against a line-haul carrier alone to require such line-haul carrier to

extend the rate published by it to Chicago (as a point on its own line) to a delivery not on its line—that being the effect of an order requiring the absorption of a switching charge—in the absence of a finding of unjust discrimination and undue prejudice, that is, in the absence of proven violations of section 2 or 3(1) of the Act. See *Automatic Gravel Prod. Co.* v. *Burlington M. & N. W. Ry. Co.*, 151 ICC 481, 486; *Switching Charges on Crushed Stone*, 186 ICC 322, 327; *Fitchburg Gas & Electric Light Co.* v. *B. & M. R.R.*, 147 ICC 145, 149; *Reciprocal Switching at Richmond, Va.*, 222 ICC 783, 800; *Standard Packing Co.* v. *South Omaha Term. Ry. Co.*, 229 ICC 479, 482; *Crossfield Ice Co.* v. *Southern Ry. Co.*, 232 ICC 795, 799; *Price Chemical Co.* v. *Louisville & N. R. Co.*, 215 ICC 365, 367. The soundness of the rule of the cases just cited is manifest. When a through rate from a C&NW origin, such as Omaha, Nebraska, to a location on a separate switching line, such as the private siding of Swift on the Junction, is made up of two separately stated charges, the switching line may not be charged with responsibility for an unreasonable through rate in the absence of proof that its rate is excessive for the separate services covered thereby—a claim not made by appellant in this case—; and the C&NW may not be charged with responsibility for an unreasonable through rate merely because a switching service beyond its rails is required to make delivery and the switching line insists on being paid therefor. Consequently, the C&NW in the situation mentioned—two separate charges being published and maintained—may not be compelled to provide the shipper with the flat Chicago rate by absorbing the separate charge of the switching line, except when necessary to correct an unlawful discriminatory, preferential, and prejudicial rate relation.

However, the Commission does have power under section 15(3) of the Act,[4] to require the line-haul carrier, as, for

[4] Set out in full in Appendix A hereto.

example, the C&NW from Omaha to Chicago, and the Junction to establish a through route from an interstate origin to the Swift private track and to apply thereover a maximum reasonable single-factor joint rate on the flat Chicago basis, provided that the one who seeks such a through route and joint rate bears the burden of proving that he is entitled to it under statutory standards. That is the relief sought by Swift under sections 1 and 15(3) by the amendment to its complaint. (R. 55-56)

The power conferred by section 15(3) is expressly conditioned on a finding by the Commission that the particular through route and maximum reasonable joint rate prescribed is "necessary or desirable in the public interest". In its report the Commission found flatly that the evidence would not warrant the necessary finding as to the rate sought by Swift. At page 573 of 274 ICC, the Commission said (R. 77):

> There is no warrant, . . . for a conclusion that the establishment of joint rates as desired by complainant is necessary or desirable in the public interest.

In its formal conclusions on page 576 of 274 ICC, the Commission said (R. 81):

> We find . . . (2) that the establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest.

Appellant's complaint in the lower court does not allege that the Commission erred either in law or in fact in making the finding and conclusion just quoted. There is no claim in the pleadings or in the brief that such finding or such conclusion are contrary to or without substantial support in evidence of record. Appellant makes no claim that it offered any proof whatsoever on the question of public interest. Under such circumstances, it would seem that this Court must accept as incontestable the Commis-

sion's order in so far as it dismissed the sections 1 and 15(3) issues raised by appellant's complaint.

This, of course, does not settle the entire controversy since appellant alleges error on the part of the Commission in disposing of issues as to discrimination, preference and prejudice raised under other sections of the Act. The validity of the Commission's findings and order of dismissal with respect to such other issues are dealt with separately under appropriate headings herein.

Applicant apparently seeks to escape the force of the propositions developed above, which, if valid, would eliminate from this review all questions of evidence, fact and law as to the reasonableness of the charges under section 1, by treating the section 15(3) findings as without significance. On this point, appellant in a footnote on page 31 of brief says:

> The complaint as amended also contained a prayer (R. 56) for the establishment of joint-through rates between the line-haul carriers and the Chicago Junction. The merits of that prayer turn in part on the difference between the absorption of a switching rate by the line-haul carrier, which is the general practice throughout the country, and a division of the joint rate, which is the practice in Chicago (R. 293-294, 295, 843-845). Since, however, the basic issue in the present controversy, is, on the Commission's own statement (R. 59), the legality of the switching charge, and since in our view a joint rate which included the switching charge would be equally illegal, we have thought it conducive to clarity to omit all further reference to the establishment of joint rates.

Illegality of rates can take several forms. Rates can be illegal because excessive and unjust, thus in violation of section 1. Rates can be illegal because they occasion unjust discrimination or undue preference and prejudice in violation of section 3(1). When, as the Commission found, the appellant failed to prove that a through route with

a joint rate thereover on the flat Chicago basis is necessary or desirable in the public interest, appellant's case then becomes limited to the legality of the added switching charge under the anti-discrimination provisions of the Act.

The Commission rightfully dismissed the Swift complaint because what it sought was against the public interest.

Appellant concedes on page 59 of its brief:

> * * * If what Swift sought was against the public interest, it should not be permitted at any price.

In the preceding section of this argument we quote two very specific findings of the Commission that what Swift sought was not necessary or desirable in the public interest. (R. 77, 81) Those findings provide the rational basis for the Commission's conclusion that the rates assailed were not unreasonable. Those findings are not challenged by the appellant, either as to their sufficiency or as to their support in the evidence. The Commission's findings on the question of public interest, when read in the light of the discussion which leads up to them, are not mere negative findings; rather, they reflect a view that distinct harm to the public interest would result from the grant of the Swift demand.

In addition to the findings of the Commission which use the phrase "public interest", above quoted, the Commission dealt in two other findings with the harm to the public interest, which would result from the grant of the Swift demand.

R. 76-77:

> Interferences with the movement of livestock to the stock yards is a serious concern not only of defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is adequate for their needs.

And (R. 77):

> We may, . . . disapprove the inauguration of a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal operating conditions and the movement of livestock generally.[5]

---

[5] Preliminary findings of the Commission as to the effect on the railroad services of the line-haul defendants and the Junction if the Swift demand were granted, read as follows:

> Under the present practice, followed since the inauguration of services to the Union Stock Yards in the interest of expeditious centralized delivery, the yards of the Junction are not burdened with livestock cars either loaded or empty. It clearly appears that any attempt by the Junction to make deliveries of livestock generally to packers or to transport an amount of livestock substantially greater than complainant's present needs, would result in serious disruption of operations and services and serious delays in the delivery of livestock. * * * (R. 71)
>
> * * *
>
> . . . the conclusion is warranted that a substantial movement of livestock by the Junction would adversely affect efficient and expeditious terminal operations generally and that operations would be disrupted if much of the large movement of livestock to the stockyards area and thereturn movement of the empty cars, were performed by the Junction. (R. 71)
>
> * * *
>
> While, as above stated, any cars of livestock consigned to complainant could be handled in consolidated trains by grouping such cars at the head of the train with the cars of dead freight intended for set-out in the south yard, nevertheless because of difficulties peculiar to livestock traffic, such handling would, it appears, affect adversely the line-haul carriers' operations incarrying livestock to the stockyards. * * * (R. 72)
>
> * * *
>
> * * * Having in mind the congested condition of yards and tracks, it is clear that the attempt to make plant delivery through and over them of even 18 cars of livestock daily would considerably delay and burden defendants' operations. Moreover, although it is shown that complainant's direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipments exceeded 18 cars. Also it appears that the number of complainant's direct shipments of livestock in proportion to the number bought at the stock-

While the foregoing findings do not use the phrase "public interest", it may not be doubted that they relate thereto. The serious harm to livestock producers and shippers generally, which would inevitably result from the grant of the Swift demand (See Statement, pages 7 to 10 above), is an exceedingly important circumstance to be considered in evaluating the public interest. Here again, there is no claim from appellant that the findings immediately above quoted are not supported by substantial evidence. If they are challenged at all, it is only with respect to their legal relevancy to the Commission's conclusion.

In *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515, 535-536, this Court said that the matter of public interest "is . . . the business of the Commission, made such by the very terms of the statute".

In the instant case the Commission concerned itself with "its business" and found that what Swift sought was **not** in the public interest. There being no question as to the substantiality of the support which the evidence provides for the findings on this point, the Commission's order, in so far as based thereon, becomes incontestable.

This should be sufficient to settle all questions presented by the case with respect to the reasonableness of rates under sections 1 and 15(3).

---

yards has been steadily increasing, and the testimony of complainant's witnesses affords ground for the belief that that condition will continue. (R. 74, 75)

* * *

* * * Nevertheless, it is our best judgment, and we, therefore, so find and conclude, that, if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like delivery service in an amount and volume which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction's lines. (R. 76)

Findings to show that the measure of an assailed rate or rate relation is justified by the cost of the services covered thereby are not required to support the validity of an order which dismisses a complaint upon a finding that the assailed rates are not shown to be unreasonable.

The appellant had the burden of proof in the proceeding before the Commission. In disposing of the issue raised by its complaint under sections 1 and 15(3), the Commission found, as noted above, no warrant for a conclusion that a joint rate on the flat Chicago basis to the Swift private siding is necessary or desirable in the public interest. In addition, the Commission found (R. 80):

> The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of services that would be required for the desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plants.

Appellant says that the foregoing finding is not sufficient to support the order of dismissal; that, in the absence of findings as to rate versus cost relations, the conclusion of the Commission "stands simply as an arbitrary *ipse dixit*" (page 54); and that, for this reason, the Commission's order of dismissal must be set aside. This is the burden of appellant's entire argument under point I on pages 50-62 of its brief, although presented with variations.

This contention of appellant's is a strange one. A shipper complains that his rate is excessive in relation to the rate of his competitor and, according to appellant, he must prevail *as a matter of law* unless the railroad defendants bear the burden of a cost-of-service justification, and the Commission specifically finds that the difference in rates assailed

by the shipper is justified from a cost-of-service standpoint. Lacking such finding and such evidence—such evidence from the defendants being essential to the entry of a finding as to costs under appellant's theory—the appellant says that the Commission has no power to dismiss the complaint. Before looking at a single authority relied upon, common sense tells us that no such rule of law has ever been enunciated by this or any other court. There is no possible theory under which the burden of proof can be shifted, as appellant would shift it, from the shoulders of Swift to the shoulders of the railroads which were the defendants before the Commission.

When we come to consider the authorities cited and relied upon, we find that appellant has confused the instant case, in which the Commission neither prescribed nor approved any rate, but only found appellant's allegations as to unlawfulness not sustained by its proof, with cases in which the Commission has prescribed or approved rate differences or increases in charges without evidence or findings to justify or support its action.

Interstate Commerce Com. v. *Mechling,* 330 U.S. 567, is typical of appellant's authorities. In that case railroads operating east from Chicago performed identical services in the on-transportation of grain whether it arrived at Chicago via rail or via barge, but the Commission fixed and approved a rate difference (3 cents per 100 pounds) to the disadvantage of the ex-barge grain. This Court simply held that the prescribed rate difference for services apparently identical could not be sustained in the absence of a proven difference in cost. The prescription of different rates for identical services, as in the *Mechling* case, has nothing in common with the instant case in which the Commission found that the through rate assessed for the *two-line services* of the line-haul carrier and the Junction to the Swift private siding had not been shown to be

excessive and unreasonable in violation of section 1, even though it was higher than the through rate assessed for the *one-line service* of the line-haul carrier to the unloading chutes of the Yards Company. Obviously, the *Mechling* case and the instant case have nothing in common.

Likewise as to *New York Central R. Co.* v. *United States,* 99 F. Supp. 394 (D. Mass.) affirmed, 342 U.S. 890; *Palmer* v. *United States,* 75 F. Supp. 63 (D.D.C.); and *Tennessee Valley Authority* v. *United States,* 96 F. Supp. 409 (N.D. Ala.). In the *New York Central* case the order of the Commission had the effect of requiring railroads to continue in effect a higher rate on grain to Boston and New York than to Baltimore and Philadelphia, although they proposed a reduction in rates to Boston and New York so as to provide port equalization. The District Court set that order aside because neither the evidence nor findings in the report provided support for an order compelling the continuation in the future of the rate difference which the railroads proposed to eliminate. In the *Palmer* case the order of the Commission required an increase in the rental charge on freight cars. The order was set aside because the Commission failed to provide findings to justify its requirement that the rental charge be increased. In the *Tennessee Valley Authority* case the Commission approved a railroad proposal to apply a higher switching charge on ex-barge grain than on ex-rail grain without evidence to support the rate difference given its affirmative approval. The District Court treated that case as controlled by the *Mechling* case, as indeed it was. But for reasons stated above, such a case has nothing in common with the instant case.

Except in cases like *Mechling* and *Palmer,* neither this nor any other Court has held that evidence and findings with respect to rate versus cost relations are essential to the validity of a Commission order. In cases involving

different services in which the Commission has actually prescribed the rates to be charged, as well as the arbitraries or differentials by which they should differ, this Court has held squarely that such evidence and findings are not necessary supports for a challenged order. In *Louisiana Pub. Serv. Com.* v. *Texas & N.O.R. Co.*, 284 U.S. 125, this Court had under review an order of the Commission prescribing mileage scale rates on sand and gravel which included an arbitrary when the service involved a crossing of the Mississippi River. The order was assailed on the ground that the arbitrary was not supported by evidence or by findings with respect to the cost thereof or the difference in cost. This Court sustained the order against that attack. To the same effect, is *Alabama Great S. R. Co.* v. *United States*, 340 U.S. 216, 223, 225. Compare *New York* v. *United States*, 331 U.S. 284, 331, and *Ayrshire Collieries Corp.* v. *United States*, 335 U.S. 573, 592.

The switching charge of the Junction on livestock is not a penalty charge, prohibitive or otherwise.

Appellant repeatedly characterizes the switching charge of the Junction on livestock as a penalty charge and as if its only purpose were to make prohibitive (from the standpoint of costs) the handling of livestock by the Junction in switching service. There is no warrant in the facts of the case for either contention.

The switching charge of the Junction represents the compensation which it believes it should have whenever required to undertake the difficult task of handling livestock in switching service from its Ashland Avenue south yard to a private industry track on its rails. Appellant does not challenge the right of the Junction to be compensated for that service. Appellant does not challenge the measure of the charge, considered independently of the through rate.

We find in its brief no mention of any evidence offered by it tending to prove that the $28.80 switching charge per car, in effect at the time of the hearing, was excessive for the livestock switching services covered thereby. A penalty rate or charge connotes the addition of something over and above what would otherwise be just, reasonable and compensatory. But applicant cannot show that the Junction arrived at the $28.80 per car charge by adding some amount to what would otherwise be a normally reasonable and compensatory charge. It is a misnomer to call the switching charge of the Junction a penalty charge.

Nor is appellant on sounder ground when it characterizes the switching charge of the Junction as if designed to prohibit the movement of livestock over its rails. Its only basis for that characterization is that the Junction's switching charge exceeds appellant's trucking cost from the Omaha Packing Plant tracks to the Yards, and also exceeds the stock yards charges assessed by the Yards Company on shipments of "direct" livestock delivered through and by use of the facilities of the Yards Company. But that does not mean that the switching charge was fixed higher than the charges or costs of other methods of delivery so as to induce appellant to use one instead of the others.

If the higher charge or cost for one method of delivery than another is, in truth, a penalty charge, then, by the same token, the charges assessed by the Yards Company are penalty charges because higher than the cost to appellant of truck delivery for its direct livestock. The statement of the proposition indicates its absurdity.

The switching charge is simply a charge thought necessary by the carrier to cover the services involved. There isn't a scintilla of proof that it was made in consideration of or with regard to either the trucking cost of the appellant or the stock yard charges of the Yards Company. The

switching charge stands here on its own bottom, related only to the service which it covers. It is a reasonable charge according to the findings of the Commission and those findings are supported by substantial evidence. It should not be looked upon by this Court in any other light, regardless of the extravagance of appellant's language.

III.

The Commission committed no error of law, either of omission or commission, in construing and applying the various anti-discrimination provisions of the Interstate Commerce Act.

Under point II of brief (pp. 63-89), appellant contends that the rates assailed are in violation of sections 3(1), 2, and 1(9) of the Act. The dimissal of the complaint with respect to issues raised under various anti-discrimination provisions of the Act was based on adequate findings and substantial evidence which we discuss below.

The dismissal of the section 3(1) allegations of the complaint is supported by adequate findings and such findings are supported by substantial evidence.

Appellant argues that livestock is unduly prejudiced and dead freight is unduly preferred because the dead freight consigned to Swift's private siding is transported thereto via through routes over which apply joint rates on the flat Chicago basis, whereas livestock must pay the combination basis hereinabove described. (Brief, pp. 63-69)

The refusal of the Commission to require a like scheme of rates for livestock and dead freight by an alternative order issued under section 3(1) of the Act is clearly within its authority. For one reason, the Commission's report

contains an affirmative finding as to differences in services. On that point, the Commission said (R. 65):

> The measure of the transportation services rendered shipments of livestock is substantially greater than that accorded dead freight. * * *

The differences in the services required is spelled out in detail by the Commission on the several pages of its report which follow immediately after the sentence above quoted. (R. 65-74) Appellant does not dispute the truth of the facts stated by the Commission with respect to the services required when livestock is switched as compared with the services required when dead freight is switched. Rather, appellant marshals the facts to suit its own ideas on the matter and argues, in effect, that the Commission came to an erroneous conclusion. Here again appellant addresses itself to issues not within the scope of judicial review because this Court has repeatedly held that all questions as to the weight of the evidence are exclusively for the Commission to decide. See *Virginian R. Co.* v. *United States*, 272 U.S. 658, 663; *Merchants Warehouse Co.* v. *United States*, 283 U.S. 501, 508; *Interstate Commerce Com.* v. *Louisville & N. R. Co.*, 227 U.S. 88; *Board of Trade* v. *United States*, 314 U.S. 534, 548; *United States* v. *Berwind-White Coal Min. Co.*, 274 U.S. 564, 580-581; *Baltimore & O. R. Co.* v. *United States*, 298 U.S. 349, 359; *New York* v. *United States*, 331 U.S. 284, 331, 349; and *Ayrshire Collieries Corp.* v. *United States*, 335 U.S. 573, 593.

The second ground on which the Commission's order of dismissal as to the issue under section 3(1) may be supported involves the universally accepted rule that section 3(1) does not apply to other than competitive situations. See *Barrett Co.* v. *Atchison T. & S. F. Ry. Co.*, 172 ICC 319, 333-334. Livestock is not competitive with dead freight. Consequently, it is not disadvantaged by reason of the fact that dead freight is transported to private

sidings on the Junction without the addition of switching charges. Conversely, dead freight gains no benefit or advantage whatsoever from the fact that the switching charge is added in the case of livestock. If an alternative order were issued under section 3(1) and the railroads, in compliance therewith, cancelled the joint rates on the flat Chicago basis on the dead freight, thus making applicable the combination line-haul rates plus the switching charge of the Junction, the appellant's position as to livestock delivery cost would not be imroved. That means livestock is not *unduly* prejudiced and dead freight is not *unduly* preferred. It necessarily follows that to treat livestock differently than dead freight in respect to the construction and application of through rates does not violate section 3(1), even if such difference in treatment were not justified by difference in transportation conditions.

It is significant that in *Swift & Company* v. *Baltimore & O. R. Co.*, 266 ICC 55, in which the Commission required railroads at Cleveland, Ohio, to provide service for the delivery of livestock on a private siding[6] of Swift & Co., the finding under section 3(1) did not relate to the delivery of dead freight on that siding. Rather, the Commission made its finding and granted Swift relief under section 3(1) because other packers adjacent to the Stock Yards at Cleveland were provided with service in the delivery of livestock under circumstances and conditions which the Commission found were similar to those encountered on the tracks serving Swift over which service as to livestock was refused.

[6] The order of the Commission in that case was sustained by this Court in *United States* v. *Baltimore and Ohio R. Co.*, 333 U.S. 169.

The refusal of the Commission to find a violation of section 2 of the Act is adequately supported by findings and said findings have the support of substantial evidence.

On pages 69 to 79 of brief, appellant argues that the prohibition in section 2 against unjust discrimination is violated when livestock destined to Swift's private siding is subjected to a combination through rate and livestock destined to the unloading chutes of the Yards Company in the same general area is subjected to the lower, flat Chicago rate.

Section 2 forbids the exaction of different rates for "like and contemporaneous service[s] in the transportation of . . . like kind[s] of traffic under substantially similar circumstances and conditions . . .".

The Commission made a finding of fact which is directly opposed to appellant's claim under section 2, saying at page 574 of 274 ICC (R. 78, italics supplied):

> * * * The transportation services, conditions, and circumstances connected with deliveries by the line-haul carriers at the unloading chutes of the Union Stock Yards, as hereinbefore described, also are *substantially dissimilar from the private track delivery sought.*

Appellant ignores the finding just quoted. Yet that finding stands in the way of every contention advanced by it under section 2 unless the finding is not supported by substantial evidence. As to that, it should be sufficient for the purposes of this review simply to note that a direct one-line service by the line-haul carrier is involved in delivering at the unloading chutes of the Yards Company, whereas a two-line service of the line-haul carrier and the Junction is involved in delivering to the Swift private siding. That circumstance, even if it stood alone, is sufficient to make section 2 inapplicable.

However, before we conclude our consideration of the

facts, it is desirable to make clear the services rendered by line-haul carriers in handling the livestock which is transported from outer yards to the unloading chutes of the Yards Company, whether in exclusive or in consolidated trains (See Statement, pp. 5 to 6 above). We deal with the point because at many places in its brief appellant says, in effect, that the livestock handled in the consolidated trains—such trains constituting 37 percent of the total trains transporting livestock to the unloading chutes—requires additional set outs, additional switching, etc., beyond the simpler operation involved in delivering to unloading chutes of the Yards Company the livestock contained in the exclusive livestock trains (Appellant's brief, p. 71).

The fact is that the livestock contained in the consolidated trains is neither "switched" nor "set out" during the course of its journey from the line-haul carrier's outer yards to the unloading chutes of the Yards Company. The consolidated train is stopped on the running track near the east end of the Ashland Avenue south yard so that the dead freight, which is at the head end of the train, may be cut loose from the livestock and switched into receiving tracks in the Ashland Avenue south yard of the Junction. Then, the engine picks up the livestock cars at the place where they were left to proceed thence to the unloading chutes, a short distance to the east. But there is no set out of the livestock. It moves over precisely the same route in every particular as that over which move the exclusive livestock trains. The stopping of the livestock in the consolidated train on the running track has no greater significance than the stopping of the exclusive livestock train on the same running track while waiting opportunity to proceed to the unloading chutes.

In the course of its argument on its section 2 point, appellant cites *Seaboard Airline Railway Co.* v. *United States*,

254 U.S. 57, in which this Court sustained the order of the Commission in *Richmond Chamber of Commerce* v. *S. A. L. Ry.*, 44 ICC 455, as if it held that section 2 requires the *charging* of an identical rate to all deliveries in the same terminal district. That case had nothing to do with the *measure* of the charges for switching services when in addition to line-haul rates. That case arose because line-haul railroads reaching Richmond, Virginia, followed a practice with respect to absorption of switching charges under which such charges would be absorbed *if* the switching line also served the origin point, but would not be absorbed as to *like* traffic from the *same* origin point if switched by another line not serving said origin point. The Commission held that this difference in treatment was a violation of section 2 because the difference in absorptions was not based on a difference in transportation conditions, but was based on the matter of a difference in carrier competition. No similar situation is involved in the instant case. Furthermore, it is significant that in the *Richmond* case, the Commission acknowledged by its discussion the propriety of different switching charges in the same terminal area; and its command as to quality of treatment did not disturb that situation.

Appellant cites no case involving a higher *charge* assessed for the combined services of two lines to a place of delivery different from the place of delivery to which a lower charge applied for a single line service in which a violation of section 2 has been found. No such case is cited because there is none.

In *Barringer & Co.* v. *United States*, 319 U.S. 1, was involved an order of the Commission which authorized the addition of a loading charge to the line-haul rate on cotton when destined to the southeast and at the same time authorized the elimination of such loading charge *for an identical loading service at the same point* when the cotton

was destined to the Texas Gulf ports. The Supreme Court sustained the order because of a difference which the Commission found as to circumstances surrounding the services to the two different delivery points for the cotton. The Court at page 6 said:

> * * * But differences in rates as between shippers are prohibited only where the "circumstances and conditions" attending the transportation service are "substantially similar." Whether those circumstances and conditions are sufficiently dissimilar to justify a difference in rates, or whether, on the other hand, the difference in rates constitutes an unjust discrimination because based primarily on considerations relating to the identity or competitive position of the particular shipper rather than to circumstances attending the transportation service, is a question of fact for the Commission's determination. Hence its conclusion that in view of all the relevant facts and circumstances a rate or practice either is or is not unjustly discriminatory within the meaning of section 2 of the Act will not be disturbed here unless we can say that its finding is unsupported by evidence or without rational basis, or rests on an erroneous construction of the statute.

Appellant's complaint before the Commission involved no situation to which section 1(9) of the Act applies.

On pages 80-83 of brief, appellant argues that the switching charge of the Junction violates section 1(9) of the Act. The ground for that contention is that a joint through rate applies on dead freight, as compared with the combination of line-haul rate and switching charge on livestock, so that the livestock is discriminated against in the "operation of the switch track."

Section 1(9) requires every common carrier subject to the act to "construct, maintain, and operate upon reasonable terms a switch connection with any . . . private sidetrack which may be constructed to connect with its railroad" and such a common carrier is required to "furnish

cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper."

Plainly, section 1(9) deals only with facilities and with service. It does not deal with switching rates, whether alone or in combination with line-haul rates, nor does it deal with rate relations. The instant proceeding involves no question of discriminatory service. Nor does it involve a refusal to furnish cars, the service which the section specifies shall be rendered "without discrimination".

A check of the decisions in which the Commission has found it necessary to apply section 1(9) indicates that in every instance they involved a limitation on the service which a carrier was willing to provide to or from private sidetracks, rather than the measure or relation of the rates to be applied upon the furnishing of the services. This is sufficiently illustrated by the cases which appellant cites on pages 80 to 83 of its brief.

IV.

The instant case is neither like nor controlled by United States v. Baltimore & O. R. Co., 333 U.S. 169.

In *United States* v. *Baltimore and Ohio R. Co.*, 333 U.S. 169, hereinafter referred to as the *Cleveland* case, this Court sustained an order entered by the Commission in *Swift & Company* v. *Baltimore & O. R. Co.*, 266 ICC 55. That decision of this Court is cited on 20 different occasions in appellant's brief. It is characterized as the "controlling precedent" (pp. 41, 86). The appellant claims that "the facts in the two cases are the same in every relevant particular" (p. 41), and that "it would be difficult . . . to find two cases which are closer on their facts . . .". (p. 88)

We propose to show that neither the facts nor the issues

in the *Cleveland* case are like those in the instant case, and that the questions on which that case turned in this Court are not even remotely like the questions presented on the review of the Commission's order in the instant case.

The facts in the *Cleveland* case as shown in the report of the Commission in 266 ICC 55 are as follows: The Swift Packing plant at Cleveland was served by the New York Central Railroad. In serving the plant, the New York Central operated over Track 1619, which was owned by the Cleveland Union Stock Yards Company, hereinafter called the *Stock Yards*. For many years the New York Central had operated over the track in question in delivering both livestock and dead freight on the basis of the flat Cleveland rates. That was the practice whether the New York Central was the line-haul carrier as to the traffic in question, or whether other railroads brought the traffic to Cleveland and the New York Central acted simply as a switching carrier.

In 1935, upon notice as provided under the existing trackage agreement, the trackage agreement was amended to prohibit the use of Track 1619 by the New York Central in hauling livestock to Swift, unless a separate charge or rental was paid to the Stock Yards Company. The railroads were unable to agree with the Stock Yards as to the price on which they would be allowed to continue the use of Track 1619 in delivering livestock to Swift. Consequently, the railroads declined to continue such deliveries. However, deliveries at the flat Cleveland rate were continued for numerous competitors of Swift at Cleveland who could be and were served without the use of Track 1619.

In the case before the Commission there was no issue as to rates. The only issue related to services. The flat Cleveland rate basis applied on livestock delivered to the Swift track during many years in which livestock was transported thereto, and it was only the insistence of the Stock Yards

that it be paid a special charge whenever the track was used for livestock that led the New York Central to make its switching charge inapplicable to livestock.[7]

The railroads agreed that there was no physical difficulty in continuing the delivery which had been performed for many years. They rested their defense entirely on the prohibitory charge or rental which they would have to pay the Stock Yards if the track were used for livestock. The Commission held that the New York Central used the track in question as a common carrier and that it could not justify its refusal to serve thereover merely because of its trackage agreement with the Stock Yards.

In deciding that case in favor of Swift, all violations of law found related wholly to the refusal of the New York Central to serve; none involved the measure or relation of rates. For the convenience of the Court, we quote the finding as to each violation of the Act found by the Commission. As to section 3(1) (266 ICC 68):

> * * * The evidence shows, and we so find, that, with respect to the service, including the effecting of plant delivery, involved in transporting livestock to all of the plants, including that of complainant, the circumstances and conditions of transportation are substantially the same; that all plants are engaged in the same general business, buying their livestock in the same markets and disposing of the same dressed products in the same consuming territory; and that active competition exists between them in purchasing the live animals and in selling the dressed products. Accordingly, we conclude that the defendant carriers' failure, in connection with the transportation of carload shipments of livestock consigned to complainant's plant, to accord delivery thereof on the latter's sidetracks while according such service in connection with like shipments consigned to its competitors subjects com-

[7] The reciprocal switching charge of the New York Central was $3.47 per car and the charge demanded of it by the Stock Yards exceeded that amount.

plainant to undue prejudice and unduly prefers the competing plants above named.[8]

As to the violation of section 1(6), which prohibits unreasonable and unlawful practices, the Commission found (266 ICC 69):

> * * * Accordingly, based on the above facts, circumstances, and considerations, we find and conclude that the defendants' failure, in connection with the transportation of carload shipments of livestock consigned to complainant's plant, to accord delivery thereof directly to the latter's sidetracks, is an unreasonable and unlawful practice in violation of section 1(6) of the Act.

As to the violation of section 1(9), the Commission found (266 ICC 71-72):

> We find that the complainant has made application in writing to the carrier for the operation of the switch connection discussed and has tendered interstate traffic to such carrier; that the New York Central has refused to maintain or operate such connection for the transportation of livestock to complainant's plant; that the facts shown above depicting operation over the track for a number of years for the transportation of livestock and since used for the transportation of commodities other than livestock shows that the connection is practicable and may be made with safety, and such refusal constitutes justification for the connection, and that the number of carloads of livestock which complainant is ready and willing to have transported by railroad will furnish reasonable compensation to the carrier with whose line the connection is made, in this case the New York Central. We also find that the failure or refusal of the defendant, New York Central, to furnish cars for the movement of livestock traffic to complainant's plant at Cleveland, Ohio, while furnishing cars for the movement of other classes of traffic, constitutes a discrimination against Swift & Company within the meaning of this section. Consequently, we

[8] These competing plants were also adjacent to the stock yard facilities at Cleveland.

find that a violation of section 1(9) of part I of the Interstate Commerce Act follows.

The railroads and the Stock Yards brought separate actions to enjoin the order of the Commission. The lower court enjoined the order on the ground that the Stock Yards had a property right in Track 1619 which entitled it to restrict the character of use to which it might be put by the New York Central under the trackage agreement. This Court reversed and stated the question to be (333 U.S. 175):

> * * * Can the non-carrier owner of a segment of railroad track who contracts for an interstate railroad's use of the segment as part of its line reserve a right to regulate the type of commodities that the railroad may transport over the segment, or would such a reservation be invalid under the Interstate Commerce Act?

In sustaining the order of the Commission, this Court held that the Commission had power to require a correction by the railroad of the discriminatory practices found to have been followed in respect to services rendered, and *held* that that power was not affected by the private ownership of the track in question. The narrow ground of the holding of this Court is indicated by the concluding paragraph from its opinion:

> We hold that the Commission's order was authorized by statute and that it does not deprive Stock Yards of its property without due process of law. In doing so we do not pass upon any questions in relation to the dedication of Track 1619 to railroad use. Neither do we decide what are the relative financial rights of Stock Yards and New York Central under their contracts, nor whether Stock Yards can cancel the contract with New York Central, nor what would be the duty of New York Central should Stock Yards attempt to terminate its right to use Track 1619. We only hold that Stock Yards' ownership of Track 1619 does not vest it with power to compel the railroads to operate in a way which violates the Interstate Commerce Act.

Plainly, the *Cleveland* case has nothing in common, either as to its facts, or as to the issues decided by the Commission, or as to the questions decided by this Court, with the instant case. Even taking the broadest view of the case and the matters involved therein, the two cases are fundamentally different. In the first place, what Swift sought and obtained in the *Cleveland* case was the restoration of an operating practice as to the use of trackage which had been followed for many, many years. In contrast, what Swift seeks in the instant case is a rate basis for livestock destined to private sidings on the Junction which is contrary to the accepted practice of many decades. In the second place, the defendants in the *Cleveland* case had declined to perform a service which it was both practical and possible for them to perform with ease and safety, and there was no suggestion that transportation services in the handling of livestock for the general public would be impeded or disadvantaged by the restoration of the service which Swift sought. In contrast, the grant of the rate basis which Swift seeks in the instant case would adversely affect transportation services rendered for the general public so that what Swift seeks is manifestly against the public interest, and the Commission so found upon substantial evidence.

V.

The Swift complaint did not pray for relief with respect to the adequacy of facilities and service on the Junction and the fact the Commission issued no order to require additional facilities or services does not invalidate its order of dismissal of Swift's rate complaint.

Under point IV in its brief (pp. 105-116) appellant argues that the Commission's order of dismissal of Swift's rate complaint should be set aside because the Commission failed to require such added facilities and service by the

Junction as might be necessary to handle livestock in switching service to private sidings.

Whether the facts are such as to warrant an order under section 1(11) of the Act, is not a question for decision in this case since the Commission proceeding involved no issue under that section. If there is a question as to the adequacy of the Junction properties and facilities, that question must be presented to and decided by the Commission before this Court can say whether or not the Commission acted within its authority in the premises.

VI.

The covenant in the lease given by the Yards Company to the Chicago River and Indiana Railroad Company, lessee and operator of the Junction, has no pertinency to any issue or question in the instant case.

Appellant devotes point V in its brief (pp. 117-141) to a covenant whereby the Chicago River and Indiana Railroad Company, a wholly owned subsidiary of the New York Central, agrees to operate the Junction in such manner "as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards". Appellant says that the covenant mentioned is "the heart of the case", that it is illegal, and that solely by reason of the covenant the Junction has failed to equip itself with the property and facilities necessary to the handling of livestock in switching service to private sidings. To prove this point, applicant relies wholly on a letter written by counsel for the Yards Company to counsel for the New York Central with reference to the production of evidence by the New York Central in defense of the Swift complaint before the Commission (Exhibit 57, R. 1961-1962). In that letter counsel for Yards expressed the opinion that the covenant required

the River Road and the New York Central to defend against the Swift complaint and that any failure to do so would be a breach of the covenant. Appellant argues that because the Commission dismissed the Swift complaint, it is, in effect, enforcing the covenant which is discriminatory and therefore illegal *per se*.

The Commission did not consider the matter of this covenant to have any pertinency to the issues before it or to be responsible for the rate basis assailed by the Swift complaint. The Commission's discussion and findings on this point read, (274 ICC 555, 575):

> Complainant asserts that a contractual relation exists between the Union Stock Yards and the Chicago Junction under a lease dated December 1, 1913, whereby the carrier agreed "to conduct, manage and operate the line of railroad by this instrument demised, and in so far as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards." The covenant quoted was incorporated in a later lease executed May 19, 1922, when the Chicago Junction subleased its line to the Chicago River & Indiana, a wholly owned subsidiary of the New York Central Railroad, for 99 years with an option to renew in perpetuity. *Union Stock Yard & Transit Co.* v. *United States*, 308 U.S. 213, 216. The effect of the leases was to completely divest the Union Stock Yards of operation and control of the terminal railroad, the Court saying that by ceasing to operate or control its railroad directly or indirectly, the Union Stock Yards restricted its transportation service to the loading or unloading of livestock as specified in its tariff. The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the *Chicago Junction Case*, *supra*. Those conditions were particularly intended to insure that the Chicago Junction and the Chicago River & Indiana should be operated as neutral terminal carriers, without special advantage favoring the New York Central but the conditions were and are broad enough

to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock Yards.

Since the Commission treated the covenant in question as having no bearing on the matters before it, either in the direction of warranting an order in favor of Swift or as warranting an order against it, there is no possible basis for the claim that the existence of the covenant operates so as to invalidate the Commission's order. Yet, that is what appellant's argument seems to come down to, i.e., that the mere existence of the covenant in question precludes the Commission from a dismissal of the Swift complaint.

Appellant apparently makes much of the matter of the covenant in the hope that it will make this case look like the *Cleveland* case. Obviously, the covenants in the two cases have nothing in common. In the *Cleveland* case the railroad entered into a contract which obligated it not to transport livestock over the track leading to the Swift plant unless it paid the Stock Yards Company a special charge which was higher than the switching charge named in the railroad's tariff. In the instant case there is no covenant as to either the rendition or the withholding of service, nor is there any covenant as to a particular rate basis. There is no evidence in this record which even suggests that the measure of the switching charge on livestock maintained by the Junction is due to any circumstance other than the operating conditions encountered when the services for which the charge is assessed are performed. That circumstance, and the others, noted under point IV above (pp. 40 to 45), show how dissimilar is the *Cleveland* case.

There is still another reason why everything that appellant argues about the covenant is completely beside the

point. The Swift complaint does not attack the reasonableness of the switching charge considered independently of the through movement. The Swift complaint is actually directed to the failure of the line-haul carriers to absorb the switching charge, or to the failure of the line-haul carriers and the Junction to join in a single-factor through rate on the flat Chicago basis. In either situation it is primarily the line-haul carriers who are responsible for the measure of the rates and the rate relations about which Swift complains. Taking this view of the case, which is the only proper view, it is obvious that the covenant between the Yards Company and the River Road had no bearing whatsoever on any issue decided by the Commission and has no pertinency to any question involved in this review as to the validity of the Commission's order.

CONCLUSION.

The Commission committed no error in dismissing the Swift complaint. Accordingly, the judgment of the District Court upholding that order should be affirmed.

Respectfully submitted,

JOHN S. BURCHMORE,
ROBERT N. BURCHMORE,
NUEL D. BELNAP,
Attorneys for Appellees.

WALTER, BURCHMORE & BELNAP,
Of Counsel.
2106 Field Building,
Chicago 3, Illinois.

Dated: February 26, 1952.

APPENDIX A.

Pertinent statutory provisions.

The statutory provisions referred to herein are set out in Appendix A to the brief of the appellant, with the exception of section 15(3) (49 U.S.C. 15(3)) of the Interstate Commerce Act which is set out below:

> The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
FEB 29 1952
CHARLES ELMORE CROPLEY
CLERK

No. 282

In the Supreme Court of the United States

OCTOBER TERM, 1951

SWIFT & COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	2
STATUTES INVOLVED	2
STATEMENT	2
SUMMARY OF ARGUMENT	26
ARGUMENT	29
I. In determining the issues raised in the proceedings, it was essential that the Commission consider the lay-out of yards and tracks of the Junction; the Junction's present operations in handling dead freight; the method by which livestock had for many years been handled by the line-haul carriers to the stockyards; and the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock	29
II. Swift's allegation that the Commission erred in failing to find that the existing rates, charges and practices of the carriers resulted in undue prejudice and preference in violation of section 3 is without merit	39
III. Swift's contention that the Commission's order gives effect to an unlawful covenant is without merit	49
IV. The switching charge of the Junction in addition to the line-haul rates is not a penalty charge as termed by Swift	52
CONCLUSION	55

291101—32——1

CASES CITED

	Page
Adams v. *Mills*, 286 U. S. 397	32, 33, 47
Armour & Co. v. *Alton R. Co.*, 312 U. S. 195	32, 33
Atchison, T. & S. F. Ry. Co. v. *United States*, 295 U. S. 193	32, 33
Ayrshire Corp. v. *United States*, 335 U. S. 573	22
Baltimore Butchers Live Stock Co. v. *P. B. & W. R. Co.*, 20 I. C. C. 124	42, 44
Chicago Junction Case, 71 I. C. C. 433	10, 51, 52
Chicago Live Stock Exchange v. *Atchison, T. & S. F. Ry.*, 219 I. C. C. 531	9, 23
Cleveland Stockyard Case, 266 I. C. C. 55	44, 46
Covington Stock Yards Co. v. *Keith*, 139 U. S. 128	48
Group of Investors v. *Milwaukee R. Co.*, 318 U. S. 523	21
Los Angeles Switching Case, 234 U. S. 294	48, 49
Kriel v. *Baltimore & Ohio R. Co.*, 41 I. C. C. 434	43
Nashville Abattoir, Hide & Melting Assn. v. *L. & N. R. R. Co.*, 40 I. C. C. 134	42
Neuhoff Packing Co. v. *L. & N. R. R. Co.*, 268 I. C. C. 271	41, 44, 51
Swift & Co. v. *United States*, 316 U. S. 216	32, 35, 40, 47
United States v. *Baltimore & O. R. Co.*, 330 U. S. 169	28, 44, 47

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

SWIFT & COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The findings of fact and conclusions of law (no opinion was filed) of the specially constituted District Court are set forth in the transcript (R. 197–210). The report of the Interstate Commerce Commission (R. 57) appears at 274 I. C. C. 577.

JURISDICTION

The final judgment of the District Court was entered June 21, 1951 (R. 210), and the appeal was allowed July 26, 1951 (R. 211). The juris-

diction of this Court is invoked under 28 U. S. C. 1253 and 2101 (b). Probable jurisdiction was noted October 15, 1951. (R. 228)

QUESTIONS PRESENTED

1. Whether, in the light of the long-existing conditions found to exist in the Chicago stockyard area, the Interstate Commerce Commission acted within its powers in concluding that appellant Swift was not entitled to delivery of livestock at its proposed plant in that area at the line-haul rate.

2. Whether the evidence before the Commission warranted its findings that the switching charge for private delivery to Swift had not been shown to be either unreasonable or discriminatory.

STATUTES INVOLVED

For the pertinent provisions of the Interstate Commerce Act and other Acts here involved, the Court is respectfully referred to Appendix A of appellant's brief.

STATEMENT

This is a direct appeal from the final judgment of a specially constituted district court, sustaining as in all respects valid a report and order of the Interstate Commerce Commission issued and entered in a proceeding entitled No. 29809, *Swift & Company* v. *Atchison, Topeka & Santa Fe Railway Company, et al.*

The Commission proceeding was instituted by complaint filed by appellant (hereinafter called Swift), alleging in substance, that the rates and charges on direct[1] shipments of livestock, in carloads, from points outside Illinois for delivery at its plant in Chicago are unreasonable, unduly prejudicial to livestock as a commodity, and unduly prejudicial to it and preferential of its competitors in Illinois and several other midwestern states (R. 58), in violation of sections 1 and 3 of the Interstate Commerce Act. The complaint prayed the Commission to prescribe reasonable rates, charges and practices, and, particularly, joint through rates between the line-haul railroads serving Chicago and the Chicago Junction Railway[2] and Chicago River and Indiana Railroad, such joint rates to include delivery of livestock shipments on the industrial sidings at Swift's plant in the stock yard area and not to exceed the rates applying on shipments of livestock to the Union Stock Yards (hereinafter called the stockyards) and other points in Chicago at which the railroads deliver such ship-

[1] Shipments consigned directly to packers for slaughter and not offered for sale in the public interest.

[2] The Chicago Junction Railway, a terminal switching carrier, is the only railroad which reaches with its own rails either the stockyards or the industries (including the packers) within that part of the industrial area of Chicago known as the stock yard area. It is operated by the Chicago River and Indiana Railroad as lessee, in connection with the latter's own terminal switching line. For convenience, these two terminal carriers will hereinafter be called the Junction.

ments at the line-haul rates without additional charge (R. 55–56, 59).

Although the Junction has never, except in cases of emergency, switched or transported livestock either to the stockyards or industry sidings, its tariff provided for switching charges on "all carload freight" to or from industries, sidings, team tracks and districts as shown therein. And, following the filing of Swift's complaint with the Commission, the Junction filed schedules proposing to specifically exempt livestock from the traffic it would transport and to cancel the application on livestock of all switching charges published by it except to and from chutes and sidings at the stockyards. On protest of Swift and others the Commission suspended operation of the proposed schedules until July 14, 1948, and thereafter the Junction voluntarily postponed the effective date thereof pending the Commission's decision. The two proceedings were heard on a consolidated record and decided in the same report (R. 59).

Numerous parties representing the Union Stock Yards, producers, buyers, and sellers of livestock, intervened in opposition to the complaint. The United States Department of Agriculture also intervened as an interested party under its administration of the Packers and Stock Yards Act, 1921 (R. 59). Following extensive hearings, a proposed report was issued by the examiner. Exceptions to the proposed report and replies to

exceptions were filed by the parties, and thereafter they were heard in oral argument by the entire Commission (R. 58).

The main issue presented in the Commission proceedings was whether or not Swift was entitled to have direct shipments of livestock delivered by the Junction without a charge in addition to the line-haul rates on a private siding at a plant which it proposed to construct in that part of the stockyard area known as "Packingtown" and just north of its present plant (R. 55–56, 59, 65). Certain of the buildings and facilities of Swift's present plant had become obsolete and inadequate and, therefore, Swift proposed to construct a new packing plant which would have substantial facilities for unloading livestock brought in by rail or truck, including adequate plant tracks and holding pens[3] (R. 65).

The flat line-haul rate on livestock to Chicago applies to public team tracks and industrial sidings on the rails of the line-haul carriers,[4] and

[3] At the time of the hearing, the new, or additional, site was occupied by another concern, but the latter's structures and tracks were to be removed and replaced by new buildings, tracks and facilities (R. 65).

[4] About 1,500 shipments of livestock per year are delivered at public team tracks of five of the line-haul railroads (Ex. 17, R. 1101), and about 6,500 cars per year are delivered on sidings of the Omaha Packing Company, a wholly owned subsidiary of Swift, located on the Burlington some miles north of the stockyards. Formerly the Omaha plant slaughtered and processed a substantial part of the livestock received by it, but in 1932 the plant was destroyed by fire and

also to the stockyards which, in legal effect, is on the rails of the line-haul carriers, since they have trackage rights over the rails of the Junction leading to the stockyards and have for years transported livestock directly thereto, operating with their own engines and crews (R. 60, 78, 79, 286). The line-haul carriers do not have trackage rights to operate over the rails of the Junction to reach Swift's plant or the plants of other packers on the Junction. Nor does the flat line-haul rate to Chicago include delivery of livestock to such plants (R. 60, 78–79, 527, 838–840). The charge of the Junction for switching livestock from junctions with connecting carriers to Swift's plant and other points on its line is $28.80 per car. "That carrier, however, has never, except in an emergency handled ordinary livestock in switching service." (R. 60.) With the exception of such emergency situations,

> For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock to the stockyards and make deliveries there,[5] and for the

---

has not been rebuilt. However, Swift continued to receive and now receives livestock at the unloading pens on the Omaha plant site and trucks the animals from there to its plant in Packingtown (R. 67–68).

[5] Most of the larger packing plants as well as some of the smaller ones and also a number of industries of other sort are located in Packingtown which adjoins the stockyards on

> Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays. (Commission's report, R. 72.)

As above said, the main issue in the Commission proceeding was whether Swift was entitled to plant delivery by the Junction of its direct shipments of livestock without charge in addition to the line-haul rates to Chicago. Based upon allegations that the existing interstate rates, charges, and practices on direct shipments of livestock to its plant in Packingtown were un-

---

the west and is connected therewith by a network of overhead runways, tunnels and viaducts, owned and maintained by the stockyards. These runways, tunnels, and viaducts are used to drive livestock from the stockyards to the slaughtering floors of the packers, including Swift (R. 65), which latter, however, uses them only to drive livestock which it purchases at the stockyards to the floors of its plant in Packingtown. All of its direct shipments of livestock Swift receives at pens on the property of the Omaha plant on the rails of the Burlington and well outside the congested stockyard area. From there it trucks the animals about 2½ miles to its plant in Packingtown (R. 67).

reasonable and unduly prejudicial and preferential, Swift's complaint prayed the Commission to order the defendant carriers to establish and apply just and reasonable rates, charges, and practices, including joint through rates between the trunk lines and the Junction, under which delivery will be afforded on the sidetrack of its plant and under which the rates and charges shall not exceed those applying to the stockyards and other points in Chicago where the line-haul rates apply without charge in addition thereto (R. 56).

Manifestly and, as stated by the Commission (R. 60), the determination of the issues raised in the proceeding made it

> necessary to consider the track lay-out of the Junction, and the present operations thereover in the handling of so-called dead freight, which term includes perishable and all other freight other than livestock; the method by which livestock has for many years been handled by the line-haul carriers to the Union Stock Yards; the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock, as sought by the complainant; and also, in order to avoid undue preference and prejudice, if it were required to make similar deliveries to complainant's competitors."[6]

[6] The Stockyard Company, created by special statute of Illinois in 1865, was organized by the railroads entering Chicago to replace four widely separated stockyards by a

In performing the switching of dead freight in the stockyard area, the Junction acts as terminal carrier for 27 railroads, 22 of which are

---

union stockyard which would provide a livestock terminal for the railroads and a central market for livestock (R. 1019–25). While the original stockholders were the organizing railroads, they disposed of their holdings during the succeeding 12 years. *Chicago Live Stock Exchange* v. *A. T. & S. F. Ry.*, 219 I. C. C. 531. In addition to the establishment of the Union stockyard, the company was authorized by its special charter to construct a terminal railroad to connect with the lines of all railroads terminating in Chicago. Late in 1865, the company completed construction of the stockyard in the open prairies south of the city (R. 917) and also 30 miles of terminal railroad to connect with the then nine railroads serving Chicago (R. 915–9, 920–1). At the beginning the terminal road was used almost wholly for the transportation of livestock to and from the stockyards, the trunk lines then, as now, operating with their own engines and crews over tracks of the terminal road connecting their lines with the stockyards (R. 469, 920). With the establishment, "starting about 1870," of packing plants in the stockyards area and the construction of additional railroads into Chicago, the tracks and facilities of the terminal road were extended to reach such plants and to connect with the new railroads. But, since the packing plants were at first small and the establishment thereof and of other industries was at first gradual, the individual trunk lines were for some years authorized to operate over the switching tracks of the terminal road in carrying dead freight to and from the plants and industries in the area, this continuing until 1887. Thereafter, from 1887 to 1893, the dead freight operations over the tracks of the terminal road were conducted first by one and later by another association controlled by the trunk lines, but, in the latter year, the yard company acquired locomotives and commenced the handling of dead freight itself (R. 921–4). In 1897 the yard company leased its terminal road to Chicago & Indiana State Line Railroad, which railroad and another small railroad were the following

trunk lines; and it serves, not only the packers, but a total of about 499 industries. The principal place of interchange between the Junction

year consolidated into a company known as the Chicago Junction Railway. In 1922, pursuant to authorization by the Commission, the Junction subleased the terminal road to the River Road, a subsidiary of the New York Central (see footnote 2, *supra*), the method of conducting terminal operations, however, remaining the same. In short, from 1865 on, the trunk lines, operating over the main running tracks of the terminal road (now the Junction), have hauled their cars of livestock to the stockyards, making delivery there, and also have hauled all empty stock cars back to their own yards. While for some years the trunk lines conducted dead freight operations to and from the plants of the packers (R. 923), they were not then or at any time authorized to transport livestock over the "dead freight tracks" (R. 924). And from the time when the stockyard company acquired locomotives and commenced its own dead freight operations, the carriers' method of conducting terminal operations in the stockyards area has, except in emergencies, always been the same, that is, the trunk lines operating over the tracks of the terminal road, have carried all livestock to the stockyards and the terminal road, or the lessees thereof, have performed the switching of all other freight for the packers and other industries in the area (R. 469, 920, *Chicago Junction case*, *supra*, 71 I. C. C., at 433).

The industrial development of the stockyards area began with the construction of the first packing plant in 1870 and by 1887 there were 15 such plants (R. 922). Following the annexation in 1889 of the stockyards district to Chicago, public streets were opened up and industrial development became rapid until by 1907 the entire area in the vicinity of the stockyards was built up solidly with permanent buildings (R. 924–6). There was even at that time great congestion in the interchange yards of the Junction, causing delay in the handling of dead freight (R. 925) and, since then, many manufacturing industries have located along the lines of the Junction until now there are 499 served by that carrier (R. 442).

and connecting railroads is the Junction's Ashland Avenue Yard. While that yard consists of a solid mass of tracks, based on the operating purposes thereof it is divided into two yards, known as the South Yard and the North Yard. All inbound cars of dead freight destined to the many industries on the Junction must be delivered by connecting carriers on 9 receiving tracks in the South Yard, and nowhere else, pursuant to a labor agreement between the Junction and its employees entered into in 1946 to avert a threatened strike (R. 61, 463–4, 515–7). After completion of the necessary inspection and carding, the cars are switched by Junction break-up crews to adjoining classification tracks (25, with a capacity of 680 cars) for grouping and movement to base yards serving the respective operating districts. There the cars are reclassified and switched to the private sidings of the industries or to team tracks (R. 61).

The North Yard, which has 24 tracks with a capacity of 700 cars, is the Junction's interchange yard for delivery to western connecting lines of outbound cars of dead freight and of "empties," other than empty stock cars. Cars, loaded and empty, moving from industries on the Junction, are first switched to base yards where they are classified for further movement either to the North Yard or to the Loomis Yard, if for delivery to eastern or southern connecting lines. When moving to the North Yard, such outbound cars,

loaded or empty, are first placed by Junction crews on 3 of the 24 tracks in that yard. Seven other of said tracks are used for holding or classification purposes, leaving available 14 tracks for the delivering of cars to western connecting lines. The movement through the North Yard ranges from 600 to 800 loaded and empty cars per day. The Loomis Yard, above referred to, is the Junction's interchange yard for delivery of outbound dead freight and "empties" to eastern and southern connecting lines. That yard contains 20 tracks with a capacity of 420 cars (R. 62).

A third and very important use is made of the Ashland Avenue yards. Between the North and South Yards the Junction has three parallel main running tracks designated 1102, 1103, and 1104, respectively. The line-haul carriers have trackage rights to operate east-bound over 1103 to the stockyards [7] and west-bound from the yards over 1102 and 1104; and for these rights they pay the Junction $1.50 per car, loaded or empty, handled to or from the stockyards (R. 62). About 63 percent of the trains of the trunk

[7] Such right to operate over track 1103 also extends to dead freight either as carried in a consolidated train for set out on the receiving tracks of the Ashland Avenue South Yard or where the trains consist wholly of dead freight for delivery to the tracks of that yard. See example of Burlington's operations (R. 63). The 12 carriers entering the stockyard area from the east use west-bound running tracks 1101 or 1104 in making delivery of dead freight to the South Yard (R. 70, 636).

lines moving to the stockyards consist exclusively of cars of livestock. Solid trains of livestock entering the stockyard area from the west are hauled by the line-haul carriers over east-bound track 1103 to the unloading chutes in the stockyards. While the cars are being unloaded the engine cuts off, passes around the train and, having coupled on to the other end, hauls the empty cars over westbound tracks 1102 or 1104 to the line-haul carrier's home yard. As stated by the Commission (R. 63):

> Manifestly, as the line-haul carriers must use the same east-bound track into the Union Stock Yards, any delay to a train on that track results in "piling up" trains of other lines seeking ingress to the Union Stock Yards. Frequently as many as four trains must wait to enter this track as a result of its being blocked at the east end. Delays are necessarily experienced also because of "set outs" made by consolidated trains, consisting of livestock and dead freight. In a consolidated train the dead freight is on the head and behind the engine. The cars of livestock are cut off and left standing at the eastern end of the east-bound running track while the line-haul carrier's engine sets the dead freight on one of the nine receiving tracks in the south yard. This operation blocks the running track until the engine returns and hauls the livestock to the Union Stock Yards.

The principal carriers of livestock to the Chicago stockyard district are the western carriers and such carriers, except the Rock Island,[8] must use track 1103, not only because it is assigned for eastbound use, but also because the other two running tracks are used to capacity (R. 636–7). As above stated, all inbound cars of dead freight, whether from western or eastern carriers, must be delivered on receiving tracks in the Junction's Ashland Avenue South Yard. And all outbound dead freight cars, loaded or empty, moving to western carriers, must be delivered by the Junction on tracks in its North Yard. Through those yards there were "funnelled" an average per annum of 726,144 loaded and empty cars during 1945, 1946 and 1947. The yards are in a densely developed industrial part of the city and there is no land available for the expansion thereof or the building of additional facilities nearby for interchange and classification of traffic (R. 60). Under the present practice,

[8] The Rock Island enters the stockyard area from the east. Upon arrival of a consolidated train at the Rock Island's outer yard, the cars of livestock are separated from the dead freight and the former are hauled to the stockyards without passing through the Ashland Avenue yards. All cars of dead freight, however, must be hauled over the Junction's westbound running tracks to the Ashland Avenue South Yard. And any cars of livestock destined to the Omaha plant must also be hauled over those running tracks. These operations of the Rock Island are typical of the operations of other carriers similarly entering the stockyard area from the east, of which there are 12 (R. 70, 489, 636).

followed since 1865, of centralized delivery by the line-haul carriers of all livestock to the stockyards, such carriers also hauling the empty stock cars directly back to their respective home yards, the Junction's interchange and classification yards are not burdened with livestock cars, either loaded or empty (R. 71). In handling the present dead freight traffic alone, the Junction's interchange and classifying yards are worked to capacity (R. 547, 701). And even accepting the view, urged by Swift, that all the Commission needed to consider was the plant delivery of its direct shipments of livestock, averaging 18 cars a day, still cars of livestock cannot be handled in the same simple and expeditious way customarily used in switching and classifying cars of dead freight. While Swift's cars of livestock could be handled in consolidated trains by grouping such cars at the head of the train with the cars of dead freight intended for set-out in the South Yard, nevertheless it would have to be expected that such course would add to the delay and "piling up" of the livestock trains of other carriers, seeking ingress to the stockyards over the same running track. Speaking of this, the Commission report says (R. 72–3):

> * * * Consolidated trains always occasion some delay, since the cars of livestock destined to the stockyards are left standing on the track while the engine hauls the cars of dead freight a short

> distance eastward and then, after backing them onto a sidetrack leading to the receiving tracks of the south yard, "kicks" the cars as previously described. But, while in the case of dead freight the cars may be simply "kicked," if the switching were to include livestock for complainant or other packers, the service would have to be differently performed. Whether the livestock were handled alone or together with the dead freight, the cars could not be simply "kicked," but would have to be switched and actually placed on the receiving track to avoid risk of injury to the animals; and, once the cars were so placed, subsequent switches of dead freight could not be "kicked" and thus permitted to roll freely against the cars of livestock.

Furthermore, the difficulties in handling Swift's cars of livestock would obtain even in greater degree in the Junction's congested South Yard, its base yard (Damen Avenue), and also in making final delivery over auxiliary track 1105 and other track leading to Swift's proposed plant (R. 66–7). Referring to the added burden that would be cast on the South Yard if livestock were diverted through it, the Commission's report says (R. 73–5):

> * * * In its work of classifying dead freight for switching delivery, the Junction, which serves, not only the packers, but hundreds of other industries, follows the usual and timesaving practice of

"kicking," whereby uncoupled cars at the end of the string of cars being classified are sent on their way over the switching lead and onto the proper classification track; but if classification track 19 [assigned to Swift for dead freight], or any other, were to be used for the livestock destined to complainant, neither the livestock cars nor subsequent cars of dead freight could be so "kicked," but would have to be pushed over the lead and along the track to the point of placement, such cars remaining coupled until brought to rest.

Moreover, in the making of any such use of classification track 19, or any other, for complainant's livestock shipments, it would have to be expected that the cars of livestock would often be blocked in between cars of dead freight, and would have to be "dug out" for a special run to complainant's plant. Indeed, it appears that in some instances, immediately upon arrival of a consolidated train including cars of livestock for complainant, the Junction might have to make a special run to deliver the cars at the latter's plant. As above mentioned in practically all cases, livestock arriving at Chicago has only a limited time left before it must be unloaded to avoid violation of the law governing watering and feeding;[9] * * * *.

[9] The law referred to (45 U. S. C. 71–74) provides that livestock may be confined in cars for not more than 28 hours without unloading for rest, watering and feeding unless the

> * * * Moreover, although it is shown that complainant's direct shipments of livestock average 18 cars a day, such average necessarily includes days when the shipment exceeded 18 cars. Also it appears that the number of complainant's direct shipments of livestock in proportion to the number bought at the stockyards has been steadily increasing, and the testimony of complainant's witnesses affords ground for the belief that that condition will continue.

By consigning all its direct shipments of livestock to the Omaha Plant site, Swift now avoids, to some extent at least, (R. 68), the costs incurred by other packers taking delivery of their direct shipments of livestock at the stockyards and paying yardage charges [10] for use of the yards, overhead runways, tunnels and viaducts in driving the animals to their plants. Swift's complaint to the Commission asked for the establishment of joint rates on livestock between the trunk lines and the Junction to its proposed plant, such rates to be at the line-haul level and to include delivery on tracks to be built at the proposed plant. If granted, Swift would, in effect, have been enabled

shipper requests in writing that the time be extended to 36 hours. It is important to note that a stop for rest, water and feed always adds 5 hours to the running time because the law specifies that the animals be given at least 5 consecutive hours of rest.

[10] Sixty-five cents per head on cattle, 40 cents on calves, 21 cents on hogs, and 15 cents on sheep (R. 68).

to avoid any of the running expense incurred by its competitors by reason of the yardage charges they pay. Yet, before the Commission, Swift, in referring to the railroads' contention that, if its demand for plant deliveries at the flat line-haul rate were granted, other packers would make like demands which would have to be complied with, characterized the contention as one resting on an untested assumption or conjecture and thus requiring the Commission to decide the case, not upon facts, but upon prediction, opinion, and prophesy. Answering, the report says in part (R. 76–77):

> But the very nature of complainant's complaint, asking, as it does, that defendants be required to render for its proposed plant a delivery service of a kind new to the stockyards district, necessarily requires exercise of judgment as to the future effects and results. * * * The other packers or some of them may encounter difficulties occasioning delay in the establishment of unloading facilities; in instances the difficulties may cause the packer or packers to conclude not to change to the new method of receiving livestock. Nevertheless, it is our best judgment, and we, therefore, so find and conclude, that, if complainant's demand for the delivery service at the line-haul rates were granted, there would result demands from other packers requiring defendants to render like delivery service in an amount and volume

which together with such service rendered complainant would seriously interfere with, delay, and disrupt defendants' terminal operations in carrying livestock to the Union Stock Yard and in making deliveries of other freight to the industries on the Junction's lines.

Interferences with the movement of livestock to the stockyards is a serious concern not only of defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is adequate for their needs. It is the position of these interests that deliveries of livestock on private industrial tracks served by the Junction should be condemned upon the ground that such disposition of livestock is contrary to the public interest. We are not authorized to prescribe the manner in which livestock shall be marketed in the public interest.

We may, however, disapprove the inauguration of a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally. The proposed complete exemption of livestock from transportation by the Junction under any circumstances is not justified. There is no warrant, however, for a conclusion that the

establishment of joint rates as desired by complainant is necessary or desirable in the public interest.

The record contains adequate facts showing that, if Swift's demand for plant delivery of livestock were granted, other packers would be under strong competitive compulsion to make like demands. The Commission's principal function is legislative in nature, requiring it to project its judgment into the future. Cf. *Group of Investors* v. *Milwaukee R. Co.*, 318 U. S. 523, 542–544.

Interference with the expeditious movement of livestock to the Chicago stockyards is, indeed, matter of serious concern, not only to the railroads performing the transportation, but to producers and consumers throughout a wide area of the country and also Canada. It is the greatest livestock market in the world (R. 918). In the course of a year, several hundred thousand, possibly half a million, producers ship livestock for sale on the Chicago stockyards market (R. 743). To that market a producer can ship any meat animal, regardless of its species, grade, type or weight, and he will find a buyer. And any buyer in the country, regardless of the quality he likes to buy, the grades, weights or whatnot, can come to Chicago with assurance that he will find the animals he wants (R. 920). This favorable condition of the Chicago stockyards market and its value to producers and consumers necessarily depends on good railroad service. Although now

hemmed in my the City's intensive industrial and municipal development, the Junction's lay-out of yards and tracks is still well adapted for rendering expeditious service by the method, always pursued, of centralized delivery of all livestock at the stockyards by the trunk lines. However, any change now in such method of delivery, particularly as requiring the Junction to assume the lengthy undertaking of switching the livestock of Swift and other packers through its congested yards would not only greatly add to the number of set-outs at the South Yard and consequent delaying of trains seeking ingress to the stockyard, but would also interfere with the trunk line's train schedules by adding to the number of stops for rest, feed and water, increasing the shipper's costs and inevitably narrowing the area from which producers may profitably avail themselves of the Chicago market. (R. 642–4; 680–1; 702–3; 724–7.)

Doubtless it is true, as pointed out in Swift's brief (14–5), that the distance to its proposed plant is about the same as that to the stockyards. But, if the Commission, in meeting its transportation and rate problems, should always treat distance or other mathematical guide as governing, that would often result in the narrowing of areas of production contrary to the interests of consumers, of many producers, and of the general public. Cf. *Ayrshire Corp.* v. *United States*, 335 U. S. 573, 576, and cases cited. And here, too,

the Commission had to particularly consider the public interest as affected by the general disruption in service that would result from compliance with Swift's demand.

Coming to the question whether in any event the joint rates at the line-haul level sought by Swift include compensation for the delivery of livestock to its proposed plant, the Commission's report says (R. 78–79):

> The line-haul rates on livestock to Chicago are Commission-prescribed rates. In *Chicago Livestock Exch.* v. *Atchison, T. & S. F. Ry. Co.*, 219 I. C. C. 531, 545, 546, we said that "the line-haul carriers operate over the tracks of the Chicago Junction to the Union Stock Yards and make delivery there thereby making these yards their own terminals." We pointed out that in prescribing the rates on livestock to Chicago, among other markets, there was specifically taken into consideration as an element "the rendition of terminal service in connection with the transportation of livestock," and there was included what was considered "sufficient to cover such terminal services under a normal operation as well as to cover the unloading and loading of livestock at public stockyards," but we did not there consider what the services would be in connection with deliveries of livestock by the Junction on private industrial tracks. That carrier did not then and does not now perform such services.

The Commission report also discusses at some length the Section 3 issues and certain others raised by Swift which will, however, be left for later mention when reached in argument.

Thereafter, the report concluded with the following findings and conclusions: (R. 80, 81.)

> The evidence affords no basis for a conclusion that the terminal charge of the Junction in addition to the line-haul rates is unreasonable for deliveries of livestock to the proposed plant, considering services and modification of services that would be required for the desired deliveries and the effect upon terminal operations generally of performing such delivery service to the proposed plant.
>
> The Junction provides for switching charges on "all carload freight." That provision, without qualification, includes livestock. There is therefore a holding out by the Junction to switch livestock to and from industries, sidings, team tracks, and districts listed in the tariff. The published switching charge is appropriate for any switching that may occur of cars of livestock to complainant's proposed plant. It does not appear that the maintenance of a switching charge for livestock will have any detrimental effect upon terminal operations.
>
> We find (1) that in the circumstances presented the published switching charges in addition to the line-haul rates will not be unreasonable or otherwise unlawful for

the transportation of livestock for delivery on the private side-tracks to be constructed by complainant, which will connect with the Junction, provided that the tracks to be constructed will be adequate for deliveries by the Junction at its ordinary operating convenience and without interruption or interference, and (2) that establishment of joint rates for the transportation of this traffic is not necessary or desirable in the public interest.

We further find that the proposal to specifically exempt livestock from the traffic which will be transported by the Junction at Chicago and to cancel the application on livestock of switching charges, except to and from chutes and sidings at the Union Stock Yards at that point, is not just and reasonable.

Following entry of the Commission's order carrying out its findings, Swift brought its suit to set aside the order (R. 1). The United States and the Commission filed separate answers (R. 90, 94). Having been given leave to intervene (R. 97), the railroads (including the River Road, lessee of the Junction) filed their answer (R. 98). Others intervening and filing answers were the Union Stock Yards (R. 125), the Chicago Live Stock Exchange, the Chicago Traders Live Stock Exchange (R. 132), the National Live Stock Producers Association and the Chicago Producers Commission Association (R. 135). At the hearing before the specially constituted dis-

trict court a complete record of the proceedings before the Commission, including exhibits, was introduced (R. 196). The court's findings of fact and conclusions of law (R. 197-209) were filed May 28, 1951; its order dismissing Swift complaint (R. 210) was entered June 21, 1951.

SUMMARY OF ARGUMENT

I

What appellant Swift sought of the Commission in this case was an order requiring private delivery to it, at its private side track, without any charge in addition to the line-haul rate. But the line-haul rates do not include compensation for such switching, and the Chicago Junction Railroad could not be expected to perform such switching without compensation.

The Commission could neither ignore the history of the development of the stockyards area nor the fact that inauguration of regular, continuing switching service to effect plant delivery of livestock would inevitably interfere with, and delay, the Junction's dead freight service and the operations of the line-haul carriers in making delivery of livestock to the stockyards, all to the detriment of producers and consumers generally and to the public interest.

Taking these factors into account, the Commission could properly, and did, find that the granting of Swift's request would "seriously

interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally."

II

The Commission's findings that the switching charge upheld had not been shown to be prejudicial and discriminatory are amply supported by the evidence. It is clear enough, as the Commission found, that live freight—cars filled with cattle—cannot be handled in the same manner as dead freight. The measure of the transportation services rendered the former is substantially greater than that required by the latter. Cars of livestock cannot be subjected to rough shocks or jolts, and the Federal 28-hour law requires special handling of livestock, not necessary with respect to dead freight, in the interests of economy, safety, sanitation, and health.

Swift did not bear its burden of showing that other packers, under substantially the same conditions and circumstances, were being accorded perferred treatment. The Union Stock Yards is not a packer; it has been held by this Court to be a terminal, and terminal delivery cannot be equated with private sidetrack delivery. Swift's Omaha plant is not in the congested stockyard area as its proposed plant would be, and so the fact that delivery there is made at the line-haul rate does not show discrimination.

United States v. *Baltimore & Ohio R. Co.*, 333 U. S. 169, was quite a different case. There was not involved in that case the congestion and delays which would be a consequence of the private side-track delivery Swift seeks here. Indeed, in that case, involving the Cleveland stockyards area, railroads had been making plant delivery of live-stock for many years, and the only question was whether the Yard Company's ownership of track could be used as a device for terminating such plant delivery which adversely affected the Yard Company's business.

III

The Commission's decision in this case was in no way based on the covenant between the River Road and the Union Stock Yards. It was based on transportation standards, and was the product of an effort to give effect to the interests of producers, consumers, carriers and the general public. To suggest that the private agreement referred to was in any respect influential on the Commission is an affront to that public body which is wholly unjustified.

IV

The switching charge upheld by the Commission in this case is the same (subject to general increases) as that it upheld, almost twenty years ago, when Hygrade Food Products asked for what Swift is now here seeking. (195 I. C. C. 553.)

It is not a penalty charge directed at Swift, or at livestock, or designed indirectly to accomplish an indirect prohibition of private sidetrack delivery to Swift. For the history of the charge demonstrates that it was designed to apply to "all carload freight" not merely livestock.

Swift had the burden of showing that charge to be unreasonable; it failed to meet that burden and hence cannot complain simply because it is not accorded private delivery at rates which would be lower than its expenditures for delivery at the Union Stock Yards or at the Omaha plant.

ARGUMENT

I

In determining the issues raised in the proceedings, it was essential that the Commission consider the lay-out of yards and tracks of the Junction; the Junction's present operations in handling dead freight; the method by which livestock had for many years been handled by the line-haul carriers to the stockyards; and the physical operations that would be necessary if the Junction were required to make private-track delivery of livestock

Based on allegations that the interstate rates, charges and practices on and in respect of direct shipments of livestock to its plant in the stockyard area of Chicago were unreasonable and unduly prejudicial in violation of sections 1 and 3, Swift's complaint prayed the Commission to order the defendant carriers (line-haul and terminal) to establish in lieu thereof and apply

in future just and reasonable rates, charges and practices, including joint through rates between the line-haul carriers and the Junction, such rates to cover delivery of the livestock on a private siding at its plant and not to exceed the rates charged on shipments of livestock to the stockyards and other points in Chicago where delivery is afforded without charge in addition to the line-haul rates.

Thereupon, the Junction which had never, except in an emergency, handled livestock in switching service and yet, under the joint rates sought, would be the carrier making switching delivery thereof at the plant which Swift proposed to construct with connecting track in Packingtown, filed schedules proposing to specifically exempt livestock from the traffic it would transport and to cancel the application on livestock of all switching charges published by it, except to and from chutes and sidings at the stockyards. By action of the Commission, supplemented by voluntary action of the Junction, the operation of the schedules was postponed pending the Commission's decision. The two proceedings were heard on a consolidated record and decided in the same report (R. 57, 59).

The main issue presented was whether or not Swift was entitled to delivery without charge in addition to the line-haul rates of its direct shipments of livestock on the private sidings at a plant it proposed to construct in Packingtown just

north of its present plant (R. 59, 63). Swift's demand ignored the heavy burden of switching livestock through the crowded main and base yards of the Junction and thence over the latter's spurs to Swift's proposed plant. The line-haul rates do not include compensation for such switching (R. 78–79); the Junction could not be expected to perform such switching without compensation. And it is not apparent that the establishment of joint through rates between line-haul carriers and the Junction would eliminate the heavy burden of switching livestock through the Junction's yards and over its spurs to Swift's proposed plant. Moreover, a factor having to be particularly considered was that the inauguration of regular, continuing, switching service to effect plant delivery of livestock would necessarily interfere with and delay the Junction's dead freight service and the operations of the line-haul carriers in making delivery of livestock to the stockyards, all to the detriment of producers and consumers generally and to the public interest.

Accordingly, in order to properly determine the issues raised, the Commission regarded as necessary that it consider the layout of the yards and tracks of the Junction; the Junction's present operations in handling dead freight; the method by which the line-haul carriers had for many years transported livestock to the stockyards; the physical operations that would be necessary if the

Junction were required to make private-track delivery of livestock, as sought by Swift; and also, in order to avoid undue preference and prejudice, if it were required to make similar deliveries to Swift's competitors.

There are few cases, Court or Commission, involving shipments (direct or market) of livestock to the Chicago stockyards which have been determined without giving consideration to the history of the stockyards and of the company's terminal railroad (now the Junction), the conditions which induced the construction thereof, the rapid extension of the City, its streets and industries, into the area, and other conditions accounting for the practices of the stockyards or those of the railroads serving it. This has always been true of the Courts' decisions involving direct shipments of livestock consigned to packers at the stockyards. *Swift & Co.* v. *United States,* 316 U. S. 216; *Armour & Co.* v. *Alton R. Co.,* 312 U. S. 195; *Atchison, T & S. F. Ry Co.* v. *United States,* 295 U. S. 193; *Adams* v. *Mills,* 286 U. S. 397. In the *Swift case, supra* (pp. 222–3) this Court quoted from *Adams* v. *Mills,* as follows:

> * * * That the yards are, in effect, terminals of the railroads is clear. They are in fact used as terminals; and necessarily so. Whether the unloading in the yards was a part of transportation was not a pure question of law to be deter-

mined by merely reading the tariffs. Compare *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 294. The decision of the question was dependent upon the determination of certain facts, including the history of the Stock Yards and their relation to the line-haul carriers; the history of the unloading charge at these yards; and the action of the parties in relation thereto. If there was evidence to sustain the Commission's findings on these matters, its conclusion that the collection of the extra charge from the shippers was an unreasonable and unlawful practice must be sustained. * * *.

Later on in its decision in the *Swift* case, this Court said (pp. 225–227):

> In determining whether the Yard Company's unloading pens were suitable points at which to terminate the duties of carriers to consignees, and points where the consignees entered into a relationship with someone other than the carriers, the Commission was justified in considering, as it did, all that would account for the evolution of the practice complained of, as well as the effect of existing and proposed practices on the interest of the carriers, the public, and other shippers. *Adams* v. *Mills, supra,* at 409, *et seq.; Atchison, T. & S. F. Ry. Co.* v. *United States,* 295 U. S. at 198, *et seq.; Armour & Co.* v. *Alton R. Co., supra,* at 201. Neither the railroads nor the Stock Yards exist for the benefit of the

packers alone. Their patronage is large and important, but neither in the regulation of the carriers nor in the regulation of the Stock Yards are they entitled to facilities or treatment that will ignore the existence of other interests. The Stock Yards are not only a facility for the transportation of direct shipments from points of country origin to the packers; they also are an important factor in the entire animal industry of the United States. * * *

The bulk of the movement of stock is received in the Yards during the first days of the week, and approximately three-fourths of the daily movement is unloaded between three and eight in the morning. * * * * * * The customary handling over many years led to the building up of a physical plant which the Commission finds makes it physically impossible to remove this stock from the unloading pens except by use of the property of the Yard Company.

The interests of the public and of the community are entitled to consideration. This transportation is of a special kind of property on the hoof, which calls for special handling in the interests of economy, safety, sanitation, and health. The Commission has found that "the evidence fails to disclose how, as a practical matter, an annual volume of 30,000 carloads of livestock could be discharged into and handled through the public streets of Chicago."

The history and the practice deemed so weighty by this Court in the past, Swift would now prefer to put aside—to label as a product of "Railroad Statics" (Appellant's Br. 45, 89, 135), and so labeled to be ignored. In their stead, appellant bears heavily on the injustice and perhaps illegality involved in forcing packers, like Swift, to use the Union Stock Yards and pay them for unwanted and unnecessary services.

That these grievances have no place in this case, arising under the Interstate Commerce Act, has already been made clear by this Court. In *Swift & Co.* v. *United States,* 316 U. S. 216, 232–233, this Court said:

> Neither the Interstate Commerce Commission nor this Court can assume that the charges or practices of [the Union Stock Yards] are unfair or unreasonable, that it is charging for services that are not performed or facilities not used, or that it is imposing on consignees unnecessary services. Nor can the Commission or this Court assume that, if unreasonable practices or charges are imposed by this utility, the Secretary of Agriculture would fail to correct them upon an appropriate complaint in a proceeding in which the Yard Company is a party and may defend its practices for itself. In any event, Congress has provided that the Secretary of Agriculture is the forum in which such charges and practices may be questioned and may be weighed in the interest, not only of the

> packers but of others who use the Yards and markets and who might be affected competitively by granting the packers' present demands. Congress has established appropriate forum in which any complaint of the packers against the real party in interest may be heard and any lawful grievances adjusted, and the Commission was quite right in refusing to trespass on its jurisdiction.

Thus, the charges imposed by Union Stock Yards have no bearing whatever on this case. Cf. Appellant's Brief, pp. 12–13, 117–141.

While, in the *Swift* case, *supra*, and the other so-called "egress" cases, the basic question involved—the point where transportation ends—was one committed to the Commission, equally, in the case here, the questions whether Swift was subjected to undue prejudice, whether the carriers' practices respecting terminal deliveries were unreasonable, whether the joint rates sought were in the public interest, all were questions committed to administrative judgment, and clearly, in determining them, the Commission was expected to have full evidence as to past and present conditions accounting for existing practices as well as evidence as to the effect of proposed practices on the carriers and on producers, consumers, and the general public. As stated in the Commission's report (R. 72):

We have indicated generally the difficulties which would confront defendants if required to make delivery of livestock at complainant's plant, the basic difficulty being that such method of delivery is not adapted to defendant's service, tracks and yards, as specially designed and developed, along with the city's intensive development, for performance of the centralized delivery service rendered at Chicago. For some 70 years the method of conducting terminal operations in the stockyards district has been for the line-haul carriers, using Junction tracks, to carry all shipments of livestock [11] to the stockyards and make deliveries there, and for the Junction to perform the switching and spotting of other freight for the packers and many other industries in the area. As a result, the Junction's main tracks, its yards and subyards and their tracks, are peculiarly designed and fitted for the operations and service described, and any change, particularly as contemplating deliveries of livestock to the plants of the packers, would, as might be expected and as is shown, require a conflicting use of such yards and tracks and subject defendant's operations to interference and delays.

[11] With the exception of team track deliveries and deliveries to Swift at the Omaha Plant site, referred to in footnote 4, page 5, *supra*.

Continuing, the Commission's report outlined in considerable detail the adverse effects of any undertaking by the Junction to make switching deliveries of livestock through its yards, both as blocking and delaying the trunk lines' trains of livestock seeking ingress to the stockyards and as delaying and disrupting the Junction's operations in classifying and switching dead freight to and from the 499 industries on its lines. Thereafter, the Commission stated and found (R. 76–77):

> Interferences with the movement of livestock to the stockyards is a serious concern not only of defendants but also of producers and livestock marketing agencies who desire expeditious movement of livestock and continued functioning of the public market in a manner that is adequate for their needs. * * *
>
> We may * * * disapprove the inauguration of a continuing practice of delivering livestock directly to packers in circumstances where, as we have found would be the case here, such practice would seriously interfere with, delay, and disrupt terminal transportation operations and the movement of livestock generally. The proposed complete exemption of livestock from transportation by the Junction under any circumstances is not justified. There is no warrant, however, for a conclusion that the establishment of joint rates as desired by complainant is necessary or desirable in the public interest.

II

Swift's allegation that the Commission erred in failing to find that the existing rates, charges and practices of the carriers resulted in undue prejudice and preference in violation of Section 3 is without merit

As regards Swift's contention that the carriers' existing rates, charges and practices on and in respect of shipments of livestock to its proposed plant resulted in undue prejudice to livestock as a commodity, it will be noted that the Commission found (R. 65–72):

> The measure of the transportation services rendered shipments of live animals is substantially greater than that accorded dead freight. Livestock cannot be switched in the same manner as other freight. In the ordinary and usual course of classifying dead freight by the Junction, the engine pushes a string of cars along a track leading to the classification tracks. Uncoupled cars are "kicked" or given impetus to roll freely through a switching lead onto the proper classification track. Manifestly, if livestock were so handled it would result in injury to the animals by being thrown against the ends or sides of the cars or knocked down. Cars of livestock must necessarily come to rest without rough shocks or jolts. * * *

Subsequently, in discussing the difficulties the Junction would encounter in classifying and switching livestock in yards, already worked to capacity in handling dead freight; the report

shows in considerable detail the greater service that would have to be rendered livestock than is accorded dead freight (R. 72–4). In fact, it seems beyond dispute, not only that the measure of service rendered livestock is greater than that accorded dead freight, but that the circumstances and conditions that accompany its handling are far different. As stated in the previous *Swift case, supra,* p. 227:

> * * * This transportation is of a special kind of property on the hoof, which calls for special handling in the interests of economy, safety, sanitation, and health. * * *.

In the proceeding before the Commission Swift had the burden of showing that the rates in effect were unduly prejudicial to it and preferential of its competitors. To do this Swift was required to show that other packers under substantially the same conditions and circumstances were being accorded preferred treatment. Swift failed to sustain this burden. Not only did Swift fail to show that facts, circumstances, and conditions at other midwestern points were the same or very similar to those at Chicago,[12] but rather

[12] The record shows that at the other midwestern points the so-called preferred packers occupied the same position with respect to line-haul carriers as did Swift with respect to its private sidings on the right-of-way of the Burlington which serves Swift's Omaha plant (Ex.'s 12 and 53, R. 1083, 1868). In this connection Swift's position becomes in effect one of complaining, among other things, because Swift itself at its

the evidence indicates that Swift was in a better position than other Chicago packers because Swift had the choice of receiving its "directs" either at the Omaha Packing Company or at the Stockyards.

The cases cited by Swift as involving situations analogous to those in this case do not sustain its position here. In *Neuhoff Packing Co. v. L. & N. R. Co.*, 268 I. C. C. 271, the complainant was a wholly owned subsidiary of Swift and it operated a meat-packing plant at Nashville, Tenn. The complaint there alleged that the railroads' refusal to deliver interstate carload shipments of livestock upon complainant's sidetrack was unreasonable and unduly prejudicial to the complainant, and unduly preferential of its competitors in the southeast, in violation of Sections 1 and 3 of the Interstate Commerce Act. The Commission upheld the complainant after stating that "the sole basis for the defendants' refusal to make the sidetrack deliveries to the complainant is a provision in a contract with the stockyard company which designated the stockyard as the only depot for receipt of livestock in Nashville." (268 I. C. C. 271, 273.) The Commission went on to say that if the contract "transgresses or conflicts with any of the provisions of the Interstate Commerce Act, it must be disregarded, and that since no rule of universal ap-

---

Omaha plant is receiving a preference over Swift itself at its proposed new plant.

plication could be laid down, each case must be determined according to the facts, circumstances, and conditions presented." (268 I. C. C. 271, 273.)

In *Nashville Abattoir, Hide & Melting Assn.* v. *L. & N. R. Co.*, 40 I. C. C. 134, the issues raised were substantially the same as those in this case. There, as here, the Commission found that upon the facts of record defendants' regulations and practices governing the delivery of livestock in Nashville were not shown to be unreasonable or unjustly discriminatory. The Commission distinguished the *Neuhoff* case from the *Nashville Abattoir* case on the ground that the facts, circumstances, and conditions in that proceeding are entirely dissimilar from those in the *Neuhoff* case.

In reaching its decision in the *Neuhoff* case, the Commission cited an analogous case as the basis of its decision. Thus, at page 274 of the *Neuhoff* case, the Commission said:

> In *Baltimore Butchers Live Stock Co.* v. *P. B. & W. R. Co.*, 20 I. C. C. 124, the Commission considered a situation similar to that here presented. There, complainant had yards for the receipt and care of livestock with a switch connection and sidetrack reaching the yards which were then and for many years had been in use. *No physical obstacles to the delivery of livestock at the yards were shown to*

> *exist.* That is the case here. [Emphasis supplied.]

The *Neuhoff* and *Baltimore Butchers* cases are readily distinguishable from this; in those cases no physical obstacles to the delivery of livestock were shown to exist. In the instant case the record and the Commission's findings demonstrate that the physical obstacles that would be encountered in switching livestock through the Junction's yards would be very great and that the undertaking of such service would seriously interfere with all terminal operations in the stockyard area.

Kriel v. *Baltimore and Ohio R. R. Co.*, 41 I. C. C. 434 (1916), involved another unsuccessful attempt to obtain plant delivery of livestock on the ground that defendant carriers' customary method of delivery to the Union Stock Yards in Baltimore, about 3½ miles from complainant's plant, was unreasonable and unduly prejudicial. Complainant relied on the *Baltimore Butchers* case, *supra,* but the Commission, distinguishing that case, said:

> If defendant is required to provide the desired delivery for complainant, other packers might with equal propriety demand similar treatment. Defendant states that to make such delivery, it would be necessary to provide a permanent double-deck unloading chute and also a pen to prevent the hogs from straying over the streets. Cars

> for unloading are ordinarily placed on the tracks in question during the night, and in certain seasons there is considerable congestion. Defendant states that under present train schedules livestock shipments would not arrive there until 9 A. M., and that the delays incident to the spotting of cars, especially if the tracks were congested, might necessitate the return of such livestock to the Claremont yards to be watered, fed, and rested within the time required by law.
>
> It cannot be denied that to have the unloading of livestock concentrated facilitates inspection, tends to prevent the spread of disease, and improves sanitary conditions generally (p. 435).

In addition to the *Neuhoff* and *Baltimore Butchers* cases, Swift, before the Commission, as here, relied particularly on the so-called *Cleveland Stockyard* case, 266 I. C. C. 55, the Commission's order in which was sustained as valid in *United States* v. *Baltimore & Ohio R. Co.*, 333 U. S. 169. In that case, Swift's plant and the plants of certain other packers were reached by a spur of the New York Central, a middle segment of which was owned by the Cleveland Union Stock Yards Company but for years had been operated over by the Central under trackage right agreements. The agreement of 1924 was cancellable by either party on 30 days' written notice; and, in the early 1930's the Yard Company, whose income

is largely derived from fees it charges for unloading and delivering livestock into pens within its yard, concluded that it was losing patronage and fees because of the deliveries of livestock to Swift and other packers on the Central's spur. With a view toward collecting such fees, the Yards Company instituted negotiations with the Central which in 1935 resulted in a modified agreement. Whereas, under the former agreement the Central was granted the free and uninterrupted use of the track segment (called track 1619), the modified agreement added the clause "except for competitive traffic a charge for which shall be the subject of a separate agreement."

In subsequent negotiations the parties agreed that the words "competitive traffic" meant livestock, and the Yards Company demanded that the Central either stop carrying livestock over track 1619 to Swift and other packers or pay it for such use thereof an amount equivalent to the fees the Yards Company would have collected had the livestock consigned to such packers been unloaded and delivered in its yard. This amount was considered exorbitant by the Central and the other railroads for which it performed switching and they refused to pay it. The result was that in 1938 the railroads ceased delivering livestock to the sidings of Swift and the other packers served by the Central's spur, although under agreement with the Yards Company they continued to use

the spur for delivery of all other kinds of commodities.

Swift filed its complaint with the Commission and, following full hearings, the Commission found that the railroads' refusal to carry livestock to Swift's plant subjected Swift to undue prejudice and unduly preferred several nearby competing plants which continued to receive deliveries of livestock on sidings which could be served without using track 1619. The Commission further found that under the circumstances shown at Cleveland such refusal of the railroads constituted a violation of section 1 (6) and also of section 1 (9). (266 I. C. C., at 68–70.) In connection with these findings it is important to keep in mind that the railroads had made plant delivery of livestock at Cleveland for many years. The operations there were geared to that method of delivery just as at Chicago they have developed on the basis of delivery to the public yard. The Commission found (pp. 68–69) that for years all the defendant railroads had recognized that the performance of plant delivery of livestock was included in the line-haul rates to Cleveland while in the case here the Commission found that the line-haul rates on livestock to Chicago which it had prescribed do not contemplate or cover deliveries to plants on the Junction.

The Commission's findings in the *Cleveland Stockyard* case were not in fact challenged. All turned on the Yard Company's ownership of track

1619 and the question whether, although contracting for the use of the track as part of the line of an interstate railroad, it could compel that railroad to operate in a way which violates the Interstate Commerce Act. This Court's answer to the question was "no"; that "the Commission's order was authorized by statute and that it does not deprive Stock Yards of its property without due process of law." *United States* v. *Balto. & O. R. Co., supra,* p. 177.

Appellant complains that an unlawful discrimination is involved in "the transportation of livestock to the Swift sidetrack for the line-haul rate plus $39.24 per car switching fee, while similar transportation of the same commodity to the Union Stock Yards is made at the line-haul rate without any switching fee" (Br. 70).

This complaint ignores what this Court has always recognized to be the fact: "That the yards are, in effect, terminals of the railroads is clear. They are in fact used as terminals; and necessarily so." *Adams* v. *Mills,* 280 U. S. 397, 409; *Swift & Co.* v. *United States,* 316 U. S. 216, 222. In recognition of this fact, Congress has explicitly and clearly distinguished between public stockyards deliveries and other deliveries. By Section 15 (5) of the Interstate Commerce Act, Congress has stipulated for stockyards delivery at the line-haul rate but gone on to provide that "Nothing in this paragraph shall be construed to affect * * * the duty of performing service as to

shipments other than those to or from public stockyards."[13] [Italics supplied.]

This Court has said that a carrier cannot exact an extra charge for the use of a terminal.[14] It hardly follows that a carrier may not exact an extra charge from one who chooses not to use the terminal and who desires and receives private sidetrack delivery.

Whether such a charge is unlawfully exacted depends upon "whether in view of the conditions of the distribution of the carload freight through a large area there was in fact such a similarity of movement as to negative the basis for a separate charge." *Los Angeles Switching Case*, 234 U. S. 294, 312. Here the Commission found no

[13] Section 15 (5) provides, in full, as follows:

SEC. 15. (5) Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards, of outbound shipments, without extra charge therefor to the shipper, consignee, or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee, or owner, or to try an intermediate market, or to comply with quarantine regulations. The commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

[14] *Covington Stock Yards Co.* v. *Keith*, 139 U. S. 128, 135–136.

such similarity of movement (R. 70) and to Swift's insistence "that the contrary of this finding is self-evident," this Court's answer in the Los Angeles Switching Case has equal force here: "The facts with respect to the movement of freight in a great terminal district are by no means so simple that the deliberate judgment of the Commission can be regarded as contradicting the obvious." 234 U. S., at 314.

III.

Swift's contention that the Commission's order gives effect to an unlawful covenant is without merit

Swift urges at some length (Br. 117–34) that the Commission's order gives effect to a covenant by which the River Road, a subsidiary of the New York Central, is to operate the Junction in a way discriminating in favor of the stockyards business. In the Commission proceeding Swift introduced a letter (Ex. 57, R. 1038–9, 1961–2) written by counsel for the stockyards to the General Counsel of the River Road and New York Central stating that those carriers were obligated by such covenant to defend against Swift's complaint and to take the proper steps to raise the issues necessary for a determination of all the questions involved. Swift's brief (123) suggests that the River Road and New York Central undertook to defend against its complaint only because of the letter. In its report the Commission

refers to the covenant and Swift's contention as follows (R. 79–80):

> Complainant asserts that a contractual relation exists between the Union Stock Yards and the Chicago Junction under a lease dated December 1, 1913, whereby the carrier agreed "to conduct, manage, and operate the line of railroad by this instrument demised, and insofar as possible the same to conduct in such manner as will tend to the benefit, advantage, and behoof of the business and affairs of the Yards." The covenant quoted was incorporated in a later lease executed May 19, 1922, when the Chicago Junction subleased its line to the Chicago River & Indiana, a wholly owned subsidiary of the New York Central Railroad, for 99 years with an option to renew in perpetuity. *Union Stock Yard & Transit Co.* v. *United States*, 308 U. S. 213, 216. The effect of the leases was to completely divest the Union Stock Yards of operation and control of the terminal railroad, the Court saying that by ceasing to operate or control its railroad directly or indirectly, the Union Stock Yards restricted its transportation service to the loading or unloading of livestock as specified in its tariff. The operation of the Chicago Junction is subject not only to the provisions of the Interstate Commerce Act but also to the conditions imposed by the Commission in the *Chicago Junction Case*, *supra*. Those conditions were par-

> ticularly intended to insure that the Chicago Junction and the Chicago River & Indiana should be operated as neutral terminal carriers, without special advantage favoring the New York Central but the conditions were and are broad enough to inhibit operation of the Chicago Junction to the special advantage and interest of the Union Stock yards.

The complete answer to Swift's contention is that the Commission's decision is not in any respect whatsoever based on the contract clause in question. The Commission not only gave it no weight at all in reaching its conclusion, but on the contrary rejected the suggestion that it had any significance. The Commission's attitude on that question was succinctly stated in the *Neuhoff case, supra,* where it said that if any private contract conflicts with the provisions of the Interstate Commerce Act then it must be disregarded. What Swift wants is that its proposed plant in Packingtown be accorded at the flat Chicago rate the same delivery service as is accorded its plant and also all other packing plants at Cleveland. But, as above stated, operations in Chicago have developed on the basis of an entirely different method of effecting deliveries. That this was known to the Commission and all parties to the *Chicago Junction case,* 71 I. C. C. 631, is shown by the Commission report in that case wherein it is stated (p. 633):

> The movement of live stock in and out of the Junction yards is essentially different from the method of handling the dead freight, in that each carrier moves its trains to the unloading chutes with its own power, and goes into the pens for outbound stock destined for its own line. All parties concede that that is the only practical method of handling that traffic. * * *

As is so unmistakably shown in its report in the case here, the Commission's decision was based on transportation standards, giving effect to the interests of producers, consumers, carriers and the general public. It was not in the slightest degree influenced by any special interest.

IV

The switching charge of the Junction in addition to the line-haul rates is not a penalty charge as termed by Swift

As bearing on the switching charge of the Junction to points on its lines, the Commission said in its report in this case (R. 77–8):

> In *Hygrade Food Products Corp.* v. *Atchison, T. & S. F. Ry Co.*, 195 I. C. C. 553, complainant therein alleged, among other things, that switching charges demanded for the placement of carloads of livestock at complainant's plant directly north of the unloading pens of the Union Stock Yards in Chicago, were inapplicable and, if applicable, were unreasonable, un-

duly prejudicial to complainant, and unduly preferential of the Omaha Packing Company, in Chicago, a competitor of complainant.

The plant of the complainant in that proceeding also is served only by the rails of the Junction. It was there sought, as in the instant proceeding, to have certain private tracks used for the receipt of livestock without any additional charge for switching. We found that the published switching charge there assailed, $12 per car, which, as increased by subsequent general authorized increases, is the identical switching charge here assailed, was applicable to the placement for delivery of carloads of livestock at complainant's plant, and had not been shown to be unreasonable or otherwise unlawful.

In the report in that proceeding we said at page 555:

While deliveries are made at the plant of the Omaha Packing Company without the assessment of a switching charge such as applies to deliveries at complainant's plant; there is no indication that transportation services, conditions, and circumstances connected with deliveries at complainant's plant would be substantially similar to those connected with deliveries at the plant of the Omaha Packing Company, and no facts of record lead to the conclusion that charges applicable to such services as may be performed in making deliveries at complainant's plant are un-

reasonable or that the differences in these charges are not warranted.

Apparently, Swift, in contending that the Junction's switching charge is a penalty charge means that it is, and has been, a charge made purposely high to force deliveries of livestock at the public yards (Appellant's Br. 57). But, as pointed out in the Commission report here (R. 80), the switching charge is one applying on "all carload freight." It is because the tariff provision is thus unqualified that it includes livestock, but, for the same reason, it includes and applies to any dead freight as to which joint rates have not been established, or specific charge published. Certainly, as so applying on both dead freight and livestock, it cannot be logically assumed that the switching charge is, or ever was, one made purposely high to force deliveries of livestock at the public yards instead of at the plants of the packers. It may be that in cases where the charge applies to dead freight it is excessive, but the record makes even that assumption doubtful. The evidence is all one way, fully supporting the Commission's finding that in view of the services and modification of services to effect the desired deliveries of livestock and the effect on terminal operations generally, the switching charge in addition to the line-haul rates will not be unreasonable or otherwise unlawful.

What Swift sought was joint through rates not

to exceed the flat line-haul rates to Chicago. But the Commission could not disregard the evidence. Apparently, Swift believes that any switching charge not adjusted so as to be below the Stockyards yardage charges or below his costs for trucking the animals from the Omaha plant site would be penalty charges. But the statute does not contemplate that the Commission apply such standards.

CONCLUSION

For the above reasons it is respectfully submitted that the decree of the lower court should be affirmed.

PHILIP B. PERLMAN,
Solicitor General.

DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

FEBRUARY 1952.